

IN THE COURT OF APPEALS OF THE STATE OF OREGON

NORTHWEST PUBLIC  
COMMUNICATIONS COUNCIL,

Petitioner,

v.

QWEST CORPORATION, fka U.S. West  
Communications, Inc. and PUBLIC  
UTILITY COMMISSION OF OREGON,

Respondents.

TRANSMITTAL OF SHORTENED  
RECORD AND CERTIFICATE

Appellate Court No. CA No. A166810

Agency Case No. UT 125

VOLUME I

ITEM NOS. 1 - 12

FILED  
COURT OF APPEALS

MAR 27 2018

STATE COURT ADMINISTRATOR

By AB Deputy

CASE NO. A166810

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Agency Case No. UT 125

I, Cheryl Walker, Administrative Specialist 2, Public Utility Commission of Oregon, pursuant to ORS 183.482(4), list below and transmit herewith the original of the shortened record UT 125 under review in the above proceedings, except that wherein a copy of any document or paper is filed herein, I hereby certify that I have compared the copy with the original and that it is a true and correct copy of the original and the whole thereof.

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1	UT 125 -- NORTHWEST PUBLIC COMMUNICATIONS COUNCIL's (NPCC's) Amended Petition for Review Judicial Review Pursuant to ORS 183.482 in the Oregon Court of Appeals; challenging Order No. 17-473; Dated 2/12/18.	789-805
2	UT 125 -- NPCC's Petition for Review Judicial Review Pursuant to ORS 183.482 in the Oregon Court of Appeals; challenging Order No. 17-473; Dated 2/7/18.	772-788
3	UT 125 -- NPCC's Reply in Support of Its Motion for an Order to Show Cause; Dated 4/14/17.	755-771
4	UT 125 -- Qwest's Response to NPCC Motions; Dated 3/24/17.	730-754
5	UT 125 -- NPCC's Motion for an Order to Show Cause or in the Alternative, to Clarify Order No. 07-497; Dated 1/26/17.	695-729
6	FCC ORDER FCC 13-24, CC Docket No. 96-128; Released 2/27/13.	659-694

7	UT 125 -- Order No. 07-497 signed by Commissioners Lee Beyer, John Savage, and Ray Baum; DISPOSITION: STIPULATION ADOPTED. Entered 11/15/07.	655-658
8	UT 125 -- Order No. 06-515 signed by Commissioners Lee Beyer, John Savage, and Ray Baum; DISPOSITION: QWEST RATE REBALANCING PROPOSAL DENIED. Entered 9/11/06.	642-654
9	UT 125 -- Letter from L. Reichman to Hearings Division, including Attachment "A"; Dated 3/31/06.  Confidential exhibits to Attachment A located in Envelope #96(46).	636-641  Separate Cover
10	DR 26/UC 600 -- STAFF of the Public Utility Commission of Oregon's Reply to Qwest's Cross-Motion for Summary Judgment; Dated 1/25/05.	631-635
11	UT 125 -- Advice No. 1946, Effective 8/28/03. Dated 7/28/03. (Note: Confidential materials unavailable.)	624-630
12	UT 125 -- Advice No. 1935, Effective 3/17/03. Dated 2/14/03. (Note: Confidential materials unavailable.)	601-623
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13	UT 125/PHASE II RATE DESIGN -- Order No. 02-009 signed by Commissioners Roy Hemmingway, Lee Beyer, and Joan H. Smith; DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED. Entered 1/8/02.	595-600
14	UT 125/PHASE II RATE DESIGN -- Order No. 01-810 signed by Commissioners Roy Hemmingway, Lee Beyer, and Joan H. Smith; DISPOSITION: RATES APPROVED. Entered 9/14/01.	525-594
15	UT 125 -- Advice #1806 did not go into effect. This Filing Withdraws Advice No. 1806 And Transmittal No. 99-014-PL And Their Supplements In Their Entirety: Attachment A/List of Tariff Sheet Revisions - Advice No. 1849/1-11 (Accompanied by related tariff sheets); Transmittal No. 2000-007-PL/1-2, Revisions to the Access Service Tariff, Private Line Transport Services Tariff, and the Exchange and Network Service Tariff and Price List; Attachment B/Advice No. 1849/UT 125 Rate Design 11-15-00 (Confidential documents in Envelope #96(23). Dated 11/15/00.	474-524  Separate Cover
16	UT 125/UT 80 -- Order No. 00-191 signed by Commissioners Ron Eachus, Roger Hamilton, and Joan H. Smith; DISPOSITION: PORTIONS OF ORDER NOS. 96-183 AND 97-171 READOPTED. Entered 4/14/00.	284-473

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17	UT 125/UT 80 -- Order No. 00-190 signed by Commissioners Ron Eachus, Roger Hamilton, and Joan H. Smith; DISPOSITION: STIPULATION ADOPTED; ORDER NO. 96-107 MODIFIED; ORDER NOS. 96-183, 96-286, AND 97-171 RESCINDED. Entered 4/14/00.	225-283
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19	UT 125-- Advice No. 1668, Effective 4/15/97. Dated 1/15/97. (Note: Past retention and unavailable.)	36
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Dated at Salem, Oregon, this 23<sup>rd</sup> day of March, 2018.

*Cheryl Walker*

Name: Cheryl Walker

Title: Administrative Specialist 2

Agency: Public Utility Commission of Oregon



**IN THE COURT OF APPEALS OF THE STATE OF OREGON**

**NORTHWEST PUBLIC COMMUNICATIONS COUNCIL,**

**Petitioner,**

**v.**

**QWEST CORPORATION, fka U.S. West Communications, Inc. and PUBLIC**

**UTILITY**

**COMMISSION OF OREGON,**

**Respondents.**

**Public Utility Commission of Oregon**

**UT125**

**A166810**

**Amended**

**PETITION FOR JUDICIAL REVIEW OF ORDER  
OF THE PUBLIC UTILITY COMMISSION OF OREGON**

Petitioner seeks judicial review of the Public Utility Commission of Oregon's Order No. 17-471, dated November 16, 2017. A copy of the Order is attached.

The parties to this proceeding before the Court of Appeals are:

**DOCKETED**

Petitioner:

Northwest Public Communications Council  
21420 NW Nicholas Ct #13  
Hillsboro, OR 97124

Respondents:

Qwest Corporation, fka U.S. West Communications  
c/o Lawrence Reichman  
Perkins Coie LLP  
1120 NW Couch St #10  
Portland, OR 97209

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301

Petitioner Northwest Public Communications Council is represented by:

Frank Patrick, OSB No. 760228  
PO Box 231119  
Portland, OR 97281  
fgplawpc@hotmail.com  
(503) 245-2828

Respondent Qwest Corporation is represented by:

Lawrence H. Reichman, OSB No. 860836  
Perkins Coie LLP  
1120 NW Couch, 10th Fl.  
Portland, OR 97209  
(503) 727-2019  
lreichman@perkinscoie.com

Respondent Public Utility Commission of Oregon is represented by:

Page 2– AMENDED PETITION FOR REVIEW OF A FINAL ORDER OF THE PUC



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Petitioner seeks review of the Public Utility Commission's Final Order, PUC 17-473 dated November 16, 2017, in case number UT 125 denying Petitioner's Motion to Show Cause, or, alternatively, to Clarify Order No. 07-497.

Petitioner is a party to the proceedings in UT 125.

Petitioner is willing to stipulate to shorten the record. Petitioner requests inclusion of the following documents from Case No. UT 125: Public Utility Commission Orders Nos. 96-094, 96-107, 96-183, 97-171, 00-190, 00-191, 01-810, 02-009, 06-515, and 07-497; Advice Nos. 1668, Advice 1806, 1935, and 1946; and the Letter from L. Reichman to Hearings Division, including its Attachment "A" (March 31, 2006), as well as the following documents from Case No. DR 26/UC 600: the Letters to the Federal Communications Commission dated April 10, 1997 and April 11, 1997 from counsel for the Coalition of Regional Bell Operating Companies, the responsive brief of the PUC Staff in response to

NPCC's motion for summary judgment in Docket DR 26/UC 600, FCC Order FCC 13-24 dated February 27, 2013.

Pursuant to ORS 183.482(8)(a), (b) and (c), Petitioner requests that the Court of Appeals reverse Public Utility Commission Order No. 17-473 to grant Petitioner's Motion to Show Cause, or, alternatively, Clarify Order No. 07-497 by ordering the calculation and payment of additional refunds as prayed by Petitioner to make the interim rates compliant with the FCC and PUC Orders.

The Public Utility Commission has failed and refused to comply with the Court of Appeals remand requiring that the PAL and fraud protection rates adopted in Order 01-810 that replaced all interim PAL and fraud protection rates in effect since May 1, 1996 it reversed and remanded to be made compliant with the federal requirements including the new services test.

The PUC does not have discretion to do other than Comply with the Remand and to require Qwest to comply with: (i) the Court of Appeals remand; (ii) the requirement that all payphone rates comply with the new services test effective April 15, 1997 in accordance with the Telecommunications Act as amended in 1996; or (iii) the PUC's orders that refunds be allocated to ratepayers based on the difference between the "final rate" set November 15, 2007 and any higher interim rate as required by Orders 00-190 and 00-191 the result of

settlement agreements; and the settlement agreement embodied therein as those orders and the obligations thereunder have been interpreted in Order 06-515, a final non appealable order. In the alternative, Petitioner requests that the Court of Appeals reverse Order No. 17-471 because the PUC Order and Opinion has erroneous factual statements and interpretations of law.

This appeal is timely and otherwise properly before the Court of Appeals because it is being filed within 60 judicial days of the effective date of the PUC final Order entered on November 16, 2017.

Dated this 9th day of February, 2018.

CORPORATE LAWYERS PC

By: s/ Frank G. Patrick

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(503) 245-2828  
*Counsel for Northwest Public  
Communications Council*

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically Filed and Served a copy of the foregoing Petition to Review the Decision of Court of Appeals and Decision consolidated as one document as requested as follows:

Service was by:  Mailing  Hand Delivery  Email  E Filing ORAP Rule

The Respondent:

Public Utility Commission Of Oregon  
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Respondent

Respondent Public Utility Commission of Oregon was served by:

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Attorney for Respondent QWEST

I further certify that upon review, all parties are registered with E-filing at the State of Oregon Electronic Filing System and that the Amended Petition for Review was filed by Email and by E-filing.

E-Filing:  
ATTN: Records Section  
State Court Administrator  
Supreme Court Building  
1163 State Street  
Salem, OR 97301-2563

FEBRUARY 9, 2018

/s/ Frank G. Patrick  
Frank G. Patrick, OSB 760228  
Attorney for Appellant

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UT 125

In the Matter of

QWEST CORPORATION, fka  
U S WEST COMMUNICATIONS, INC.

ORDER

DISPOSITION: MOTION TO SHOW CAUSE OR, ALTERNATIVELY,  
CLARIFY ORDER NO. 07-497, DENIED; DOCKET CLOSED

I. INTRODUCTION

In this order we deny the motion of Northwest Public Communication Council (NPCC) asking the Commission to order Qwest Corporation (Qwest) to refund overcharges alleged to have occurred between 1996 and 2003.

II. BACKGROUND

A. The Parties

NPCC is a trade association that represents companies providing public payphone services. Qwest is a former regional Bell Operating Company and local exchange carrier, previously referred to as U S WEST Communications, Inc. in this docket.<sup>1</sup> NPCC's payphone service providers (PSPs) use Qwest's services in Oregon and pay Qwest rates determined by the Commission.

B. Procedural History

To provide a proper context to address NPCC's motions, we very briefly summarize relevant decisions of this Commission and the Federal Communications Commission (FCC). We divide our discussion into two parts: (1) our review of Qwest's rates in docket UT 125 and the FCC's payphone orders; and (2) NPCC's complaint against Qwest in dockets DR 26/UC 600.

<sup>1</sup> Qwest Corporation is a wholly-owned subsidiary of CenturyLink QC and does business under the name CenturyLink, but it retains its own corporate identity for legal and regulatory purposes.

1. *Docket UT 125 and the FCC Payphone Orders*

We opened docket UT 125 in 1995 to examine rates for Qwest's telecommunication services, including the company's public access lines (PAL) and fraud protection services (CustomNet). During the pendency of that general rate review, the FCC issued orders to implement the Telecommunications Act of 1996 (the Act). Of note here, the FCC found that payphone rates were to comply with the so-called "new services test"—which required rates to be based on the actual cost of providing the service, plus reasonable overhead costs. The FCC required local exchange carriers to file new services test-compliant tariffs with state commissions with an effective date no later than April 15, 1997. Carriers were permitted a 45-day extension for filing, subject to a refund obligation, under the FCC's waiver order.<sup>2</sup> Qwest filed new PAL rates on April 15, 1997, and therefore, as discussed below, did not need to avail itself of the 45-day extension granted by the waiver. We approved those rates with an effective date of April 15, 1997, and NPCC did not appeal this approval. For years thereafter, it was unclear whether those April 15, 1997, rates met the FCC standards, but they ultimately have been found to comply with the new services test standard.

We bifurcated the UT 125 rate case into two phases: (1) revenue requirement; and (2) rate design. In the revenue requirement phase, we issued Order Nos. 00-190 and 00-191, approving a settlement among Qwest, Staff and other parties (revenue requirement stipulation). These orders established revenue requirement figures and ordered refunds, which Qwest issued in late 2000 to certain customers, including PSPs. The PSPs continued to seek additional refunds which depended upon the outcome of pending FCC decisions.

In the rate design phase, we issued Order Nos. 01-810 and 02-009 establishing the final rate design to implement the stipulated revenue requirement. The rates established in this phase did not include refunds. NPCC appealed the rate design orders. In 2004, the Oregon Court of Appeals remanded the rate design orders with directions to consider whether the approved rates relating to payphones complied with the new services test.<sup>3</sup> While NPCC's appeal was pending, Qwest lowered its PAL rates in March 2003 and its CustomNet rates in August 2003 (Advice Nos. 1935 and 1946). In 2007, we adopted, in Order No. 07-497, a stipulation in which all parties unequivocally agreed that those rates were compliant with the new services test.

2. *Dockets DR 26 / UC 600*

Meanwhile, in May 2001, while the rate design phase of docket UT 125 was pending, NPCC filed a complaint asking us to order Qwest to pay refunds to NPCC members. NPCC stated that Qwest's rates that went into effect on April 15, 1997, did not comply with the new services test and that Qwest was required to pay refunds under the waiver order. We denied

<sup>2</sup> *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order, DA 97-805, 12 FCCR 21,370 (Apr 15, 1997). For additional background information, see *Northwest. Pub. Commc'ns Council v. Qwest Corp.*, 279 Or. App. 626, 628-642 (2016); *reconsideration den'd* (Mar 9, 2017).

<sup>3</sup> *Nw. Public Commc'ns Council v. Public Utility Commission of Oregon*, 196 Or. App. 94 (2004).

NPCC's complaint, finding that the refund obligation in the waiver order had not been triggered.<sup>4</sup> The Court of Appeals recently affirmed our finding, stating that Qwest had no refund obligation under the FCC waiver order because Qwest did not rely on the FCC waiver order in filing rates but instead relied on rates that we had approved.<sup>5</sup>

Central to NPCC's argument here, the Court relied on a 2013 FCC order that finally explained in more detail the refund obligation from the FCC's waiver order. The Court noted that the FCC order made clear that the waiver order did not address the applicability of refunds where a carrier filed tariffs after the extension period, or did not file new tariffs and instead relied on existing rates or only filed cost studies for existing rates.

### III. DISCUSSION

#### A. Overview

NPCC contends that from 1996 to 2003, Qwest charged and collected rates for payphone service, specifically for public access lines (PAL) and fraud protection services (CustomNet) that were unlawfully high. NPCC's filing is a two part motion. First, NPCC asks us to order Qwest to show cause that it is in compliance with orders we previously issued in this docket.<sup>6</sup> In particular, because we stated in an earlier order that Qwest agreed to accept the risk that it might lose on appeal and then be required to make further refunds, NPCC argues that Qwest assumed the obligation to refund overpayments to its ratepayers. In the alternative, NPCC asks that we amend Order No. 07-497 to expressly require Qwest to issue refunds. NPCC alleges that we have the power and the responsibility to require Qwest to fully refund PSPs for overcharges. Qwest filed a response to the Show Cause Motion and NPCC filed a reply.

#### B. Procedural Arguments

##### 1. Parties' Positions

Qwest raises two primary procedural objections to NPCC's requests. Qwest first argues that NPCC's motion is improper, because this docket is inactive and there are no issues that require a ruling. Qwest states that if NPCC wishes to pursue a claim, it must file a new complaint pursuant to ORS 756.500 clearly stating the basis for its claims and allowing Qwest the opportunity to defend itself.

Second, Qwest states that the final order in this docket was issued in November 2007, twelve years after it was opened, with NPCC participating actively throughout. Qwest emphasizes that no party appealed the 2007 order and this docket has been inactive and effectively closed

<sup>4</sup> *In Re Northwest Public Commc'ns Council v. Qwest Corp.*, Docket Nos. DR 26/UC 600, Order No. 11-504 at 8-9 (Dec 15, 2011) ("Contrary to NPCC's assertions, the *Waiver Order* did not require that intrastate payphone tariffs be reviewed and conclusively determined to be [new services test-] compliant by May 19, 1997. The order required only that [a local exchange carrier] be able to certify that it had effective state tariffs that met FCC requirements, Qwest made such certification on May 20, 1997.") (emphasis in original).

<sup>5</sup> *Nw. Pub. Commc'ns Council v. Qwest Corp.*, 279 Or. App. at 647 (2016).

<sup>6</sup> NPCC asserts that Qwest is in violation of Order Nos. 96-107, 00-190, 00-191, 06-515, and 07-497 as well as the Act and state law.



since 2007. Qwest reasons that, by not asking for additional refunds when final rates for payphone services were set in 2006-2007, NPCC waived any claim it might have had for additional refunds.

NPCC responds that its motions must be addressed in this proceeding, not only because they seek relief directly related to orders issued in or referred to in docket UT 125, but also because the central issue is whether Qwest is required to issue refunds for the over collection of unlawful rates. NPCC offers that it would stipulate to a procedure that allows Qwest and Staff to present evidence to aid in the resolution of NPCC's motion.

NPCC also maintains that the Commission has broad express and implied authority to issue orders to show cause and to amend its previous orders. NPCC believes its motions are proper because it seeks to enforce or amend orders issued in this docket and a complaint is not required.

NPCC also asserts that it did not and cannot waive Qwest's refund obligations and the Commission may amend an order at any time pursuant to ORS 756.568.

## 2. *Resolution*

Although our statutory authority over ratemaking matters is broad and includes the authority to amend prior orders<sup>7</sup> and require refunds in certain circumstances,<sup>8</sup> under the "filed rate doctrine," when the Commission issues an order not subject to refund, those rates are lawful when not under appeal.<sup>9</sup> Consequently, in light of NPCC's failure to seek the additional refunds when final rates for payphone services were set, those rates became the lawful, established rates upon the passing of the final date on which the Commission order could be appealed.<sup>10</sup>

## C. *Substantive Arguments*

### 1. *Parties' Positions*

NPCC asserts that from April 15, 1997, and at least through August 28, 2003, Qwest charged and collected rates from PSPs that significantly exceeded the rates that we determined in Order No. 07-497 to be new service test-compliant. NPCC believes that Qwest is obligated to refund the difference between the unlawful, interim rates it charged to its PSP ratepayers beginning effective May 1, 1996, and the final, NST-compliant rates approved by the Commission. NPCC supports its arguments by linking our various orders to conclude: (1) Order No. 96-107 made all Qwest's rates interim subject to refund from May 1, 1996;

<sup>7</sup> ORS 756.568.

<sup>8</sup> *Gearhart v. PUC*, 356 Or. 216, 244-246 (2014) (citing ORS 756.040 for broad statutory ratemaking authority, and concluding that the Commission may order refunds on remand to correct a legal error).

<sup>9</sup> *Dreyer et al v. Portland General Electric Company*, 338 Or. 489, 113P3d 435 (2005).

<sup>10</sup> *Nw. Pub. Commc'ns Council v. Qwest Corp.*, *supra*, was limited to addressing the question of the triggering of the FCC waiver request, not whether the rates were otherwise compliant.

(2) Order No. 00-190 adopted the revenue requirement stipulation in which Qwest recognized its potential to be obligated to pay additional refunds; (3) Order No. 06-515 provided that the revenue requirement stipulation applied to Order No. 01-810; and (4) Order No. 07-497 established final, NST-compliant PAL and CustomNet rates.

Qwest responds that NPCC has waived its right to seek refunds because it stipulated in 2007 that the proposed resolution of this case complied with all federal requirements and satisfied the Court of Appeals remand. Qwest also contends that NPCC's claims are barred by issue preclusion and claim preclusion, explaining that NPCC filed—and lost—four separate lawsuits seeking refunds from Qwest.

NPCC replies that Qwest mischaracterizes the stipulation because NPCC never disputed that Qwest's 2006 PAL and CustomNet rates were lawful going forward, but that NPCC has always firmly maintained that Qwest owes refunds to PSPs for the rates charged from 1996 to 2003. NPCC also contends that, although the Court of Appeals in 2016 ruled that Qwest did not owe refunds based on the FCC waiver order, the Court made clear that the Commission could order refunds pursuant to other orders, and that is what NPCC seeks here.

Qwest also points to Order No. 00-190 that ordered refunds and asserts that order fully resolved all of Qwest's refund liability. NPCC maintains that the refund from Order No. 00-190 is not at issue, because that was a refund that Qwest made in 2000 to avoid having to make the same refund at some future date, and that order does not release Qwest from making additional, different refunds based on the new service test and related orders. NPCC also notes that the Commission's Order No. 06-515 recognized that Qwest may be required to make refunds in addition to those set forth in the stipulation because of an appeal. NPCC concludes that it is undisputed that Qwest's rates prior to 2003 were not new service test-complaint and the Commission should order Qwest to show cause why it is not in violation of the FCC's new service test orders, or in the alternative, clarify that Qwest must issue refunds to the PSPs for any overcharges it made.

## 2. *Resolution*

We deny NPCC's motions because, having reviewed NPCC's arguments, our orders in this docket, and the 2016 Court of Appeals opinion on new services test precedent, we find no error in our previous orders or in Qwest's compliance with those orders. First, we will explain our review of the orders in this docket and why we agree, in part, with NPCC's arguments. Second, we will explain our review of the 2016 Court of Appeals opinion relevant to this proceeding, and why we must deny NPCC's motions based on that opinion.

We recognize that the earlier orders in this docket contributed to the long-standing uncertainty over the PAL rates. As NPCC notes, beginning in May 1996, Qwest charged interim rates subject to refund. These interim rates ended with Order No. 00-190 (and two follow-up orders), where we adopted a contested revenue requirement stipulation and ordered refunds in excess of \$200 million.<sup>11</sup> In Order No. 00-190, we noted that Qwest may owe

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<sup>11</sup> Qwest states that it completed its refunds in late 2000, refunding customers \$283 million. Qwest Response at 4 (Mar 24, 2017).

PSPs additional refunds based on the FCC payphone orders, but that it was an issue we could not decide based on that record.<sup>12</sup> Furthermore, in Order No. 01-810 at 55, we stated that “[w]e conclude that Qwest’s PAL rates satisfy the new services test.”

The Court of Appeals has now removed any uncertainty over the PAL rates, and we are convinced that Qwest has no remaining refund liability. In its 2016 opinion, the Court conclusively answered the question of whether Qwest’s 1997 rates satisfied the new services test and whether or not Qwest had used the FCC waiver extension that would trigger refund liability. The Court held that Qwest had no refund obligation under the FCC waiver order because the refund obligation in the waiver order was not triggered.<sup>13</sup> The Court thus affirmed our finding that Qwest did not avail itself of the extension granted in the FCC waiver order because it had instead made a certification on May 20, 1997, that the tariff in effect in Oregon on April 15, 1997, met all of the FCC requirements.<sup>14</sup> Thus, we can now conclude with certainty that Qwest has no refund liability due to the FCC waiver order.

We can further find that there is no other refund liability from the 1996 interim rates. Our orders in this proceeding (Order Nos. 00-190, 00-191, and 02-068) have comprehensively resolved all refund liability from May 1996 through 2000. We will not reopen the rate case orders in this proceeding. We declined to reopen the rates in Order No. 06-515 when Qwest asked to rebalance its rates due to additional refunds, and we will not reopen those rates now when NPCC asks for additional refunds. The one exception to this finality was the 2004 Court of Appeals remand. However, the remand was satisfied with Order No. 07-497 where we adopted a stipulation between Qwest, NPCC, and Commission Staff “designed to resolve all outstanding issues” with the parties agreeing that Qwest’s rates “satisfy the Court’s remand.” NPCC did not seek rehearing, reconsideration, or appeal of Order No. 07-497.<sup>15</sup>

Finally, we address the 2016 Court of Appeals statement that, under the circumstances presented here, a state commission may well find refunds to be appropriate pursuant to sources of authority other than the FCC waiver order.<sup>16</sup> We find no other Commission authority or remedy available to NPCC to pursue refunds for this time period. We find no legal error in our rate setting orders in this docket, and we find there is no other authority available to NPCC to seek refunds here.

#### IV. ORDER

IT IS ORDERED that

1. The Motion for an Order to Show Cause or, in the Alternative, to Clarify Order No. 07-497 filed by Northwest Public Communications Council is denied;

<sup>12</sup> Order No. 00-190 at 15 (Apr 14, 2000).

<sup>13</sup> *Nw. Pub. Commc'ns Council v. Qwest Corp.*, 279 Or. App. at 644-5.

<sup>14</sup> Order No. 11-504 at 8 (Dec 15, 2011).

<sup>15</sup> Order No. 07-497 at 2, 4 (Nov 15, 2007).

<sup>16</sup> *Nw. Pub. Commc'ns Council v. Qwest Corporation*, 279 Or. App. at 643.

2. This docket is closed.

Made, entered, and effective NOV 16 2017.

*Lisa D. Hardie*

Lisa D. Hardie  
Chair

*Stephen M. Bloom*

Stephen M. Bloom  
Commissioner



*Megan W. Decker*

Megan W. Decker  
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

## **WALKER Cheryl**

---

**From:** WALKER Cheryl  
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GRANT Michael  
**Subject:** Docket Number UT 125--Notice of Filing--Oregon PUC

Description: NPCC's Amended Petition for Review Judicial Review Pursuant to ORS 183.482 in the Oregon Court of Appeals; challenging Order No. 17-473; filed by Frank Patrick.

Docket Name: U S WEST COMMUNICATIONS INC  
Utility Company: QWEST CORPORATION -- TELE, UTIL\_T  
Type of Activity: APPEAL, filed on 2/12/2018.  
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**IN THE COURT OF APPEALS OF THE STATE OF OREGON**

In the Matter of:

**QWEST CORPORATION, fka U.S.  
WEST COMMUNICATIONS, INC.**

**NORTHWEST PUBLIC  
COMMUNICATIONS COUNCIL,**

Petitioner,

v.

**QWEST CORPORATION, fka U.S.  
WEST COMMUNICATIONS, INC.  
and PUBLIC UTILITY  
COMMISSION OF OREGON,**

Respondents.

PUC Case No. UT 125

CA Case No. \_\_\_\_\_

**RECEIVED**

**FEB 07 2018**

Public Utility Commission of Oregon  
Administrative Hearings Division

**PETITION FOR JUDICIAL REVIEW OF ORDER  
OF THE PUBLIC UTILITY COMMISSION OF OREGON**

Petitioner seeks judicial review of the Public Utility Commission of Oregon's Order No. 17-471, dated November 16, 2017. A copy of the Order is attached.

The parties to this proceeding before the Court of Appeals are:

Petitioner:

Northwest Public Communications Council  
21420 NW Nicholas Ct #13  
Hillsboro, OR 97124

**DOCKETED**

Respondents:

Qwest Corporation, fka U.S. West Communications  
c/o Lawrence Reichman  
Perkins Coie LLP  
1120 NW Couch St #10  
Portland, OR 97209

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
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Petitioner Northwest Public Communications Council is represented by:

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Respondent Qwest Corporation is represented by:

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Respondent Public Utility Commission of Oregon is represented by:

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Petitioner seeks review of the Public Utility Commission's Final Order, PUC 17-473 dated November 16, 2017, in case number UT 125 denying Petitioner's Motion to Show Cause, or, alternatively, to Clarify Order No. 07-497.

Petitioner is a party to the proceedings in UT 125.

Petitioner is willing to stipulate to shorten the record. Petitioner requests inclusion of the following documents from Case No. UT 125: Public Utility Commission Orders Nos. 96-094, 96-107, 96-183, 97-171, 00-190, 00-191, 01-810, 02-009, 06-515, and 07-497; Advice Nos. 1668, Advice 1806, 1935, and 1946; and the Letter from L. Reichman to Hearings Division, including its Attachment "A" (March 31, 2006), as well as the following documents from Case No. DR 26/UC 600: the Letters to the Federal Communications Commission dated April 10, 1997 and April 11, 1997 from counsel for the Coalition of Regional Bell Operating Companies, the responsive brief of the PUC Staff in response to NPCC's motion for summary judgment in Docket DR 26/UC 600, FCC Order FCC 13-24 dated February 27, 2013.

Pursuant to ORS 183.482(8)(a), (b) and (c), Petitioner requests that the Court of Appeals reverse Public Utility Commission Order No. 17-473 to grant Petitioner's Motion to Show Cause, or, alternatively, Clarify Order No. 07-497 by

ordering the calculation and payment of additional refunds as prayed by Petitioner to make the interim rates compliant with the FCC and PUC Orders.

The Public Utility Commission has failed and refused to comply with the Court of Appeals remand requiring that the PAL and fraud protection rates adopted in Order 01-810 that replaced all interim PAL and fraud protection rates in effect since May 1, 1996 it reversed and remanded to be made compliant with the federal requirements including the new services test.

The PUC does not have discretion to do other than Comply with the Remand and to require Qwest to comply with: (i) the Court of Appeals remand; (ii) the requirement that all payphone rates comply with the new services test effective April 15, 1997 in accordance with the Telecommunications Act as amended in 1996; or (iii) the PUC's orders that refunds be allocated to ratepayers based on the difference between the "final rate" set November 15, 2007 and any higher interim rate as required by Orders 00-190 and 00-191 the result of settlement agreements; and the settlement agreement embodied therein as those orders and the obligations thereunder have been interpreted in Order 06-515, a final non appealable order. In the alternative, Petitioner requests that the Court of Appeals reverse Order No. 17-471 because the PUC Order and Opinion has erroneous factual statements and interpretations of law.

This appeal is timely and otherwise properly before the Court of Appeals because it is being filed within 60 judicial days of the effective date of the PUC final Order entered on November 16, 2017.

Dated this 16th day of January, 2018.

CORPORATE LAWYERS PC

By: *s/ Frank G. Patrick*

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*Counsel for Northwest Public  
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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically Filed and Served a copy of the foregoing Petition to Review the Decision of Court of Appeals and Decision consolidated as one document as requested as follows:

Service was by:  Mailing  Hand Delivery  Email X E Filing ORAP Rule

The Respondent:  
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Respondent

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Attorney for Respondent QWEST

I further certify that upon review, all parties are registered with E-filing at the State of Oregon Electronic Filing System and that the Petition for Review was filed by E-filing.

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State Court Administrator  
Supreme Court Building  
1163 State Street  
Salem, OR 97301-2563

January 16, 2018

/s/ Frank G. Patrick  
Frank G. Patrick, OSB 760228  
Attorney for Appellant

ENTERED: NOV 16 2017

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 125

In the Matter of

QWEST CORPORATION, fka  
U S WEST COMMUNICATIONS, INC.

ORDER

DISPOSITION: MOTION TO SHOW CAUSE OR, ALTERNATIVELY,  
CLARIFY ORDER NO. 07-497, DENIED; DOCKET CLOSED

**I. INTRODUCTION**

In this order we deny the motion of Northwest Public Communication Council (NPCC) asking the Commission to order Qwest Corporation (Qwest) to refund overcharges alleged to have occurred between 1996 and 2003.

**II. BACKGROUND**

**A. The Parties**

NPCC is a trade association that represents companies providing public payphone services. Qwest is a former regional Bell Operating Company and local exchange carrier, previously referred to as U S WEST Communications, Inc. in this docket.<sup>1</sup> NPCC's payphone service providers (PSPs) use Qwest's services in Oregon and pay Qwest rates determined by the Commission.

**B. Procedural History**

To provide a proper context to address NPCC's motions, we very briefly summarize relevant decisions of this Commission and the Federal Communications Commission (FCC). We divide our discussion into two parts: (1) our review of Qwest's rates in docket UT 125 and the FCC's payphone orders; and (2) NPCC's complaint against Qwest in dockets DR 26/UC 600.

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<sup>1</sup> Qwest Corporation is a wholly-owned subsidiary of CenturyLink QC and does business under the name CenturyLink, but it retains its own corporate identity for legal and regulatory purposes.



### 1. *Docket UT 125 and the FCC Payphone Orders*

We opened docket UT 125 in 1995 to examine rates for Qwest's telecommunication services, including the company's public access lines (PAL) and fraud protection services (CustomNet). During the pendency of that general rate review, the FCC issued orders to implement the Telecommunications Act of 1996 (the Act). Of note here, the FCC found that payphone rates were to comply with the so-called "new services test"—which required rates to be based on the actual cost of providing the service, plus reasonable overhead costs. The FCC required local exchange carriers to file new services test-compliant tariffs with state commissions with an effective date no later than April 15, 1997. Carriers were permitted a 45-day extension for filing, subject to a refund obligation, under the FCC's waiver order.<sup>2</sup> Qwest filed new PAL rates on April 15, 1997, and therefore, as discussed below, did not need to avail itself of the 45-day extension granted by the waiver. We approved those rates with an effective date of April 15, 1997, and NPCC did not appeal this approval. For years thereafter, it was unclear whether those April 15, 1997, rates met the FCC standards, but they ultimately have been found to comply with the new services test standard.

We bifurcated the UT 125 rate case into two phases: (1) revenue requirement; and (2) rate design. In the revenue requirement phase, we issued Order Nos. 00-190 and 00-191, approving a settlement among Qwest, Staff and other parties (revenue requirement stipulation). These orders established revenue requirement figures and ordered refunds, which Qwest issued in late 2000 to certain customers, including PSPs. The PSPs continued to seek additional refunds which depended upon the outcome of pending FCC decisions.

In the rate design phase, we issued Order Nos. 01-810 and 02-009 establishing the final rate design to implement the stipulated revenue requirement. The rates established in this phase did not include refunds. NPCC appealed the rate design orders. In 2004, the Oregon Court of Appeals remanded the rate design orders with directions to consider whether the approved rates relating to payphones complied with the new services test.<sup>3</sup> While NPCC's appeal was pending, Qwest lowered its PAL rates in March 2003 and its CustomNet rates in August 2003 (Advice Nos. 1935 and 1946). In 2007, we adopted, in Order No. 07-497, a stipulation in which all parties unequivocally agreed that those rates were compliant with the new services test.

### 2. *Dockets DR 26 / UC 600*

Meanwhile, in May 2001, while the rate design phase of docket UT 125 was pending, NPCC filed a complaint asking us to order Qwest to pay refunds to NPCC members. NPCC stated that Qwest's rates that went into effect on April 15, 1997, did not comply with the new services test and that Qwest was required to pay refunds under the waiver order. We denied

<sup>2</sup> *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order, DA 97-805, 12 FCCR 21,370 (Apr 15, 1997). For additional background information, see *Northwest. Pub. Commc'ns Council v. Qwest Corp.*, 279 Or. App. 626, 628-642 (2016); *reconsideration den'd* (Mar 9, 2017).

<sup>3</sup> *Nw. Public Commc'ns Council v. Public Utility Commission of Oregon*, 196 Or. App. 94 (2004).

NPCC's complaint, finding that the refund obligation in the waiver order had not been triggered.<sup>4</sup> The Court of Appeals recently affirmed our finding, stating that Qwest had no refund obligation under the FCC waiver order because Qwest did not rely on the FCC waiver order in filing rates but instead relied on rates that we had approved.<sup>5</sup>

Central to NPCC's argument here, the Court relied on a 2013 FCC order that finally explained in more detail the refund obligation from the FCC's waiver order. The Court noted that the FCC order made clear that the waiver order did not address the applicability of refunds where a carrier filed tariffs after the extension period, or did not file new tariffs and instead relied on existing rates or only filed cost studies for existing rates.

### III. DISCUSSION

#### A. Overview

NPCC contends that from 1996 to 2003, Qwest charged and collected rates for payphone service, specifically for public access lines (PAL) and fraud protection services (CustomNet) that were unlawfully high. NPCC's filing is a two part motion. First, NPCC asks us to order Qwest to show cause that it is in compliance with orders we previously issued in this docket.<sup>6</sup> In particular, because we stated in an earlier order that Qwest agreed to accept the risk that it might lose on appeal and then be required to make further refunds, NPCC argues that Qwest assumed the obligation to refund overpayments to its ratepayers. In the alternative, NPCC asks that we amend Order No. 07-497 to expressly require Qwest to issue refunds. NPCC alleges that we have the power and the responsibility to require Qwest to fully refund PSPs for overcharges. Qwest filed a response to the Show Cause Motion and NPCC filed a reply.

#### B. Procedural Arguments

##### 1. Parties' Positions

Qwest raises two primary procedural objections to NPCC's requests. Qwest first argues that NPCC's motion is improper, because this docket is inactive and there are no issues that require a ruling. Qwest states that if NPCC wishes to pursue a claim, it must file a new complaint pursuant to ORS 756.500 clearly stating the basis for its claims and allowing Qwest the opportunity to defend itself.

Second, Qwest states that the final order in this docket was issued in November 2007, twelve years after it was opened, with NPCC participating actively throughout. Qwest emphasizes that no party appealed the 2007 order and this docket has been inactive and effectively closed

<sup>4</sup> *In Re Northwest Public Commc'ns Council v. Qwest Corp.*, Docket Nos. DR 26/UC 600, Order No. 11-504 at 8-9 (Dec 15, 2011) ("Contrary to NPCC's assertions, the *Waiver Order* did not require that intrastate payphone tariffs be reviewed and conclusively determined to be [new services test-] compliant by May 19, 1997. The order required only that [a local exchange carrier] be able to certify that it had effective state tariffs that met FCC requirements, Qwest made such certification on May 20, 1997.") (emphasis in original).

<sup>5</sup> *Nw. Pub. Commc'ns Council v. Qwest Corp.*, 279 Or. App. at 647 (2016).

<sup>6</sup> NPCC asserts that Qwest is in violation of Order Nos. 96-107, 00-190, 00-191, 06-515, and 07-497 as well as the Act and state law.

since 2007. Qwest reasons that, by not asking for additional refunds when final rates for payphone services were set in 2006-2007, NPCC waived any claim it might have had for additional refunds.

NPCC responds that its motions must be addressed in this proceeding, not only because they seek relief directly related to orders issued in or referred to in docket UT 125, but also because the central issue is whether Qwest is required to issue refunds for the over collection of unlawful rates. NPCC offers that it would stipulate to a procedure that allows Qwest and Staff to present evidence to aid in the resolution of NPCC's motion.

NPCC also maintains that the Commission has broad express and implied authority to issue orders to show cause and to amend its previous orders. NPCC believes its motions are proper because it seeks to enforce or amend orders issued in this docket and a complaint is not required.

NPCC also asserts that it did not and cannot waive Qwest's refund obligations and the Commission may amend an order at any time pursuant to ORS 756.568.

## 2. Resolution

Although our statutory authority over ratemaking matters is broad and includes the authority to amend prior orders<sup>7</sup> and require refunds in certain circumstances,<sup>8</sup> under the "filed rate doctrine," when the Commission issues an order not subject to refund, those rates are lawful when not under appeal.<sup>9</sup> Consequently, in light of NPCC's failure to seek the additional refunds when final rates for payphone services were set, those rates became the lawful, established rates upon the passing of the final date on which the Commission order could be appealed.<sup>10</sup>

## C. Substantive Arguments

### 1. Parties' Positions

NPCC asserts that from April 15, 1997, and at least through August 28, 2003, Qwest charged and collected rates from PSPs that significantly exceeded the rates that we determined in Order No. 07-497 to be new service test-compliant. NPCC believes that Qwest is obligated to refund the difference between the unlawful, interim rates it charged to its PSP ratepayers beginning effective May 1, 1996, and the final, NST-compliant rates approved by the Commission. NPCC supports its arguments by linking our various orders to conclude: (1) Order No. 96-107 made all Qwest's rates interim subject to refund from May 1, 1996;

<sup>7</sup> ORS 756.568.

<sup>8</sup> *Gearhart v. PUC*, 356 Or. 216, 244-246 (2014) (citing ORS 756.040 for broad statutory ratemaking authority, and concluding that the Commission may order refunds on remand to correct a legal error).

<sup>9</sup> *Dreyer et al v. Portland General Electric Company*, 338 Or. 489, 113P3d 435 (2005).

<sup>10</sup> *Nw. Pub. Commc'ns Council v. Qwest Corp.*, *supra*, was limited to addressing the question of the triggering of the FCC waiver request, not whether the rates were otherwise compliant.

(2) Order No. 00-190 adopted the revenue requirement stipulation in which Qwest recognized its potential to be obligated to pay additional refunds; (3) Order No. 06-515 provided that the revenue requirement stipulation applied to Order No. 01-810; and (4) Order No. 07-497 established final, NST-compliant PAL and CustomNet rates.

Qwest responds that NPCC has waived its right to seek refunds because it stipulated in 2007 that the proposed resolution of this case complied with all federal requirements and satisfied the Court of Appeals remand. Qwest also contends that NPCC's claims are barred by issue preclusion and claim preclusion, explaining that NPCC filed—and lost—four separate lawsuits seeking refunds from Qwest.

NPCC replies that Qwest mischaracterizes the stipulation because NPCC never disputed that Qwest's 2006 PAL and CustomNet rates were lawful going forward, but that NPCC has always firmly maintained that Qwest owes refunds to PSPs for the rates charged from 1996 to 2003. NPCC also contends that, although the Court of Appeals in 2016 ruled that Qwest did not owe refunds based on the FCC waiver order, the Court made clear that the Commission could order refunds pursuant to other orders, and that is what NPCC seeks here.

Qwest also points to Order No. 00-190 that ordered refunds and asserts that order fully resolved all of Qwest's refund liability. NPCC maintains that the refund from Order No. 00-190 is not at issue, because that was a refund that Qwest made in 2000 to avoid having to make the same refund at some future date, and that order does not release Qwest from making additional, different refunds based on the new service test and related orders. NPCC also notes that the Commission's Order No. 06-515 recognized that Qwest may be required to make refunds in addition to those set forth in the stipulation because of an appeal. NPCC concludes that it is undisputed that Qwest's rates prior to 2003 were not new service test-complaint and the Commission should order Qwest to show cause why it is not in violation of the FCC's new service test orders, or in the alternative, clarify that Qwest must issue refunds to the PSPs for any overcharges it made.

## 2. *Resolution*

We deny NPCC's motions because, having reviewed NPCC's arguments, our orders in this docket, and the 2016 Court of Appeals opinion on new services test precedent, we find no error in our previous orders or in Qwest's compliance with those orders. First, we will explain our review of the orders in this docket and why we agree, in part, with NPCC's arguments. Second, we will explain our review of the 2016 Court of Appeals opinion relevant to this proceeding, and why we must deny NPCC's motions based on that opinion.

We recognize that the earlier orders in this docket contributed to the long-standing uncertainty over the PAL rates. As NPCC notes, beginning in May 1996, Qwest charged interim rates subject to refund. These interim rates ended with Order No. 00-190 (and two follow-up orders), where we adopted a contested revenue requirement stipulation and ordered refunds in excess of \$200 million.<sup>11</sup> In Order No. 00-190, we noted that Qwest may owe

<sup>11</sup> Qwest states that it completed its refunds in late 2000, refunding customers \$283 million. Qwest Response at 4 (Mar 24, 2017).

PSPs additional refunds based on the FCC payphone orders, but that it was an issue we could not decide based on that record.<sup>12</sup> Furthermore, in Order No. 01-810 at 55, we stated that “[w]e conclude that Qwest’s PAL rates satisfy the new services test.”

The Court of Appeals has now removed any uncertainty over the PAL rates, and we are convinced that Qwest has no remaining refund liability. In its 2016 opinion, the Court conclusively answered the question of whether Qwest’s 1997 rates satisfied the new services test and whether or not Qwest had used the FCC waiver extension that would trigger refund liability. The Court held that Qwest had no refund obligation under the FCC waiver order because the refund obligation in the waiver order was not triggered.<sup>13</sup> The Court thus affirmed our finding that Qwest did not avail itself of the extension granted in the FCC waiver order because it had instead made a certification on May 20, 1997, that the tariff in effect in Oregon on April 15, 1997, met all of the FCC requirements.<sup>14</sup> Thus, we can now conclude with certainty that Qwest has no refund liability due to the FCC waiver order.

We can further find that there is no other refund liability from the 1996 interim rates. Our orders in this proceeding (Order Nos. 00-190, 00-191, and 02-068) have comprehensively resolved all refund liability from May 1996 through 2000. We will not reopen the rate case orders in this proceeding. We declined to reopen the rates in Order No. 06-515 when Qwest asked to rebalance its rates due to additional refunds, and we will not reopen those rates now when NPCC asks for additional refunds. The one exception to this finality was the 2004 Court of Appeals remand. However, the remand was satisfied with Order No. 07-497 where we adopted a stipulation between Qwest, NPCC, and Commission Staff “designed to resolve all outstanding issues” with the parties agreeing that Qwest’s rates “satisfy the Court’s remand.” NPCC did not seek rehearing, reconsideration, or appeal of Order No. 07-497.<sup>15</sup>

Finally, we address the 2016 Court of Appeals statement that, under the circumstances presented here, a state commission may well find refunds to be appropriate pursuant to sources of authority other than the FCC waiver order.<sup>16</sup> We find no other Commission authority or remedy available to NPCC to pursue refunds for this time period. We find no legal error in our rate setting orders in this docket, and we find there is no other authority available to NPCC to seek refunds here.

#### IV. ORDER

IT IS ORDERED that

1. The Motion for an Order to Show Cause or, in the Alternative, to Clarify Order No. 07-497 filed by Northwest Public Communications Council is denied;

<sup>12</sup> Order No. 00-190 at 15 (Apr 14, 2000).

<sup>13</sup> *Nw. Pub. Commc’ns Council v. Qwest Corp.*, 279 Or. App. at 644-5.

<sup>14</sup> Order No. 11-504 at 8 (Dec 15, 2011).


<sup>15</sup> Order No. 07-497 at 2, 4 (Nov 15, 2007).

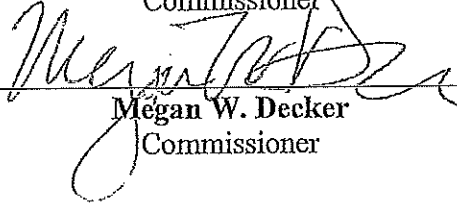
<sup>16</sup> *Nw. Pub. Commc’ns Council v. Qwest Corporation*, 279 Or. App. at 643.

2. This docket is closed.

Made, entered, and effective NOV 16 2017

  
\_\_\_\_\_  
**Lisa D. Hardie**  
Chair

  
\_\_\_\_\_  
**Stephen M. Bloom**  
Commissioner

  
\_\_\_\_\_  
**Megan W. Decker**  
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

## **WALKER Cheryl**

---

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**Subject:** Docket Number UT 125--Notice of Filing--Oregon PUC

Description: NPCC's Petition for Review Judicial Review Pursuant to ORS 183.482 in the Oregon Court of Appeals; challenging Order No. 17-471; filed by Frank Patrick.

Docket Name: U S WEST COMMUNICATIONS INC  
Utility Company: QWEST CORPORATION -- TELE, UTIL\_T  
Type of Activity: APPEAL, filed on 2/7/2018.  
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**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**UT 125**

In the Matter of:

**QWEST CORPORATION, fka U.S. WEST  
COMMUNICATIONS, INC.**

**NORTHWEST PUBLIC  
COMMUNICATION  
COUNCIL'S REPLY IN  
SUPPORT OF ITS MOTION  
FOR AN ORDER TO SHOW  
CAUSE OR, IN THE  
ALTERNATIVE, TO CLARIFY  
ORDER NO. 07-497**

**REPLY**

From 1996 until at least 2003, Qwest charged and collected rates for payphone services that failed to comply with Oregon and federal law. This is the central contention in Northwest Public Communications Council's ("NPCC") Motion to for an Order to Show Cause ("Show Cause Motion") and alternative Motion to Clarify Order No. 07-497 ("Motion to Amend"). Yet, in the entirety of its more than 20-page response to NPCC's Motions, Qwest never once disputes it. Indeed, Qwest never even mentions the New Services Test ("NST"), the Federal Communication Commission's test ("FCC") for determining whether rates for payphone services comply with federal law. Qwest's implicit concession of this central fact demonstrates that Qwest unjustly and unreasonably collected potentially millions in unlawful rates from payphone service providers ("PSPs"). To NPCC's knowledge, Qwest has never fully refunded the PSPs for its overcharges. The Commission has the power and responsibility to correct this injustice.

Instead of answering whether its rates were lawful, Qwest asserts a range of procedural objections and repeatedly references other proceedings that are not before the Commission. Qwest's procedural objections are unfounded. The Commission has broad

1 authority to protect ratepayers and NPCC's Motions request that the Commission exercise  
2 that authority fairly and with respect to both Qwest's substantive and procedural rights and  
3 the rights of Qwest's ratepayers. The other proceedings between NPCC and Qwest are or  
4 were pending before state and federal courts and involve claims not raised in NPCC's  
5 Motions here.

6 The Commission is vested with the responsibility to "protect \* \* \* customers, and the  
7 public generally, from unjust and unreasonable exactions and practices." ORS 756.040(1).  
8 Qwest has not disputed that it charged and collected unlawful rates from 1996 to 2003.  
9 Consistent with the Commission's statutory responsibility and its broad statutory and implied  
10 powers, the Commission should issue an order requiring Qwest to show cause why it is not in  
11 violation of Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the TCA, and state  
12 law. In the alternative, the Commission should grant NPCC's Motion to Amend, which  
13 requests the Commission clarify Order No. 07-497 by amending it to expressly require Qwest  
14 to issue refunds for any excess revenue it collected under rates that failed to comply with  
15 Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the Telecommunication Act of  
16 1996, and state law, less any refunds previously paid.

#### 17 ARGUMENT

18 I. **Qwest's procedural objections are unfounded: The Commission has the power to**  
19 **decide NPCC's Motions.**

20 A. **NPCC's Motions are procedurally proper.**

21 The Commission "is vested with power and jurisdiction to supervise and regulate  
22 every public utility and telecommunications utility in this state, and to do all things necessary  
23 and convenient in the exercise of such power and jurisdiction." ORS 756.040(2). In addition  
24 to its express powers, the Commission "has such implied powers as are necessary[.]" *Pac.*  
25 *Nw. Bell Tel. Co. v. Katz*, 116 Or. App. 302, 309-10 (1992). In total, the Commission "has  
26 been granted the broadest authority—commensurate with that of the legislature itself—for  
the exercise of its regulatory function." *Id.* at 309 n.5 (quotation marks, citation, and

1 alterations omitted). As NPCC argued in its Motions, consistent with the Commission's  
2 broad express and implied authority, the Commission may issue orders to show cause and  
3 amend its previous orders. (NPCC's Mot. at 25-26; 28); ORS 756.568 (the Commission  
4 "may *at any time*, upon notice to the public utility or telecommunications utility and after  
5 opportunity to be heard \* \* \*, rescind, suspend or amend any order made by the  
6 commission" (emphasis added).).

7 Despite the Commission's broad authority, Qwest makes several erroneous arguments  
8 that the Commission lacks the power to decide NPCC's Motions. Qwest begins by arguing  
9 that NPCC cannot file a motion in this docket because "there are no issues pending that  
10 require a ruling." (Qwest's Resp. to NPCC's Mot. for an Order to Show Cause or, in the  
11 Alternative, to Clarify Order No. 07-497 ("Resp.") at 10.) Qwest's argument begs the  
12 question. A motion is an "application for an order." ORCP 14 A. There is no issue pending  
13 until a party files a motion. Now that NPCC has filed Motions, there are issues pending that  
14 require a ruling.

15 Qwest next argues that the issues "NPCC now wishes to assert go far beyond the  
16 subject matter of this docket." (Resp. at 11.) This argument is wrong for two reasons. First,  
17 NPCC's Motions must be considered in UT 125 because the relief NPCC seeks directly  
18 concerns the enforcement or amendment of orders issued in this docket. The Commission  
19 issued Orders Nos. 00-190, 00-191, 01-810, and 02-009 in UT 125. NPCC appealed Orders  
20 01-810 and 02-009, *Nw. Pub. Commc'ns Council v. Pub. Util. Comm'n*, 196 Or. App. 94,  
21 100 (2004) ("*NPCC v. PUC*"), and, on remand, the Commission issued two additional  
22 Orders, Nos. 06-515 and 07-497 in this docket. NPCC's Motions ask the Commission to  
23 either (1) order Qwest to show cause that it is in compliance with the Orders issued in this  
24 docket;<sup>1</sup> or (2) amend Order No. 07-497, which was issued in this docket. The relief NPCC  
25

26 <sup>1</sup> NPCC's Show Cause Motion addresses one Order issued outside of UT 125: Order  
No. 96-107, which was issued in UT 80. That Order provided that Qwest's "rates for  
services [after May 1, 1996] shall be considered interim rates subject to refund with

1 seeks concerns Orders issued in this docket; to maintain the consistency and integrity of this  
2 docket, the Court should decide NPCC's Motions in this docket.

3 Second, NPCC's Motions address issues that have been subject of UT 125 from the  
4 beginning. NPCC's Motions address the rates Qwest charged and collected between 1996  
5 and 2007 and whether the Commission's Orders require Qwest to issue refunds for the over-  
6 collection of unlawful rates. (NPCC's Mot. at 16-30.) Those issues are precisely the issues  
7 the Commission has addressed in UT 125 from the beginning. The Commission opened this  
8 docket in 1995 to set rates for Qwest's telecommunication services, including the company's  
9 public access lines ("PAL") and fraud protection services ("CustomNet"). See Order No. 00-  
10 190 at 1. In this docket, the Commission has addressed the FCC's payphone orders and the  
11 new services test. See, e.g. Order No. 01-810 at 50-56. Furthermore, in this docket, the  
12 Commission has set, revised, and adjusted Qwest's rates and ordered refunds to Qwest's  
13 ratepayers. Order No. 00-190 at 20; Order No. 01-810; Order 06-515 at ¶¶ 4 & 6 (addressing  
14 Qwest's obligations as a result of the appeal of Order 01-810). The issues addressed in  
15 NPCC's Motions are the same issues the Commission has considered throughout UT 125.

16 Finally, Qwest implies that the Commission cannot decide NPCC's Motions because  
17 the Motions are barred by waiver, preclusion, or laches. (Resp. at 3, 12.) But Qwest never  
18 defines those doctrines or explains how they apply to NPCC's Motions. Indeed, Qwest fails  
19 even to cite any case law setting forth the principles of each doctrine. For example, on page  
20 2 of its Response, Qwest asserts that NPCC's "claims are barred by issue preclusion and  
21 claim preclusion." (Resp. at 2.) However, other than that single sentence, Qwest never  
22 develops that argument. It does not set forth the elements of issue or claim preclusion or  
23 explain how NPCC's Motions meet those elements. Moreover, Qwest's single-sentence

24  
25 interest[.]" Order No. 96-107 at 3. However, the Commission's staff report expressly  
26 acknowledged that the rates would be determined in *this* docket, UT 125, not UT 80.  
Commission staff explained that the rates would remain interim "pending the outcome of the  
company's current rate filing, UT 125." *Id.*, Appendix A at 5. Thus, it is appropriate to  
address Order No. 96-107 in this docket, rather than in UT 80.

1 assertion misconstrues NPCC's Motions as "claims"; but the Motions are not "claims," such  
2 as disgorgement or unjust enrichment.

3 The same is true for waiver and laches.<sup>2</sup> For those doctrines, Qwest asserts that it  
4 "would" have raised them against NPCC if NPCC had filed a complaint. (Resp. at 12.) But  
5 NPCC has not filed a complaint; it filed two Motions, Motions which seek relief specific to  
6 Orders issued in this docket. NPCC has no obligation to tailor the relief it seeks to the  
7 defenses Qwest wishes to raise.<sup>3</sup>

8 **B. UT 125 is the only appropriate docket in which to decide Qwest's**  
9 **Motions.**

10 NPCC's Motions request that the Court (1) issue an Order requiring Qwest to show  
11 cause why it is not in violation of Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497,  
12 the Telecommunication Act of 1996, and state law or (2), in the alternative, to amend Order  
13 No. 07-497 to expressly require Qwest to issue refunds for any excess revenue it collected  
14 under rates that failed to comply with Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-  
15 497, the Telecommunication Act of 1996, and state law, less any refunds previously paid.  
16 Both Motions must be addressed in UT 125 because they seek relief directly related to  
17 Orders issued in or referred to in UT 125.

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18 <sup>2</sup> To the extent that Qwest claims NPCC "waived" its right to seek refunds by  
19 entering a stipulation with Qwest in 2006, that argument is addressed in § I.C, below.

20 <sup>3</sup> Qwest asserts, in a footnote, that NPCC does not have authority to file its Motions  
21 because NPCC was "inactive" on the Oregon Secretary of State's website. Qwest  
22 misconstrues the statute it cites. ORS 60.704(1) provides that a "foreign corporation  
23 *transacting business in this state* without authorization from the Secretary of State may not  
24 maintain a proceeding in any court in this state until it obtains authorization from the  
25 Secretary of State to transact business in this state." (Emphasis added.) At the time it filed  
26 the Motions, NPCC was not transacting business in Oregon and, consequently, did not need  
to maintain an active authorization with the Oregon Secretary of State to "maintain a  
proceeding in any court." See *First Resolution Inv. Corp. v. Avery*, 238 Or App 565, 570  
(2010) (ORS 60.704(1) does not bar a proceeding filed by a corporation that does not have an  
authorization from the Secretary of State if the corporation is not "transacting business in this  
State"). In addition, ORS 60.704(1) applies to "proceedings in any court," not before the  
Commission. ORS 60.704(1). No case has ever applied ORS 60.704(1) to proceedings  
before the Commission or other administrative bodies. Finally, and in any event, NPCC,  
without conceding that it has any need to maintain an authorization, has renewed its  
authorization.

1 NPCC's Show Cause Motion argues that Orders No. 00-190 and 96-107 require  
2 Qwest to issue refunds. (NPCC's Motion at 21-25.) The Commission issued Order No. 00-  
3 190 in UT 125. The Commission issued Order No. 96-107 in UT 80, but the Commission's  
4 staff report issued in support of that Order expressly stated that Qwest's rates would be  
5 determined in UT 125. Order No. 96-107, Appendix A at 5. Although NPCC relies on and  
6 cites to additional Orders, the Telecommunications Act of 1996 and the FCC's orders  
7 implementing the TCA, and Oregon state law, including *NPCC v. PUC*, to support its  
8 interpretation of Orders 00-190 and 96-107, the relief NPCC seeks is based on Orders either  
9 issued in UT 125 or referred to UT 125 by the Commission's staff. (NPCC's Mot. at 21-25.)  
10 Accordingly, Qwest's failure to comply with those Orders is properly addressed in the docket  
11 in which they were issued or which they reference.

12 NPCC's Motion to Amend addresses Order No. 07-497, issued in UT 125. Thus, to  
13 maintain the consistency and integrity of UT 125, and to ensure a clear record for that docket  
14 for the future, the Commission should decide NPCC's Motion to Amend in UT 125.

15 Qwest repeatedly asserts that NPCC should have filed a complaint rather than the  
16 Motions. (*See, e.g., Resp. at 11.*) Qwest's assertions fail to understand the relief NPCC  
17 seeks. NPCC's Motions request that the Commission enforce Orders issued in UT 125 or  
18 amend an Order issued in UT 125. The relief NPCC seeks is narrowly tailored to the Orders  
19 issued in this docket. As Qwest points out, NPCC has already filed complaints against  
20 Qwest in other forums. The relief Qwest seeks here is distinct from the relief it has sought in  
21 those other forums (and which it could seek in a complaint before the Commission pursuant  
22 to ORS 756.500). If NPCC decides to seek different relief, such as making a claim for  
23 disgorgement or unjust enrichment, it is fully aware that it can file a complaint before the  
24 Commission pursuant to ORS 756.500 *et seq.*

25 NPCC's Motions do not impinge on Qwest's substantive rights. Qwest asserts that  
26 NPCC's Motion is improper because Qwest is entitled to "a clear statement" of the relief



1 NPCC seeks and Qwest “is entitled to file a response.” (Resp. at 12.) Qwest’s assertion  
2 makes little sense because NPCC has afforded Qwest both those rights: NPCC’s initial  
3 Motions clearly and repeatedly set out the relief it seeks.<sup>4</sup> (NPCC’s Mot at 1, 30.)  
4 Moreover, NPCC filed the Motions pursuant to the Commission’s rules, which permit Qwest  
5 the opportunity to file a response. OAR 860-001-0420 (“A party may file a response to a  
6 motion.”).

7 Qwest also complains that NPCC should have filed a complaint so that Qwest could  
8 raise a number of other defenses, such as issue and claim preclusion, the statute of  
9 limitations, failure to state a claim, and various jurisdictional defenses. (Resp. at 12-13.)  
10 However, it is not NPCC’s obligation to structure the relief it seeks to the defenses Qwest  
11 wishes to raise. NPCC is not here asserting “claims for relief,” as might be found in a  
12 complaint. As explained above, NPCC’s Motions concern the interpretation, enforcement, or  
13 amendment of Orders issued in UT 125, not common law claims for relief. The  
14 Commission’s rules provide authority for NPCC to file the Motions it has filed and provide  
15 an opportunity for Qwest to respond to those Motions.

16 Finally, Qwest asserts that it should have the right to present evidence and have a  
17 decision based on an evidentiary record. NPCC has no dispute with this assertion and  
18 welcomes Qwest to present any evidence it may have demonstrating that it did not charge  
19 and collect unlawful PAL and CustomNet rates. Indeed, NPCC’s Show Cause Motion  
20 specifically requests that Qwest provide evidence showing that it has complied with the  
21 Commission’s orders. In addition, NPCC would stipulate to a procedure that allows Qwest,  
22 NPCC, and the Commission’s staff to present relevant evidence to the Commission (much of  
23 which is already on file in this docket) to aid the resolution of NPCC’s Motion. Given the  
24

25 \_\_\_\_\_  
26 <sup>4</sup> Qwest asserts that “NPCC does not even specify in its Motions what provisions of  
the ‘Telecommunications Act of 1996, and state law’” require refunds. (Resp. at 18.) But  
that is incorrect: NPCC’s Motions identify and quote from Section 276 of the TCA, 47  
U.S.C. § 276, and the FCC’s multiple orders construing that section. (*See, e.g.*, NPCC’s

1 Commission's broad express and implied powers, the Commission undoubtedly has the  
2 authority to establish procedures for the taking of evidence relevant to NPCC's Motions.

3 **C. NPCC's Motion to Amend is procedurally proper.**

4 Pursuant to ORS 756.568, the Commission "may at any time, upon notice to the  
5 public utility or telecommunications utility and after opportunity to be heard \* \* \* rescind,  
6 suspend or amend any order made by the commission." In its alternative Motion to Amend,  
7 NPCC requests that the Commission amend Order No. 07-497 to expressly require Qwest to  
8 issue refunds for any excess revenue it collected under rates that failed to comply with  
9 Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the Telecommunication Act of  
10 1996, and state law, less any refunds previously paid.

11 In its response, Qwest contends that NPCC's Motion to Amend is barred because  
12 NPCC entered a stipulation in 2007 "that the proposed resolution of this case complied with  
13 all federal requirements and satisfied the Court of Appeals remand." (Resp. at 18.) This  
14 statement mischaracterizes the stipulation. NPCC stipulated that certain of Qwest's rates  
15 filed in 2006 complied with federal requirements and the Court of Appeals remand. Order  
16 No. 07-497, Stipulation ¶¶ 10-11. NPCC has never disputed that Qwest's 2006 PAL and  
17 CustomNet rates were NST-compliant *going forward*. But NPCC never stipulated to a  
18 "resolution of this case," and nothing in the stipulation or Order No. 07-497 suggests  
19 otherwise. Furthermore, NPCC has never stipulated that Qwest's rates before 2006 were  
20 NST-compliant and NPCC has never stipulated that Qwest has issued all the refunds it owes  
21 to the PSPs.

22 The stipulation did not specifically address refunds for a simple reason: At the same  
23 time Qwest and NPCC stipulated to Qwest's PAL and CustomNet rates going forward from  
24 2006, they were litigating whether Qwest owed refunds in a separate action. (*See* Resp. at 8;  
25 NPCC's Mot. at 15-16.) NPCC has always firmly maintained that Qwest owes refunds to the

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Mot. at 3-8, 16.) NPCC also repeatedly identifies ORS 756.040(1) and *NPCC v. PUC* as the

1 PSPs for the unlawful rates it charged and collected from 1996 to 2003. The separate action  
2 resulted in a Court of Appeals decision in 2016 in which the Court ruled that Qwest did not  
3 owe refunds based on one provision of one FCC order (known as the “Waiver Order”). *Nw.*  
4 *Pub. Commc’ns Council v. Qwest Corp.*, 279 Or. App. 626, 644-5 (2016). The Court of  
5 Appeals was clear, however, that although the Waiver Order might not require refunds, the  
6 Commission could order refunds pursuant to other orders: “[U]nder the circumstances  
7 presented here, ‘a state commission may well find refunds to be appropriate pursuant’ to  
8 sources of authority other than the Waiver Order[.]” *Id.* at 644-45 (quoting Refund Order ¶  
9 45; alterations omitted). That is precisely what NPCC seeks here.

10 Qwest also incorrectly asserts that NPCC “waived any claim it may have had for  
11 additional refunds” when it did not ask the Commission to order refunds in 2006. (Resp. at  
12 1-2, 6-7.) However, Qwest’s obligation to issue refunds exists independently of whether  
13 NPCC requested that Qwest issue refunds; NPCC cannot “waive” Qwest’s obligations. The  
14 Commission has the power to order refunds whether NPCC has or has not made such a  
15 request. ORS 756.040. In addition, as stated above, NPCC is not making a “claim,” it has  
16 filed Motions. Furthermore, ORS 756.568 provides that the Commission “may *at any time*”  
17 amend an order. (Emphasis added.) NPCC cannot “waive” a statutory provision that  
18 expressly permits the Commission to act “at any time.” In addition, Qwest cites no law  
19 explaining the doctrine of waiver and provides no persuasive analysis of how it would apply  
20 to NPCC’s Motions in particular or to the Commission’s rules and statutes in general.

21 Finally, as noted above, NPCC has always maintained that Qwest owes refunds to the PSPs.

22 The Commission has the authority to amend Order No. 07-497. ORS 756.568. For  
23 the reasons set forth in NPCC’s Motion to Amend, the Commission should amend Order No.  
24 07-497 to expressly require Qwest to issue refunds for any excess revenue it collected under  
25

26 \_\_\_\_\_  
state law supporting its Motions. (*See, e.g., id.* at 17-19; 21-26.)

1 rates that failed to comply with Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the  
2 Telecommunication Act of 1996, and state law, less any refunds previously paid.

3 **II. NPCC's Motions are substantively meritorious: The Commission's Orders, the**  
4 **TCA, the FCC's order implementing the TCA, and NPCC v. PUC require Qwest**  
**to issue additional refunds because Qwest charged and collected unlawful rates.**

5 As discussed in detail in NPCC's Motions, between 1996 and 2003, Qwest charged  
6 and collected unlawful PAL and CustomNet rates. (NPCC's Mot. at 17-19.) In its Response,  
7 Qwest never disputes this. Indeed, in the entirety of its Response, Qwest never even  
8 mentions the New Services Test ("NST"), the FCC's orders defining and implementing the  
9 NST, or the application of the NST to rates charged by telecommunications companies in  
10 Oregon, as required by *NPCC v. PUC*. The FCC's Refund Order unambiguously provides  
11 the Commission the right under federal law to order Qwest to refund its unlawful over-  
12 collection of PAL and CustomNet rates that were not NST-compliant. *In the matter of*  
13 *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the*  
14 *Telecommunications Act of 1996*, CC Docket No. 96-128, 28 FCC Red. 2615, 2617 (Feb. 20,  
15 2013) (A "state commission may order refunds for any time period after April 15, 1997 if it  
16 concludes that a BOC was charging PSPs a rate that was not NST-compliant, as a number of  
17 states have.").

18 Rather than address the lawfulness of its rates between 1996 and 2003, Qwest asserts  
19 two meritless arguments, the first of which is irrelevant and second of which is wrong. First,  
20 Qwest argues that the refund the Commission ordered in Order No. 00-190 "was never based  
21 on rates for specific services established in this case at any time." (Resp. at 14.) This  
22 argument is irrelevant. NPCC never argues that the refund ordered in Order No. 00-190 was  
23 improper or that Qwest failed to meet its obligations to make that refund. Rather, NPCC's  
24 argument is and has always been that the Commission's subsequent Orders, including Orders  
25 Nos. 06-515 and 07-497, require Qwest to make additional refunds to payphone service  
26

1 providers (“PSPs”) based on the TCA, the NST, and *NPCC v. PUC*, which held that the  
2 TCA, the NST, and the FCC’s other payphone orders bind the Commission and Qwest.

3 Qwest’s second argument is erroneous. Qwest argues that the refund ordered in  
4 Order No. 00-190 fully resolved all of Qwest’s liability to issue refunds. To make this  
5 argument, Qwest misconstrues Order No. 00-190 by taking a single clause of one sentence  
6 out of context. In Order No. 00-190, the Commission explained that it was adopting a  
7 modified stipulation (the “Modified Stipulation”) designed to settle two pending appeals.  
8 One of the goals of the Modified Stipulation was to provide for Qwest to make an immediate  
9 refund so that it could avoid making the same refund (with substantial accumulated interest)  
10 later. To that end, the Commission explained that the refund agreed to in the Modified  
11 Stipulation was “a return of revenues collected from customers, made in settlement of  
12 potential liability to make refunds at some future date.” Order No. 00-190 at 4. This  
13 statement merely means that Qwest agreed to make a refund in 2000 in order to avoid having  
14 to make the same refund at some future date. However, nothing in Order No. 00-190  
15 provides that Qwest is forever released from making additional, different refunds. Indeed,  
16 such an interpretation of Order No. 00-190 would grant Qwest a massive, unintended  
17 windfall. Any such interpretation was rejected in Order No. 06-515, as explained below.

18 Furthermore, the Modified Stipulation itself recognized that an appeal of Orders Nos.  
19 00-190 and 00-191, or a subsequent order implementing those orders, could impose on  
20 Qwest an obligation to provide refunds and make rate reductions. *Id.* Appendix A ¶ 5. The  
21 Commission subsequently held that the Modified Stipulation applied to NPCC’s appeal of  
22 the PAL and CustomNet rates in *NPCC v. PUC*. Order No. 06-515. In Order No. 06-515,  
23 the Commission made clear that Qwest had assumed the risk that it could owe additional  
24 refunds: “Qwest specifically agreed to accept the risk that subsequent appeals of the  
25 Commission’s order implementing the Stipulation might result in a situation where Qwest  
26 was required to make refunds or rate reductions in addition to those set forth in the

1 Stipulation. The language of the agreement demonstrates that the Company was fully  
2 cognizant of the potential consequences of its decision when it executed the Stipulation.” *Id.*  
3 at 11.

4 The TCA and the FCC’s orders implementing the TCA fundamentally changed the  
5 basis upon which the Commission was required to set PAL and CustomNet rates. (NPCC’s  
6 Mot. at 3-15.) Qwest does not dispute this. Qwest’s rates prior to 2003 were not NST-  
7 compliant. (NPCC’s Mot. at 17-19.) Qwest also does not dispute this. To comply with  
8 Orders Nos. 00-190 and 96-107, which acknowledged that Qwest could owe additional  
9 refunds if rates were modified on appeal, Qwest must issue refunds to the PSPs for the rates  
10 it unlawfully collected between 1996 and 2003. (Mot. at 21-30.) The Commission should  
11 order Qwest to show cause why it is not in violation of those orders. In the alternative, the  
12 Commission should amend Order No. 07-497 to clarify that Qwest must issue refunds to the  
13 PSPs for any overcharges it made pursuant to unlawful rates between 1996 and 2003.

14 **CONCLUSION**

15 For the foregoing reasons, the Commission should grant NPCC’s motion requesting  
16 the Commission issue an order requiring Qwest to show cause why it is not in violation of  
17 Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the Telecommunication Act of  
18 1996, and state law. In the alternative, the Commission should grant NPCC’s motion  
19 requesting the Commission clarify Order No. 07-497 by amending it to expressly require

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1 Qwest to issue refunds for any excess revenue it collected under rates that failed to comply  
2 with Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the Telecommunication Act  
3 of 1996, and state law, less any refunds previously paid.

4 DATED this April 14, 2017.

5 MARKOWITZ HERBOLD PC  
6 By: *s/ Harry B. Wilson*

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**Subject:** OPUC Docket UT 125 -- Notice of Filing

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UT 125

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Public Utility Commission of Oregon  
Administrative Hearings Division

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PAGE 1-

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UT 125

In the Matter of  
QWEST CORPORATION, fka U S WEST  
COMMUNICATIONS, INC.

QWEST'S RESPONSE TO NORTHWEST  
PUBLIC COMMUNICATIONS  
COUNCIL'S MOTIONS FOR AN ORDER  
TO SHOW CAUSE OR, IN THE  
ALTERNATIVE, TO CLARIFY ORDER  
NO. 07-497

I. INTRODUCTION

Qwest Corporation ("Qwest") respectfully submits this response to the Northwest Public Communications Council's ("NPCC") Motions for an Order To Show Cause or, in the Alternative, To Clarify Order No. 07-497 (the "Motions"). NPCC's Motions effectively ask the Commission to initiate a proceeding to consider new claims that are unrelated to any issue ever raised in this proceeding, which was concluded in 2007, more than nine years ago. The Commission should deny the Motions because they are untimely, not authorized or supported by the statutes and rules that govern practice before the Commission, and factually and legally unsupported.

The Commission issued a final order in this docket on November 15, 2007, 12 years after the docket was opened in 1995. Although NPCC actively participated in the entire case, NPCC did not ask the Commission to order additional refunds when the Commission set final rates for payphone services in 2006-07. Accordingly, NPCC waived any claim it may have had for

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1 additional refunds (as will be shown below, it had no such claim). No party appealed the final  
2 order and this docket has been inactive and effectively closed since 2007. The Commission  
3 formally closed this docket on January 4, 2017, after NPCC withdrew its previous, ill-advised  
4 motion.

5 Under the Commission's rules, a motion must pertain to a matter that is pending in a  
6 proceeding. Not only is there is no matter currently pending before the Commission in this  
7 proceeding, NPCC never before raised in this case the new claims NPCC wishes to pursue.  
8 Therefore, the Commission should deny the Motions. If NPCC still wants to pursue these new  
9 claims (notwithstanding their utter lack of merit and the excessive litigation NPCC has already  
10 pursued), it should be required first to file a complaint with the Commission under ORS 756.500,  
11 clearly stating the basis for its claims and allowing Qwest the opportunity to defend itself on all  
12 available grounds.

13 By filing motions in this closed case, NPCC attempts to downplay the highly improper  
14 nature of its requests. The claims NPCC wishes to make are entirely without merit. Contrary to  
15 NPCC's repeated assertion, no Commission order requires Qwest to make any additional  
16 refunds. If NPCC had such a claim, it should have asserted it in this case over 10 years ago.  
17 Instead, NPCC litigated these and related claims in four separate cases in federal court (which  
18 NPCC never mentions in the far-ranging discussion in its 30-page Motions), so the claims are  
19 barred by issue preclusion and claim preclusion. The courts also decided that the claims are  
20 time-barred and that NPCC does not have authority to assert a claim that Qwest violated the  
21 Commission's orders.

22 On the merits, NPCC's principal motion, for an order to show cause, is completely  
23 unfounded. Here, NPCC asks the Commission to order Qwest to show cause why it should not  
24 make additional refunds under orders the Commission entered in this and another docket, dating  
25 back over 20 years. The Commission should deny this motion because Qwest timely and

1 completely fulfilled all of its obligations to make such refunds over 16 years ago, and neither  
2 Commission Staff nor any other party or customer has even suggested that Qwest owes any  
3 additional refunds since then. NPCC's motion is based on a gross misstatement of the  
4 Commission's prior orders. Qwest should not be ordered to do anything; rather, NPCC should  
5 be required to carry its impossible burden to show that Qwest owes additional refunds.

6 NPCC's alternative motion, to "clarify" Order No. 07-497, could be characterized as an  
7 understatement if it were not so monumentally misleading. NPCC wants the Commission to  
8 "clarify" and "amend" a final order issued almost 10 years ago by ordering relief based on claims  
9 that were never made, let alone decided, in this case. NPCC asserts that Qwest owes additional  
10 refunds based on "Order Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the  
11 Telecommunications Act of 1996, and state law." Motions at 1. NPCC was an active participant  
12 in this case, including the proceedings that led to Order No. 07-497, which established the rates  
13 for Qwest's payphone services. At no time during those proceedings did NPCC (or any other  
14 party) ever assert that, in addition to approving final rates for payphone services, the  
15 Commission should order Qwest to make additional refunds to customers of those services  
16 (NPCC's members). To the contrary, NPCC stipulated at the time that the proposed resolution  
17 of this case complied with all federal requirements and satisfied the Court of Appeals' remand.  
18 The Commission cannot clarify or amend an order to require relief based on claims that were  
19 never asserted or decided in this ancient and closed proceeding, and NPCC is judicially estopped  
20 to assert otherwise. NPCC's claims are also barred by waiver and claim preclusion based on its  
21 failure to raise them over 10 years ago during the remand proceeding (if not sooner).

22 The Commission should reject the latest chapter in NPCC's extravagant forum-shopping,  
23 deny the Motions, and help put an end to the 16 years of vexatious litigation NPCC has pursued  
24 against Qwest. If the Commission is inclined to give NPCC yet another opportunity to pursue its  
25 meritless claims in a new forum, then the Commission should require NPCC to file a complaint

1 pursuant to ORS 756.500, and first show the Commission why its new claims are not barred by  
2 prior litigation and the passage of time even before it attempts to show that they have any merit  
3 (which they do not have). In the context of a complaint proceeding, Qwest would be afforded  
4 adequate procedural rights unavailable in responding to a motion, including the ability to assert  
5 defenses to the claims and to have an evidentiary hearing on the record.<sup>1</sup>

## 6 II. PROCEDURAL BACKGROUND

### 7 A. Docket UT 125.

8 This case, Docket UT 125, was a general rate case under ORS 759.180, commenced in  
9 1995. The Commission bifurcated the case into two phases, a revenue requirement phase and a  
10 rate design phase, which were conducted consecutively. At the conclusion of the first phase of  
11 the case, the revenue requirement phase, and following an appeal, the Commission issued Order  
12 Nos. 00-190 and 00-190, approving a settlement among Qwest, Staff and other parties. Those  
13 orders established two different revenue requirement figures: (1) a reduction of \$53 million per  
14 year, which was the amount of revenue Qwest was required to refund to its customers for the  
15 period from May 1, 1996 through the date of the refund, which was made in full at the end of  
16 2000; and (2) a reduction of \$63 million per year, which represented the prospective revenue  
17 reduction and was implemented through temporary bill credits during the rate design phase and  
18 in final rates. Order No. 00-190 at 10.

19 Qwest made the full refund required by the Commission's orders in late 2000, returning  
20 over \$283 million to its customers.<sup>2</sup> The amounts of the refund for individual customers were  
21 based on five broad categories of services, and bore no relationship to the amounts customers  
22

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23 <sup>1</sup> NPCC does not even appear to have authority to file the Motions or a new complaint.  
24 According to the Oregon Secretary of State's website as of March 24, 2017, NPCC is "inactive" in  
25 Oregon and had its authority revoked as of Dec. 20, 2013.  
[http://egov.sos.state.or.us/br/pkg\\_web\\_name\\_srch\\_inq.show\\_det?p\\_be\\_rsn=1419216&p\\_srce=BR\\_INQ](http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.show_det?p_be_rsn=1419216&p_srce=BR_INQ&p_print=FALSE)  
&p\_print=FALSE. Thus, NPCC does not have authority to maintain a lawsuit, and presumably any other  
26 proceeding, in this state. ORS 60.704(1).

<sup>2</sup> <http://www.puc.state.or.us/Pages/news/2000/2000044.aspx>.



1 paid for specific services or the new rates the Commission would set for those services in the  
2 second phase of the proceeding, rate design. Moreover, the Commission did not require any  
3 additional refunds to be made following the rate design phase of the case. These points will be  
4 discussed in more detail below as they are fatal to NPCC's claims.

5 The Commission issued Order No. 01-810 in the second phase of this case, establishing  
6 the final rate design, on Sept. 14, 2001. NPCC appealed the rates the Commission established  
7 for payphone services, and the Court of Appeals remanded those rates for further consideration  
8 in 2004. *Northwest Public Communications Council v. Public Utility Commission of Oregon*,  
9 196 Or. App. 94, 100 P.3d 776 (2004) (the "Rate Case Appeal"). The court's remand order did  
10 not require additional refunds; it simply required the Commission to reexamine the rates it  
11 established for payphone services that Qwest would charge on a prospective basis.

12 This proceeding concluded in 2007, when the Commission issued its final order  
13 establishing rates for payphone services. Order 07-497 adopted a stipulation among NPCC,  
14 Commission Staff and Qwest. Notably, NPCC did not assert a right to additional refunds during  
15 the remand proceeding in 2006-07. Instead, NPCC stipulated to entry of the final order, did not  
16 ask the Commission to order additional refunds, and allowed the appeal period for the order to  
17 run. There has been no further activity whatsoever in this case since 2007, and the Commission  
18 formally closed this docket on January 4, 2017.

19 Significantly, NPCC was a very active passive participant in the remand proceeding that  
20 led to Order No. 07-497. On Feb. 9, 2006, NPCC filed a Motion To Set Procedural Conference  
21 To Establish Issues and Procedures on Remand, requesting the Commission, among other things,  
22 to identify the issues that needed to be addressed on remand. Following the prehearing  
23 conference that NPCC requested, the ALJ identified only two issues that needed to be addressed  
24 by the Commission on remand:

25

26

PAGE 5- QWEST'S RESPONSE TO NPCC'S MOTIONS

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Portland, OR 97209-4128  
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1 Issue No. 1: The calculation of revised rates for Public Access  
2 Line (PAL) service and Fraud Protection Service (formerly known  
as CustomNet service).

3 Issue No. 2: Whether and to what extent other Qwest rates should  
4 be adjusted because of the recalculation of the rates for PAL and  
Fraud Protection service.

5 First Conference Report, Docket UT 125 (March 21, 2006). Neither NPCC nor any other party  
6 identified any issue relating to the possible issuance of additional refunds.

7 The Commission treated the second issue identified above as a threshold question, and  
8 resolved it in Order No. 06-515, based on written briefs. The question presented was whether  
9 Qwest could raise the rates for other services, on a prospective basis, to offset the revenue  
10 reduction Qwest would experience from reducing its rates for payphone services. As stated in  
11 the order, the Commission “decide[d], as a threshold matter, whether Qwest may raise any  
12 customer rates to offset reduced revenues resulting from a Commission decision approving lower  
13 payphone service rates.” Order No. 06-515 at 2. Contrary to NPCC’s arguments, the issue  
14 addressed in that order had nothing to do with refunds. Qwest discusses this order further below.

15 The stipulation NPCC executed in October 2007 identifies only two “unresolved issues  
16 on remand”: whether Qwest’s proposed PAL and fraud protection rates “comply with federal  
17 requirements.” Stipulation at 3. The stipulation was entered after the parties “held several  
18 settlement conferences to discuss whether the proposed rates are consistent with the Court of  
19 Appeals remand and federal requirements.” *Id.* The stipulation sets forth the parties’ (including  
20 NPCC’s) agreement that the proposed PAL and fraud protection rates “comply with federal  
21 requirements” and “satisfy the Court of Appeals Remand Order.” *Id.* Notwithstanding this  
22 stipulation freely entered by NPCC in 2007, NPCC now makes a directly contrary assertion: that  
23 Qwest’s payphone service rates violated federal law and the Court of Appeals remand order, and  
24 that requiring Qwest to make additional refunds is necessary to remedy that violation. *See, e.g.,*  
25 Motions at 28. NPCC waived and is barred from raising any such claim by failing to raise it in a

1 timely manner. NPCC is also judicially estopped from asserting such a claim 10 years after it  
2 obtained a benefit from a contrary assertion.

3 It is worth noting that NPCC intervened in this proceeding on Sept. 13, 1996, and was  
4 represented in this case by attorney Brooks Harlow of the law firm Miller Nash since at least Jan.  
5 26, 1998. Mr. Harlow, an experienced telecommunications lawyer and PUC practitioner,  
6 continued to represent NPCC in this case through its conclusion in 2007, and executed the  
7 stipulation on behalf of NPCC. Mr. Harlow's failure to raise the issue of additional refunds  
8 during the remand proceeding in 2006-07 was presumably not due to oversight, but rather was  
9 based on his thorough understanding of the Commission's prior orders in this case and the fact  
10 that Qwest had already fulfilled its refund obligation.<sup>3</sup>

11 **B. Subsequent Changes in Qwest's Ratemaking Treatment.**

12 In 1999, while UT 125 was pending, Qwest elected price cap regulation pursuant to ORS  
13 759.400 et seq. Order No. 01-810 at 3. This meant that Qwest was no longer "subject to any  
14 other retail rate regulation, including but not limited to any form of earnings-based, rate-based or  
15 rate of return regulation." ORS 759.410(2). The rates established in this docket became the  
16 maximum rates Qwest could charge under ORS 759.410. ORS 759.415(1).

17 After being subject to price cap regulation for several years, Qwest applied for, and in  
18 2008 the Commission approved, a price plan pursuant to ORS 759.255. Docket UM 1354; Order  
19 No. 08-408. The price plan established other price caps and provided Qwest with additional  
20 pricing flexibility. Qwest continues to operate under the price plan the Commission approved  
21 almost nine years ago.

22  
23  
24 <sup>3</sup> Mr. Harlow also represented NPCC in a declaratory ruling/complaint proceeding against Qwest  
25 seeking refunds for NPCC's members (Docket DR 26/UC 600, discussed below) from its inception on  
26 May 14, 2001 until July 22, 2009, when Frank Patrick, NPCC's current attorney, replaced him. In  
addition to representing NPCC in Docket DR 26/UC 600 from July 2009 through the present, Mr. Patrick  
also filed four lawsuits against Qwest between 2009 and 2013 seeking refunds (discussed below), and  
filed the Motions in 2017.

1 Based upon these two changes in the ratemaking law applicable to Qwest, Qwest is no  
2 longer subject to the type of ratemaking treatment the Commission applied in this docket.  
3 Accordingly, it is no longer relevant to undertake further proceedings in this docket.

4 **C. NPCC Filed Five Other Proceedings Seeking Refunds, Including Four Lawsuits.**

5 **1. Commission Docket DR 26/UC 600 (NPCC I).**

6 NPCC already sought refunds from Qwest in Docket DR 26/UC 600 (“NPCC I”), based  
7 upon the FCC’s *Waiver Order*.<sup>4</sup> The Commission denied NPCC’s claim in 2011 (Order No. 11-  
8 504), and the Oregon Court of Appeals affirmed the Commission’s decision in 2016. *Northwest*  
9 *Public Communications Council v. Qwest Corporation*, 279 Or. App. 626, 379 P.3d 633 (2016);  
10 *reconsideration den’d* (March 9, 2017).

11 Significantly, NPCC sought to advance the same claims in *NPCC I* that it now seeks to  
12 pursue in the Motions in this proceeding, and the Commission rebuffed those attempts. First, in  
13 2009, NPCC sought to amend its complaint in *NPCC I* to add these same claims. The  
14 Commission denied those amendments to the complaint (Order No. 10-027) and the Court of  
15 Appeals affirmed that decision. 279 Or. App. at 646. Second, on Jan. 27, 2010, NPCC filed a  
16 Motion To Enforce Orders, which also sought to have the Commission adjudicate these claims;  
17 NPCC ultimately withdrew that motion.<sup>5</sup>

18 **2. NPCC filed, and lost, four separate lawsuits against Qwest seeking refunds.**

19 NPCC also filed four separate lawsuits seeking the same relief it now seeks in the  
20 Motions. The federal district court dismissed each of those four lawsuits, and two of the  
21 dismissals have, to date, been affirmed (NPCC did not appeal one judgment and one appeal is  
22 still pending). These cases merit some discussion as they would form part of the basis for  
23 Qwest’s motion to dismiss any further proceeding brought by NPCC before the Commission.  
24

25 \_\_\_\_\_  
26 <sup>4</sup> *In re Payphone Docket*, Order, 12 F.C.C. Rcd. 21370 (1997) (the “*Waiver Order*”).

<sup>5</sup> Transcript of Feb. 4, 2010 Telephone Prehearing Conference, Docket DR 26/UC 600, at 16-17.

1           **a. NPCC's 2009 federal court lawsuit (NPCC II).**

2           NPCC filed *The Northwest Public Communications Council et al., v. Qwest Corporation,*  
3 *et al.*, 2010 WL 4260341 (D. Or. 2010), *aff'd*, 538 Fed. Appx. 822 (9th Cir. 2013) ("*NPCC II*"),  
4 in November 2009, after suffering a number of adverse rulings from the Commission in *NPCC I*.  
5 NPCC sought the same relief in *NPCC II* as in *NPCC I*, on the same grounds, and also asserted a  
6 number of additional claims under state law, including the claims contained in the Motions. The  
7 district court granted Qwest's motion to dismiss the complaint because it concluded that NPCC's  
8 federal-law claims were barred by the statute of limitations. Having dismissed the federal-law  
9 claims, the court declined to exercise supplemental jurisdiction over the state-law claims and did  
10 not reach the numerous other bases for dismissal urged by Qwest. NPCC appealed the final  
11 judgment to the Court of Appeals for the Ninth Circuit, which affirmed.

12           **b. NPCC's 2010 federal court lawsuit (NPCC III).**

13           NPCC filed a second federal court lawsuit against Qwest and the Commission in federal  
14 court in June 2010, also following adverse rulings by the Commission in *NPCC I*. *The*  
15 *Northwest Public Communications Council et al., v. Oregon Public Utility Commission et al.*,  
16 805 F. Supp. 2d 1058 (D. Or. 2011) ("*NPCC III*"). NPCC asked the court to review the  
17 Commission's orders in *NPCC I* denying NPCC's motions to add claims such as those presented  
18 in the Motions. Qwest and the Commission moved to dismiss *NPCC III* on a number of  
19 grounds. The court dismissed *NPCC III* in July 2011, and NPCC did not appeal that decision.

20           **c. NPCC's 2011 federal court lawsuit (NPCC IV).**

21           NPCC filed yet a third lawsuit against Qwest on December 16, 2011, the day after the  
22 Commission issued its final order in *NPCC I*. *State of Oregon, ex rel. Northwest Public*  
23 *Communications Council v. Qwest Corp.*, 877 F. Supp. 2d 1004 (D. Or. 2012), *aff'd* 563 Fed.  
24 Appx. 547 (9th Cir. 2014) ("*NPCC IV*"). In *NPCC IV*, NPCC purported to act on behalf of the  
25 State of Oregon to enforce the same Commission orders NPCC seeks to enforce in this case,  
26 which NPCC claimed required Qwest to make additional refunds to payphone service providers,

1 (“PSPs”) like NPCC’s members. The court granted Qwest’s motion to dismiss, on the principal  
2 basis that NPCC does not have authority to bring an action to enforce the Commission’s orders.  
3 The Ninth Circuit affirmed the district court’s decision.

4 **d. NPCC’s 2013 federal court lawsuit (*NPCC V*).**

5 NPCC filed its fourth separate lawsuit against Qwest on Nov. 15, 2013. *Communication*  
6 *Management Services, LLC, et al. v. Qwest Corporation*, 67 F. Supp.3d 1159 (D. Or. 2014),  
7 *appeal pending* (“*NPCC V*”). The claims in *NPCC V* included: (1) all of the claims the  
8 Commission addressed in *NPCC I* and the court addressed in *NPCC II*, based generally on  
9 federal law and the FCC’s Payphone Orders and the *Waiver Order* in particular; and (2) the same  
10 claims that the court addressed in *NPCC IV* and that NPCC seeks to relitigate in the Motions,  
11 seeking refunds based on the Commission’s orders issued in this docket and state law.

12 The district court dismissed NPCC’s complaint in its entirety, deciding that 11 of the  
13 claims were barred by the applicable statutes of limitation, one claim was barred under the  
14 doctrines of claim preclusion and issue preclusion by the final judgments in the other cases, and  
15 that NPCC failed to state claims upon which relief may be granted. Each of these grounds (and  
16 others) bar NPCC’s effort to relitigate these claims before the Commission.

17 **III. ARGUMENT**

18 **A. The Commission Should Deny NPCC’s Motion for an Order to Show Cause.**

19 **1. The motion is procedurally improper.**

20 NPCC filed its motion for an order to show cause “[p]ursuant to ORS 756.040.” Motions  
21 at 1. However, ORS 756.040 simply sets forth the “general powers” of the Commission; it does  
22 not authorize any type of proceeding, let alone a motion for order to show cause.

23 Under the Commission’s rules, motions “are requests seeking a ruling in a Commission  
24 proceeding ... such as a motion to dismiss.” OAR 860-001-0390(2). However, there is no  
25 proceeding pending in this docket, and there are no issues pending that require a ruling. All

1 proceedings in this docket concluded in 2007 and the Commission has formally closed this  
2 docket. A motion is not the proper vehicle to initiate a proceeding. Rather, a “pleading,” such as  
3 a complaint, is used to initiate a proceeding. OAR 860-001-0390(1).

4 Even if any matter were currently pending in this case, the claims NPCC now wishes to  
5 assert go far beyond the subject matter of this docket. NPCC asserts that the Commission should  
6 “issue an order requiring Qwest ... to show cause why it is not in violation of Order Nos. 96-107,  
7 00-190, 00-191, 06-515, and 07-797, the Telecommunications Act of 1996, and state law.”  
8 Motions at 1. Only some of the referenced orders were issued in this proceeding. Moreover, this  
9 proceeding was a general rate case under ORS 759.180. It did not address any alleged violations  
10 of the Telecommunications Act of 1996 or state law (NPCC does not even specify which  
11 provisions of the Telecommunications Act or state law Qwest allegedly violated). Just like  
12 NPCC tried to do with its proposed Second Amended Complaint in Docket DR 26/UC 600 (*see*  
13 Order No. 10-027), NPCC now seeks to radically expand the scope of this proceeding, which has  
14 been closed and inactive for over nine years, simply by filing a motion. This NPCC may not do.  
15 If NPCC wants the Commission to consider its claims (the same claims that have already been  
16 rejected by the federal courts), then NPCC must file a complaint asking the Commission to  
17 initiate a new proceeding.<sup>6</sup>

18 ORS 756.500 authorizes any person to “file a complaint” before the Commission “against  
19 any person whose business or activities are regulated by some one or more of the statutes,  
20 jurisdiction for the enforcement or regulation of which is conferred upon the commission.” ORS  
21 756.500(1). ORS 756.500(3) requires the complaint to state all grounds on which the  
22 complainant seeks relief. Pleadings are subject to the certification in ORCP 17C. OAR 860-  
23 001-0400(1). ORS 756.512 provides the defendant an opportunity to respond to the complaint.

24  
25 <sup>6</sup> To avoid any doubt, Qwest does not think NPCC should be encouraged to file a new complaint  
26 to assert the meritless claims NPCC has already litigated. Qwest’s point is that the Motions are an  
improper way to present these new claims.

1 A defendant may also file a motion to dismiss the complaint. OAR 860-001-0390(2). ORS  
2 756.518 – 756.610 establish the applicable hearing procedures including, among other things,  
3 discovery, the right to present evidence, and resolution by an order containing findings of fact  
4 and conclusions of law that is subject to judicial review.

5 The Commission’s rules implement the statutory procedures for complaints. Specifically,  
6 a “pleading,” such as a complaint, is “used to address formal requests to initiate a proceeding....”  
7 OAR 860-001-0390. That is precisely what NPCC is improperly seeking with its Motions, the  
8 initiation of a proceeding.

9 The procedural flaws with the Motions are not simply matters of form; they also affect  
10 Qwest’s substantive rights to defend the claims NPCC wants to make. First, Qwest is entitled to  
11 a clear statement of the new claims that NPCC wishes to make. OAR 860-001-0400(2)(c).  
12 Second, Qwest is entitled to file a response, including answering the material allegations and  
13 asserting all affirmative defenses. OAR 860-001-0400(3)(c). As stated above, prior to  
14 defending NPCC’s claims on the merits, Qwest would assert a number of procedural defenses to  
15 NPCC’s claims. These include, among other things: (1) the claims are barred by issue  
16 preclusion, claim preclusion and waiver, having already been litigated by NPCC in five other  
17 cases, and by NPCC’s not raising them earlier in this case; (2) the claims are barred by the  
18 statute of limitations or laches, having accrued more than 10 years ago; (3) NPCC does not have  
19 a right of action to bring the claims or to seek relief; and (4) the Commission lacks subject-  
20 matter jurisdiction over the claims. Qwest will also assert other defenses, including that NPCC  
21 is judicially estopped by its 2006 stipulation in this docket from asserting that Qwest’s rates do  
22 not comply with federal law and the remand order in the Rate Case Appeal, and the claims  
23 should be dismissed based on intervening changes in Qwest’s ratemaking treatment. Qwest  
24 would have the right to assert these and other defenses in response to a complaint; it is not clear,  
25 however, how those matters would be raised in response to a “motion.”



1 Third, Qwest has the right to present evidence and to have a decision based on an  
2 evidentiary record; such rights are not necessarily provided in the context of responding to a  
3 motion for an order to show cause. In contrast to complaints, the Commission decides motions  
4 based only upon the motion and a response. OAR 860-001-0420. Indeed, the Commission  
5 typically grants motions for an order to show cause in summary fashion, usually based upon a  
6 Staff recommendation, as it did in the three cases NPCC cites (Motions at 25-26). The  
7 Commission has issued orders to show cause based simply on one party's argument and without  
8 even providing the respondent an opportunity to respond, let alone to create an evidentiary  
9 record. Moreover, orders to show cause are used to address live issues in an active, pending  
10 docket.

11 Indeed, the context of a motion for an order to show cause, at least by its name, carries  
12 the risk of shifting the burden of proof from the moving party to the responding party; however,  
13 in this case, NPCC must have the burden to prove that Qwest violated orders and statutes and is  
14 somehow required to make additional refunds as NPCC claims. NPCC should not be permitted  
15 to raise new claims by filing Motions in a case that has been closed for over nine years,  
16 particularly where motions lack the procedural safeguards that would exist in a complaint  
17 proceeding.

18 **2. There is no basis for NPCC's assertion that Qwest owes additional refunds**  
19 **under the Commission's orders.**

20 As discussed above, the Commission should not address the merits of NPCC's claim that  
21 Qwest owes additional refunds to PSPs under the Commission's prior orders unless and until  
22 NPCC files a complaint stating such a claim and the complaint withstands a motion to dismiss  
23 based on various grounds. Nevertheless, so the Commission can understand the ultimate futility  
24 of such a complaint, Qwest will briefly explain why NPCC's assertion that Qwest owes  
25 additional refunds is based on a plainly incorrect interpretation of those orders.

1 NPCC asserts that the Commission ordered Qwest to make refunds based upon the  
2 difference between the rates Qwest charged while this rate case was pending and the final rates  
3 the Commission approved in 2007:

4 Qwest's PAL and CustomNet rates were interim and subject to  
5 refund until final rates were set in this docket, UT 125. The  
6 Commission set final rates for PAL and CustomNet in Order No.  
7 07-497, effectively concluding the rate-setting phase of UT 125  
8 and replacing the interim rates with final rates. Because the final  
9 rates are lower than the interim rates, Qwest is "subject to refund"  
10 the difference. To comply with Order No. 96-107, Qwest was  
11 required to refund the difference between the final rates and the  
12 interim rates.

13 Motions at 23-24. While NPCC acknowledges (at 8) that Qwest refunded over \$272 million in  
14 2000, NPCC's position is that was only a partial refund and that Qwest was required to make  
15 "additional refunds" once rates were finally set in this rate case. Motions at 20.

16 NPCC's argument is based on its assertions that: (1) the refund Qwest made in 2000 was  
17 based on the difference between the rates Qwest charged for specific services from the time the  
18 rate case commenced and the rates for those services the Commission established in the rate  
19 case; and (2) Qwest was required to make additional refunds to the extent rates were revised later  
20 in this docket. For example, NPCC states: "Those refunds were allocated among ratepayers  
21 based on an interim rate design that was later adopted as the final rate design in Order No. 01-  
22 810." Motions at 22.

23 NPCC is wrong on both counts. First, the refund was never based on rates for specific  
24 services established in this case at any time. Indeed, the refund was made at the conclusion of  
25 the revenue requirement phase of the case *before* any rates were changed in the rate design  
26 phase. The refunds the Commission required Qwest to make were never intended to bear any  
27 relationship to the rates the Commission established for specific services. Rather, they were  
28 intended to return money to customers *regardless* of whether the rates those customers paid were  
29 decreased, increased or stayed the same as a result of the rate case. Second, the refund the

1 Commission required was, in the Commission's own words, a "one-time refund" which Qwest  
2 would make as a "one time, lump sum credit on customers' bills." Order No. 00-190 at 3. The  
3 refund was not to be trued-up or supplemented after the rate case was concluded, as NPCC  
4 contends. Qwest made the complete refund in 2000, and is not required to make any additional  
5 refunds under the Commission's orders.

6 Understanding the full impact of the Commission's revenue requirement orders in this  
7 case helps put the "one-time refund" in its proper context and show why NPCC's claim is based  
8 on a mischaracterization of the Commission's orders and is completely unfounded. As NPCC  
9 notes, the Commission bifurcated this case into a revenue requirement phase and a rate design  
10 phase. At the conclusion of the revenue requirement phase, the Commission originally ordered  
11 Qwest to reduce its revenue requirement by approximately \$97 million per year. Order No. 00-  
12 190 at 1. Under the Commission's original revenue requirement order, Order No. 97-171, this  
13 reduction in revenue requirement would have been implemented both as a refund at that annual  
14 rate (plus interest) until such time as permanent rates were established in the rate design phase  
15 and, on a going-forward basis, in permanent rates. Order No. 00-190 at 1.

16 Qwest appealed the Commission's original revenue requirement order, which was  
17 reversed by the Marion County Circuit Court. *Id.* While a further appeal was pending, Qwest  
18 and Commission Staff reached a settlement of the revenue requirement issues, which the  
19 Commission approved in 2000. The settlement provided for two different revenue requirements:  
20 the revenue requirement reduction for the refund period would be at the rate of \$53 million per  
21 year, and the revenue requirement reduction for the going-forward period would be at the annual  
22 rate of \$63 million. *Id.* at 10. In order to implement the first part of this settlement, Qwest was  
23 required to make a "one-time refund" at the rate of \$53 million per year (plus interest) shortly  
24 after the Commission approved the settlement. *Id.* Since the refund period spanned more than  
25 four years (from May 1, 1996 through September 2000), the refund was in excess of \$283

1 million. *Id.* at 3; *supra*, fn. 2. Note that this refund was made *before* the rate design phase of this  
2 case commenced, so the amount of the refund for any customer could not possibly bear any  
3 relationship to the rates the Commission established *later* in this proceeding.

4 The agreed-upon \$63 million per-year revenue reduction following the refund period was  
5 implemented in two ways. First, Qwest was required to issue temporary bill credits from the  
6 date of the refund until the rate design phase was concluded that would have a total revenue  
7 impact of \$63 million per year. *Id.* at 10. The Commission described the purpose of the  
8 temporary bill credits and distinguished it from the refund:

9 The refund is a separate item from the temporary bill credits. The  
10 refund is a return of revenues collected from customers, made in  
11 settlement of potential liability to make refunds at some future  
12 date. The bill credits reflect a reduction going forward in revenue  
13 requirement pending conclusion of the rate design portion of this  
14 docket.

15 *Id.* at 4.<sup>7</sup> Second, once rates were set, the \$63 million per-year revenue reduction would be  
16 permanently implemented in the ongoing rate structure. *Id.* at 10.

17 Thus, seen in its proper context, the refund the Commission ordered was to be made “one  
18 time” and as a “lump sum credit on customers’ bills.” Qwest discharged its obligation to make a  
19 refund under the Orders when it refunded over \$283 million to customers, under the  
20 Commission’s supervision, in 2000. Qwest was not required to supplement the refund after final  
21 rates were established. Indeed, as the Commission stated, the refund amount was agreed upon  
22 “in settlement of potential liability to make refunds at some future date,” negating NPCC’s  
23 argument that an additional refund would be required at a future date. Indeed, given the full  
24 implementation of the revenue reduction through a refund, temporary rate credits, and final rates,  
25 if Qwest were required to make any additional refund now, that would require Qwest to reduce

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26 <sup>7</sup> NPCC’s confusion regarding the Commission’s refund order is partially displayed in the  
27 following statement in the Motions: “The refund was distributed among ratepayers, including PSPs,  
28 based on an interim rate design implemented by the Commission in the form of temporary bill credits.”  
29 Motions at 8-9. NPCC misunderstands the difference between the refund and the temporary bill credits  
30 ordered by the Commission, among other things.

1 its revenues *more* than the Commission required. NPCC's theory that Qwest is required to issue  
2 additional refunds following the conclusion of this rate case is NPCC's own invention, and  
3 entirely unsupported by the Commission orders NPCC purports to enforce.

4 One example helps illustrate these points. For purposes of the refund, the Commission  
5 established five groups of retail services. Order No. 00-191 at 165. Customers subscribing to  
6 services in each group were to receive the same one-time refund based on a ratio. The refund to  
7 residential customers was based on a ratio of 1.00. *Id.* That meant that each residential customer  
8 received a refund in the amount of \$123.92 per line.<sup>8</sup> However, the rate for basic residential  
9 service was never lowered in this case. The rate for basic residential service at the time the  
10 refund was made was the same rate that Qwest charged since the beginning of the rate case,  
11 \$12.80 per month. *Id.* The rate for basic residential service following the completion of the rate  
12 design phase was \$12.80 per month in Rate Group One, and higher in Rate Groups Two and  
13 Three. Order No. 01-810 at 57, 63. Regardless of the fact that the rate for residential service  
14 was not reduced at any time in this rate case, residential customers still received a large refund  
15 (equivalent to almost 10 months' worth of free service). Moreover, they received the entire  
16 amount of the refund so long as they were a customer for 60 days prior to the date of the refund.  
17 Order No. 00-190 at 20. (They also received the temporary bill credit in the amount of \$2.47 per  
18 month. Order No. 00-190 at 4.)

19 This shows that the refund the Commission required was not based on a reduction in the  
20 rate for any particular service. The refund also bore no relationship to the amount customers  
21 paid for a service since all customers in the group received the exact same refund whether they  
22 subscribed to the service for 60 days or the full four and one-half years since the rate case was  
23 commenced. Thus, NPCC's assertions that (1) the refund was based on the difference between  
24 the rates charged while the rate case was pending and the final rates set by the Commission and  
25

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26 <sup>8</sup> <http://www.puc.state.or.us/Pages/news/2000/2000044.aspx>.

1 (2) the refund would need to be tried up for final rates established by the Commission, are  
2 simply fantasies of NPCC's own invention.

3 **B. The Commission Should Deny NPCC's Alternative Motion to Amend Order**  
4 **No. 07-497.**

5 **1. The motion is procedurally improper.**

6 NPCC's alternative motion to "amend" Order No. 07-497 suffers from many of the same  
7 procedural infirmities discussed above, but in a more pronounced way. NPCC asks the  
8 Commission to "clarify Order No. 07-497 by amending it to expressly require Qwest to issue  
9 refunds for any excess revenue it collected under rates that failed to comply with Order Nos. 96-  
10 107, 00-190, 00-191, 06-515, and 07-497, the Telecommunications Act of 1996, and state law,  
11 less any refunds previously paid." Motions at 30.

12 As discussed above, neither NPCC nor any other party ever asserted in this case that  
13 Qwest was required to make additional refunds after the Commission established final rates for  
14 payphone services following the Court of Appeals remand. To the contrary, NPCC stipulated at  
15 the time that the proposed resolution of this case complied with all federal requirements and  
16 satisfied the Court of Appeals' remand. To suggest that the Commission could simply "clarify"  
17 an order to require relief that has never been requested or required in the proceeding, and that  
18 directly contradicts a party's earlier stipulation, is nothing less than outrageous. While the  
19 Commission has authority to amend its orders under ORS 756.598, it cannot exercise that  
20 authority in this case, to require refunds based on claims that have never been made, let alone  
21 decided.

22 Moreover, the claims that NPCC wishes to assert are vague. For example, NPCC does  
23 not even specify in its Motions what provisions of "the Telecommunications Act of 1996, and  
24 state law" allegedly require such additional refunds, and why.

25 Among other things, NPCC cites to the FCC's 2013 so-called "Refund Order" (*In the*  
26 *Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of*

1 *the Telecommunications Act of 1996*, CC Docket No. 96-128, 28 FCC Rcd. 2615 (Feb. 20,  
2 2013)) as providing the basis for a refund. Motions at 27. However, as the FCC made clear,  
3 refunds are not required by federal law, and whether a refund may be claimed under state law  
4 depends upon state law and the procedural posture of a given claim. “We recognize that each  
5 individual proceeding involves its own unique set of facts, procedural postures, and relevant state  
6 and federal statutes. With regard to similar proceedings and consistent with our previous  
7 direction to the states regarding their administration of intrastate payphone rates pursuant to  
8 section 276, we therefore leave to the states the responsibility for deciding whether refunds are  
9 appropriate.” *Id.* at 2640.<sup>9</sup>

10 In order for a state to adjudicate any such claim, the claimant must identify the state  
11 statutes that it relies upon, and any such claim is also subject to the substantive and procedural  
12 defenses that are available. Indeed, this is what NPCC tried and failed to do in its four lawsuits.  
13 NPCC cannot be allowed to make a motion to amend an order based on claims that are vaguely  
14 stated and have never been pled, let alone decided, in this proceeding. NPCC must file a  
15 complaint specifying the bases of its claims before Qwest can even be required to respond to  
16 such vague charges.

17 **2. There is no basis for the Commission to amend Order No. 07-497 to require**  
18 **refunds.**

19 NPCC’s alternative motion is largely based upon the same erroneous characterization of  
20 the Commission’s prior orders in this docket that infect and doom its primary motion. That is,  
21 the Commission’s prior orders did not require a refund based upon the difference between  
22 interim rates and final rates for specific services. NPCC’s citation to other orders does not  
23 improve its case.

---

24 <sup>9</sup> NPCC also blatantly mischaracterizes a discussion in the FCC’s order when it states, without  
25 citation: “The Indiana Commission, *like Oregon’s Commission*, found that the telecommunications  
26 companies’ ‘payphone tariffs should only be approved on an interim basis, retroactive to April 15, 1997,  
and subject to refund pending further review.” Motions at 15 (emphasis added). This Commission has  
never made any such ruling.

1 NPCC's reliance on Order No. 06-515 reflects NPCC's misunderstanding or distortion of  
2 that order. By the time the Court of Appeals issued its decision in the Rate Case Appeal, the  
3 Commission had already approved final rates in this case and Qwest had already implemented  
4 those rates, reducing its revenue by approximately \$63 million per year. The Court of Appeals'  
5 remand order ultimately meant that Qwest would be required to reduce its prospective payphone  
6 service rates even further than already ordered in this case, which resulted in an additional  
7 reduction of approximately \$1 million in revenue per year going forward. Order No. 06-515 at  
8 3. The request Qwest made of the Commission that led to Order No. 06-515 was that Qwest be  
9 allowed to raise the rate for one other service on a prospective basis to offset this additional  
10 revenue reduction. *Id.* (identifying the issue as "whether Qwest may raise any customer rates to  
11 offset reduced revenues resulting from a Commission decision approving lower payphone  
12 service rates.") As the Court of Appeals itself noted, and the Commission well knows, when the  
13 Commission engages in rate design, "reducing the rates for one service is likely to require raising  
14 the rates for another." 196 Or. App. at 96. Qwest's proposal to rebalance prospective rates in  
15 the remand was the only issue addressed in Order 06-515. Contrary to NPCC's argument,  
16 neither Qwest's request nor the Commission's decision had anything to do with whether Qwest  
17 would be required to make additional (retroactive) refunds as a result of the remand. NPCC's  
18 reliance on Order No. 06-515 adds nothing to its argument other than confusion.

19 Likewise, there is nothing in Order No. 07-497 that requires Qwest to make additional  
20 refunds. That order concluded the rate case, adopting a stipulation among Qwest, Staff *and*  
21 NPCC that the rates Qwest filed and had been charging since 2003 satisfied all federal  
22 requirements. At no time during that remand proceeding did NPCC, Staff or any other party  
23 request or even suggest that Qwest would be required to make additional refunds following the  
24 Commission's approval of those final payphone service rates. To the contrary, NPCC stipulated  
25 at the time that the proposed resolution of this case complied with all federal requirements and  
26



1 satisfied the Court of Appeals remand. NPCC is judicially estopped to assert otherwise, and has  
2 waived any claim for additional refunds by not raising it in a timely manner.

3 NPCC's counsel at that time, Brooks Harlow, who had been actively involved in this rate  
4 case since its inception, likely understood that Qwest was not required to make any additional  
5 refunds and, therefore, did not identify this as an issue for the remand proceeding. It has only  
6 been since NPCC retained new counsel in 2009, who initiated a frenzy of meritless litigation,  
7 that any party has asserted that Qwest owes refunds in addition to the over \$283 million Qwest  
8 refunded in 2000. Although NPCC did not have a valid claim for additional refunds, if it did  
9 have such a claim, the time for NPCC to raise it was in 2006-07, during the remand proceeding,  
10 not 10 years later.

11 The alternative motion is both procedurally improper and substantively unfounded and  
12 should be denied.

#### 13 IV. CONCLUSION

14 For the foregoing reasons, the Commission should deny NPCC's Motions.

15 DATED: March 24, 2017

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16  
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**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**UT 125**

In the Matter of:

**QWEST CORPORATION, fka U.S. WEST  
COMMUNICATIONS, INC.**

**NORTHWEST PUBLIC  
COMMUNICATION  
COUNCIL'S MOTIONS FOR AN  
ORDER TO SHOW CAUSE OR,  
IN THE ALTERNATIVE, TO  
CLARIFY ORDER NO. 07-497**

**MOTIONS**

Pursuant to ORS 756.040, Northwest Public Communication Council ("NPCC") moves the Public Utility Commission (the "Commission") to issue an order requiring Qwest Corporation ("Qwest") to show cause why it is not in violation of Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the Telecommunication Act of 1996, and state law.

In the alternative, pursuant to ORS 756.568, NPCC moves the Commission to clarify Order No. 07-497 by amending it to expressly require Qwest to issue refunds for any excess revenue it collected under rates that failed to comply with Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the Telecommunication Act of 1996, and state law, less any refunds previously paid.<sup>1</sup>

**INTRODUCTION**

The Commission opened this docket in 1995 to set rates for Qwest's telecommunication services, including the company's public access lines ("PAL") and fraud protection services ("CustomNet"). The Commission established the final rates for PAL and

<sup>1</sup> NPCC conferred by telephone with counsel for Qwest regarding these motions on January 25, 2017. Qwest opposes the motions.

1 CustomNet in 2007. Before 2007, during the pendency of this docket, Qwest charged and  
2 collected PAL and CustomNet interim rates that were not final and were subject to refund.  
3 The rates Qwest charged and collected for PAL and CustomNet services beginning in 1996  
4 were substantially higher than the final rates the Commission adopted in 2007. To NPCC's  
5 knowledge, however, Qwest has never issued complete refunds to its customers for the  
6 overpayments they made between 1996 and at least 2003 or otherwise.

7 The Commission is vested with the responsibility to "protect \* \* \* customers, and the  
8 public generally, from unjust and unreasonable exactions and practices." ORS 756.040(1).  
9 Consistent with this responsibility, and pursuant to its authority in ORS 756.040(2), NPCC  
10 respectfully requests the Commission to issue an order directing Qwest to show cause why it  
11 is not in violation of the Commission's orders in this docket, the Telecommunications Act of  
12 1996, and state law. In the alternative, pursuant to ORS 756.568, the Commission should  
13 clarify Order No. 07-497 by amending it to expressly require Qwest to issue refunds for any  
14 excess revenue it collected under rates that failed to comply with Orders Nos. 96-107, 00-  
15 190, 00-191, 06-515, and 07-497, the Telecommunication Act of 1996, and state law, less  
16 any refunds previously paid.

17 **BACKGROUND**

18 This motion concerns rates Qwest charged for payphone services during the rate-  
19 setting portion of this docket. NPCC represents a group of independent payphone service  
20 providers ("PSPs"). Some of the PSPs use Qwest's PAL and CumstonNet services and pay  
21 Qwest rates determined by the Commission. The following background: (1) summarizes the  
22 federal regulatory framework for rates for payphone services, § I; (2) summarizes the  
23 procedural history of this docket, § II; (3) summarizes a 2013 FCC order relevant to this  
24 docket, § III; and (4) summarizes ancillary proceedings before the Commission, § IV.



1     **I.     The Telecommunications Act of 1996 and the New Services Test.**

2             **A.     The Telecommunications Act of 1996.**

3             “Since the mid-1980s, independent payphone providers have competed with Bell  
4     Operating Companies [‘BOCs’] in the consumer payphone market. At first, Bell Operating  
5     Companies had a built-in advantage. In addition to operating some payphones, Bell  
6     Operating Companies owned the local phone lines that provide service to all payphones. An  
7     independent payphone provider was thus ‘both a competitor and a customer’ of the local Bell  
8     Operating Company.” *Nw. Pub. Commc’ns Council v. Qwest Corp.*, 279 Or. App. 626; 629  
9     (2016) (quoting *Ill. Pub. Telecommunications Ass’n v. Fed. Commc’ns Comm’n*, 752 F.3d  
10    1018, 1020 (D.C. Cir. 2014)).

11            In 1996, Congress passed the Telecommunications Act (“TCA”), the first major  
12    overhaul of telecommunications law in more than 60 years. Among its provisions, Section  
13    276 of the TCA prohibits BOCs, such as Qwest, from discriminating against independent  
14    PSPs by subsidizing their payphone services from their local exchange services. 47 U.S.C.  
15    § 276(a). Congress included this section “to promote more competitive market conditions”  
16    for payphone services. *Davel Commc’ns, Inc. v. Qwest Corp.*, 460 F.3d 1075, 1080 (9th Cir.  
17    2006). The TCA required the Federal Communications Commission (“FCC”) to develop  
18    regulations to effectuate Section 276. 47 U.S.C. § 276(b).

19            Section 276 expressly preempts state law: “To the extent that any State requirements  
20    are inconsistent with the [FCC’s] regulations, the Commission’s regulations on such matters  
21    shall preempt such State requirements.” *Id.* § 276(c).

22            **B.     The New Services Test.**

23            In 1996, the FCC issued two initial orders (the “Payphone Orders”) to carry out the  
24    TCA’s instructions. *In re Implementation of the Pay Telephone Reclassification and*  
25    *Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC  
26    Rcd. 20,541 (Sept. 20, 1996) (“First Payphone Order”); *In re Implementation of the Pay*

1 *Telephone Reclassification and Compensation Provisions of the Telecommunications Act of*  
2 *1996, Order on Reconsideration, 11 FCC Rcd. 21,233 (Nov. 8, 1996) (“Order on Recons.”).*  
3 In the Payphone Orders, the FCC “directed the state regulatory commissions to review the  
4 tariffs for compliance with Section 276 based on a pricing standard known as the ‘new  
5 services test.’”<sup>2</sup> *Ill. Pub. Telecommunications Ass’n v. Fed. Communc’ns Comm’n, 572 F.3d*  
6 *1018, 1021 (D.D.C. 2014).*

7 The new services test (“NST”) requires local exchange carriers such as Qwest to set  
8 rates for payphone services based on the actual cost of providing the service plus a  
9 reasonable amount for overhead. *Davel Communications, 460 F.3d at 1081; Order on*  
10 *Recons. ¶ 163.* The FCC required the carriers to submit NST-compliant intrastate rates to  
11 state utility commissions, which were required to review the rates for NST-compliance and  
12 approve the rates as NST compliant. *Id.* The FCC further required carriers to file the new  
13 tariffs for both payphone services and unbundled network features by January 15, 1997, with  
14 an effective date of April 15, 1997. *Order on Recons. ¶ 163.*

15 **C. The Waiver Order.**

16 In early April 1997, just before the BOCs’ new NST-compliant rates were required to  
17 go into effect, the FCC found that the BOCs were “not in full compliance with the [FCC’s]  
18 federal tariffing requirements for unbundled features and functions under the” Payphone  
19 Orders. *In the Matter of Implementation of the Pay Telephone Reclassification and*  
20 *Compensation Provision of the Telecommunications Act of 1996, Order, DA 97-678, 13 FCC*  
21 *Rcd. 1778 (April 4, 1997) (the “Clarification Order”).* The FCC issued the Clarification  
22 Order to clarify that both interstate and intrastate rates for unbundled features and functions  
23 must be NST-compliant. *Clarification Order ¶ 2 (“Tariffs for payphone services, including*

24 \_\_\_\_\_  
25 <sup>2</sup> The new services test in final form had already been in use by the FCC for other  
26 telecommunications services for five years. *See Amendment of Part 69 of the Commission’s*  
*Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture,*  
*CC Docket No. 89-79, Report and Order & Order on Further Reconsideration &*  
*Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991).*

1 unbundled features and functions filed with the states, pursuant to the Payphone  
2 Reclassification Proceeding, must be cost-based, consistent with Section 276,  
3 nondiscriminatory, and consistent with Computer III tariffing guidelines.”). In response to  
4 the Clarification Order, the BOCs, including Qwest, requested a waiver of the April 15, 1997  
5 effective date for NST-compliance so that they could submit new NST-compliant rates along  
6 with the required cost data.<sup>3</sup>

7 On April 15, 1997, the FCC granted the BOCs “a limited waiver until May 19, 1997  
8 to file intrastate tariffs for payphone services consistent with the ‘new services’ test[.]” *In re*  
9 *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the*  
10 *Telecommunications Act of 1996*, Order, DA 97-805, 12 FCC Rcd. 21,370 ¶ 2 (Apr. 15,  
11 1997) (“Waiver Order”). Under the Waiver Order, carriers were granted a short extension of  
12 time until May 19, 1997 within which to file NST-compliant rates for payphone services. *Id.*  
13 ¶ 25. In exchange for this waiver, the FCC required carriers to reimburse their ratepayers for  
14 the difference between the rates they charged after April 15, 1997 and until the carriers filed  
15 compliant rates pursuant to the waiver’s extension: A carrier “who seeks to rely on the  
16 waiver granted in the instant Order must reimburse its customers or provide credit from April  
17 15, 1997 in situations where the newly tariffed rates, when effective, are lower than the  
18 existing tariffed rates.” *Id.*

19 **D. The Wisconsin Order.**

20 In 2000, the Common Carrier Bureau (“CCB”), a division of the FCC that issued the  
21 original payphone regulations, issued an order reviewing the rates for payphone services  
22 submitted by four carriers in Wisconsin. *In re Wis. Pub. Serv. Comm’n*, Order, DA No. 00-  
23 347, 15 FCC Rcd. 9978 (March 2, 2000). A coalition of carriers, including Qwest, applied to  
24

25 <sup>3</sup> This waiver request also requested that the BOCs be allowed to collect, beginning  
26 April 15, 1997, the new compensation the FCC required be paid to all payphone owners  
generally referred to as dial around compensation (“DAC”). As the largest owners of  
payphones in the U.S., the BOCs collectively stood to collect tens if not hundreds of millions  
of dollars of DAC annually.

1 the FCC for withdrawal or a stay of the CCB's order. The coalition argued that the FCC  
2 lacked the authority to set requirements for intrastate payphone rates; that payphone services  
3 should not be subject to the NST at all; and that, even if they were, certain cost determination  
4 requirements should be altered. In 2002, the FCC issued a Memorandum Opinion and Order  
5 rejecting the coalitions' arguments and clarifying the Payphone Orders. *In re Wis. Pub. Serv.*  
6 *Comm'n Order*, Mem. Op. & Order, 17 FCC Rcd. 2051 (2002) (Jan. 31, 2002) ("Wisconsin  
7 Order").

8 The Wisconsin Order contained three important rulings. First, the FCC ruled that it  
9 had the authority to establish requirements for intrastate payphone rates for BOCs.<sup>4</sup> *Id.* ¶ 42.  
10 Second, it clarified that BOCs' rates for payphone services must comply with the NST. *Id.*  
11 ¶¶ 46, 68. The Wisconsin Order made clear that "the BOC *may not* charge more for  
12 payphone line service than is necessary to recover from PSPs all monthly recurring direct and  
13 overhead costs incurred by BOCs in providing payphone lines." *Id.* ¶ 60 (emphasis added).  
14 Third, it established guidelines for calculating various rates and charges under the NST. *Id.*  
15 ¶¶ 45-65, 68. In particular, the FCC required BOCs to calculate intrastate payphone rates  
16 "using a forward-looking, direct cost methodology." *Id.* ¶ 68.

17 Collectively, Section 276 of the TCA, the Payphone Orders, the Clarification Order,  
18 the Waiver Order, and the Wisconsin Order established that rates for payphone services, both  
19 intrastate and interstate, must comply with the NST, beginning no later than April 15, 1997.  
20 To comply with the NST, a BOCs' rates must include only actual costs plus a reasonable  
21 amount of overhead and those amounts must be determined using a forward-looking, direct  
22 cost methodology.

23  
24  
25  
26 <sup>4</sup> The FCC clarified that its authority did not reach the rates for payphone services  
provided by all local exchange carriers. Rather, it ruled that Section 276 only reached BOCs.  
Qwest is a BOC.

1     **II.     Procedural History.**

2             **A.     Termination of the Alternative Form of Regulation.**

3             In 1991, the Commission adopted an alternative form of regulation (“AFOR”) for  
4     U.S. West Communications, Inc. (henceforth, “Qwest”).<sup>5</sup> Qwest’s rates for each of its  
5     services, including PAL and CustomNet, were determined under the AFOR. The AFOR  
6     provided Qwest with pricing flexibility for certain services and the ability to earn a broad  
7     range of rates of return. Order No. 96-107 at 1. As part of the AFOR, the Commission  
8     required Qwest to adhere to technical service quality standards. *Id.* In the event that Qwest  
9     failed to meet these standards, the Commission was authorized to terminate the AFOR before  
10    its expiration. *Id.*

11            Due to service quality problems, the Commission terminated the AFOR effective  
12    May 1, 1996. *Id.* at 3. Upon termination, the Commission ordered that all of Qwest’s rates  
13    were made interim and subject to refund: Qwest’s “rates for services [after May 1, 1996]  
14    shall be considered interim rates subject to refund with interest, at a rate of 11.2 percent.” *Id.*  
15    Commission staff explained that the rates would remain interim “pending the outcome of the  
16    company’s current rate filing, UT 125.” *Id.*, Appendix A at 5.

17            **B.     Qwest submits PAL rates.**

18            On January 15, 1997, Qwest submitted an advice to the Commission setting forth  
19    rates for PAL. Qwest’s submission contained two separate PAL rates: Basic PAL and Smart  
20    PAL.<sup>6</sup> Advice No. 1668. For the Basic PAL rates, Qwest submitted the same existing rates  
21    that it had been using under the AFOR (and which the Commission had made interim subject  
22

23            <sup>5</sup> In 2000, U.S. West merged with Qwest Corporation. For the sake of simplicity, all  
24    references to U.S. West Communications or Qwest in this motion will be to “Qwest.”

25            <sup>6</sup> In the Payphone Orders, the FCC required the BOCs to offer “Smart PAL.” First  
26    Payphone Order ¶ 146. This service allows a “dumb” payphone to use central office  
  capabilities of the type afforded to payphones owned by the BOCs. Until the First Payphone  
  Order, PSPs had used smart phones to connect to the Basic PAL service which provided,  
  through the phone, the features Qwest and BOCs could provide to dumb phones through the  
  central office. First Payphone Order ¶ 143 & n.490.

1 to refund in Order 96-107 terminating the AFOR). For the Smart PAL rates, Qwest proposed  
2 rates developed "using the existing price/cost relationship of the basic Pal." *Id.* at 2.

3 Qwest did not submit new CustomNet rates on January 15, 1997 or at any time until  
4 the Commission began Phase 2, as discussed below.

5 **C. Phase 1 and Orders 00-190 and 00-191.**

6 In 1995, in anticipation of the termination of AFOR, the Commission opened this  
7 docket to, in part, establish final rates for all Qwest's telecommunications services, including  
8 Qwest's PAL and CustomNet rates. The Commission bifurcated the case into two phases:  
9 the revenue requirement phase ("Phase 1") and the rate design phase ("Phase 2"). The  
10 Commission began by determining Qwest's revenue requirement in Phase 1. Until Phase 2  
11 was completed, Qwest rates were "interim rates subject to refund with interest."<sup>7</sup> Order No.  
12 00-190 at 1 n.1.

13 The Commission resolved Phase 1 in Orders 00-190 and 00-191. Those Orders,  
14 among others things, adopted a modified settlement stipulation reached between Qwest and  
15 Commission staff. *See* Order No. 00-190, Appendix A ("Modified Stipulation"). Pursuant to  
16 Orders Nos. 00-190 and 00-191, the Commission ordered Qwest to refund between \$222.7  
17 million and \$272.8 million to its ratepayers.<sup>8</sup> Order No. 00-190 at 3, 20, Appendix A at § 1.  
18 The Commission also ordered Qwest to reduce its revenues by \$63 million per year going  
19 forward. Order No. 00-190 at 4, Appendix A at ¶ 2. The refund was distributed among  
20 ratepayers, including PSPs, based on an interim rate design implemented by the Commission  
21

22 <sup>7</sup> An appealed interim rate does not become final until "the reviewing court upholds  
23 the Commission's order." *In the Matter of the Application of Portland General Electric  
Company*, PUC Docket Nos. DR 10, UE 88, & UM 989, Order 08-487 at 8 (Sept. 9, 2008).

24 <sup>8</sup> Based on the interim rate design reflected in the temporary bill credits required in  
25 Order No. 00-190, Qwest paid refunds to PAL ratepayers on all PAL rates that had been in  
26 effect since May 1, 1996. The interim rate design for PAL was identical to the non-NST-  
compliant rates later adopted, in Order No. 01-810, which were overturned on appeal. Thus,  
even though the PSPs received a refund pursuant to 00-190, that refund failed to account for  
the full difference between the interim rates Qwest charged and the final, lawful rates the  
Commission set in Order No. 07-497.

1 in the form of temporary bill credits. Order No. 06-515 at 7-8. Pending the establishment of  
2 permanent rates in Phase 2, the Commission ordered Qwest to issue its ratepayers bill credits  
3 to accomplish the ordered revenue reduction of \$63 million per year. Order No. 00-190 at 4,  
4 Appendix A ¶ 2(b).

5 Order No. 00-190 and the incorporated Modified Stipulation provided that final,  
6 permanent rates for Qwest's ratepayers would be determined in Phase 2. *Id.* Appendix A  
7 ¶ 2(a). The Modified Stipulation recognized, however, that an appeal of Orders Nos. 00-190  
8 and 00-191, or a subsequent order implementing those orders, could alter Qwest's obligation  
9 to provide refunds and make rate reductions. *Id.* Appendix A ¶ 5. Accordingly, the  
10 Commission and Qwest stipulated that if Qwest's refund obligation increased, Qwest was  
11 entitled to a credit for those refunds already paid:

12 The parties further recognize that [Qwest's] obligation to  
13 refund monies to customers and to reduce its ongoing rates  
14 may be modified on appeal, either by issuing a judgment  
15 incorporating or requiring different refunds or rate reductions,  
16 or by the Court of Appeals refusing to dismiss the Appellate  
17 Litigation. In the event that an order implementing the terms  
18 of this Stipulation is reversed or modified on appeal, the parties  
agree that [Qwest] will be entitled to a credit for refunds and  
rate reductions made under Paragraphs 1 and 2 of this  
Stipulation against any such increased refund and/or rate  
reduction obligation imposed by a judgment reversing or  
modifying the order adopting the terms of this Stipulation or  
any subsequent order.

19 *Id.* The stipulation also allowed Qwest to reserve its rights "to seek recovery of any  
20 overpayments \* \* \* in the event that [Qwest's] refund and/or rate reduction obligation is  
21 reduced" on appeal. *Id.*

22 **D. Phase 2 and Order 01-810.**

23 The Commission issued Order 01-810 to complete Phase 2 and set Qwest's  
24 permanent rates. The principal issue addressed in Order 01-810 was "how to apportion the  
25 \$64.2 million reduction in revenues agreed to in the stipulation that the Commission adopted  
26 in Order No. 00-190." Order No. 01-810 at 4. Qwest proposed rate schedules to meet the

1 revenue reductions, including rates for PAL and CustomNet, in Advice No. 1844. *Id.* at 48.  
2 Qwest's proposed PAL rates significantly decreased the Smart PAL rates it proposed on  
3 January 15, 1997, other PAL rates for PAL services introduced after January 15, 1997, and  
4 all other PAL rates that had been in effect since the AFOR was terminated effective May 1,  
5 1996. *Id.* at 48 & n.19, 20, 21.

6 NPCC objected to Qwest's rate proposal.<sup>9</sup> *Id.* at 49. NPCC argued that Qwest's PAL  
7 and CustomNet rates had to be set according to the TCA and the NST, as set forth in the  
8 Payphone Orders. *Id.* Qwest's proposed PAL rates did not comply with the NST, NPCC  
9 argued, because Qwest had failed to submit documentation sufficient to determine Qwest's  
10 direct costs for PAL lines. *Id.* at 50, 53. NPCC also argued that CustomNet was subject to  
11 the NST. *Id.* at 50-51.

12 The Commission rejected NPCC's arguments and adopted Qwest's proposed rates for  
13 PAL and CustomNet. *Id.* at 56. The Commission concluded that Qwest's proposed PAL  
14 rates were consistent with the NST. *Id.* at 55. The Commission also concluded that  
15 CustomNet was not subject to the NST. *Id.* at 56. In particular, in accepting Qwest's  
16 proposed PAL rates, the Commission relied on an approximation of Qwest's direct costs and  
17 permitted Qwest to charge rates that were 26 percent to 91 percent above its direct costs as  
18 overhead. *Id.* at 55.

19 **E. Appeal of Order No. 01-810 and Court of Appeals Decision.**

20 NPCC promptly requested reconsideration and, when the Commission denied that  
21 request (Order No. 02-009), appealed the PAL and CustomNet rates to the Marion County  
22 Circuit Court. The Circuit Court affirmed the Commission. NPCC then appealed to the  
23 Court of Appeals. The Court of Appeals reversed the Circuit Court and ordered it to remand  
24 the case to the Commission for reconsideration in light of the TCA and the FCC's orders.  
25  
26

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<sup>9</sup> At the time, NPCC was known as Northwest Payphone Association ("NWPA").



1 *Nw. Pub. Comm'ns Council v. Pub. Util. Comm'n*, 196 Or. App. 94, 100 (2004) (“*NPCC v.*  
2 *PUC*”).

3 The Court of Appeals’ decision drew a distinction between the manner in which the  
4 Commission established overall telecommunication rates under state law and the requirement  
5 to determine rates for payphone services under federal law. In setting Qwest’s rates in UT  
6 125, the Court of Appeals observed that the Commission “followed the traditional procedure  
7 for reviewing a regulated utility’s rate schedule. In the first phase of the proceeding [Phase  
8 1], it established the rate of return that Qwest was entitled to receive on its property that is  
9 used or useful for providing regulated services in Oregon (Qwest’s rate base). In the second  
10 phase [Phase 2], the PUC evaluated the rates that Qwest proposed for its various services and  
11 made appropriate adjustments so that, as a package, they would provide it the opportunity to  
12 earn that return.” *Id.* at 96. Under this state-law based procedure, “the rates for one service  
13 may be greater than Qwest’s costs while the rates for another may be less,” permitting some  
14 services to “subsidize” others. *Id.* at 96-97.

15 In contrast, under the TCA, the Court of Appeals noted that the Commission must  
16 “focus on a [telecommunication company’s] cost of providing the specific payphone service  
17 at issue rather than on its total rate of return[.]” *Id.* at 97-98. The Court of Appeals observed  
18 that the TCA “is designed to replace a state-regulated monopoly system with a federally  
19 facilitated, competitive market.” *Id.* at 98 (quoting *New England Public Communications v.*  
20 *Fed. Comm'ns Comm'n*, 334 F.3d 69, 77 (D.C. Cir. 2003)).

21 The Court of Appeals concluded that the TCA and FCC orders implementing the  
22 TCA, including the Payphone Orders and the Wisconsin Order, were binding on the  
23 Commission. *Id.* at 100 (“The District of Columbia Circuit Court of Appeals treats the  
24 FCC’s orders under section 276 as binding on every state, and so do we.”). Consequently,  
25 the Court of Appeals held that the Commission “must reconsider its order in light of” the  
26 Payphone Orders and the Wisconsin Order. *Id.*

1 In a detailed concurrence, Judge Wollheim explained his view of the requirements of  
2 federal law. In particular, he made clear that the Commission could not determine PAL rates  
3 by “including contributions to other Qwest services and a market-driven return for Qwest,”  
4 *Id.* at 107 (Wollheim, J. concurring), as it had under the state-law “traditional procedure.”

5 **F. Remand and Order 06-515.**

6 Upon remand from the Court of Appeals to the Commission, Qwest filed a brief in  
7 UT 125 seeking “to ‘rebalance’ rates to offset the anticipated reduction in payphone service  
8 rates.” Order No. 06-515 at 3. Qwest argued that

9 [T]he Court of Appeal[s’] remand order and ORS 756.568  
10 authorize the Commission to reopen this case and to adjust  
11 other rates to offset the alleged revenue reduction that results  
12 from approving lower rates for payphone services. [Qwest]  
13 further maintains that the Commission must rebalance rates in  
14 order to provide the Company with the opportunity to recover  
15 its authorized revenue requirement and to avoid “impermissible  
16 single-issue ratemaking” that would occur if the Commission  
17 were to adjust only Qwest’s rates for payphone services.

18 *Id.* The Commission’s staff opposed Qwest’s request. *Id.* at 3-4.

19 The Commission rejected Qwest’s request. The Commission ruled that the Modified  
20 Stipulation, entered with Order No. 00-190, provided that Qwest could not rebalance its  
21 rates: The terms of paragraph 5 “limit Qwest to a credit for refunds and rate reductions made  
22 pursuant to the Stipulation, and do not authorize Qwest to increase customer rates to offset  
23 additional revenue reductions resulting from the Court of Appeals’ decision.” *Id.* at 6-7.

24 In making this ruling, Commission specifically held that paragraph 5 of the Modified  
25 Stipulation applied to appeals of Order No. 01-810, not just Order No. 00-190. The  
26 Commission explained that the 5th and 6th sentences of paragraph 5 “clearly encompass not  
only an appeal of Order No. 00-190 adopting the Stipulation, but also an appeal of any  
subsequent Commission order implementing the terms of the Stipulation.” *Id.* at 6 (emphasis  
omitted).

1           The Commission further noted that paragraph 5 provided that Qwest bear the risk that  
2 an appeal like *NPCC v. PUC* could result in additional refunds. “Under the terms of the  
3 [Modified Stipulation],” the Commission explained, “Qwest specifically agreed to accept the  
4 risk that subsequent appeals of the Commission’s order implementing the Stipulation might  
5 result in a situation where Qwest was required to make refunds or rate reductions in addition  
6 to those set forth in the Stipulation. The language of the agreement demonstrates that the  
7 Company was fully cognizant of the potential consequences of its decision when it executed  
8 the Stipulation.” *Id.* at 11.

9           Meanwhile, in the interim between the FCC’s adoption of the Wisconsin Order and  
10 the Oregon Court of Appeals decision in *NPCC v. PUC*, Qwest voluntarily lowered its PAL  
11 rates in March 2003 and CustomNet rates in August 2003. “While NPCC’s appeal was  
12 pending, Qwest filed Advice Nos. 1935 and 1946. Those filings became effective on March  
13 17 and August 28, 2003, respectively, and significantly reduced Qwest’s PAL rates.” *Id.* at 2  
14 n.4.

15           **G.     The Commission sets final, NST-complaint PAL and CustomNet rates in**  
16           **Order No. 07-497.**

17           Following the remand from the Court of Appeals, Qwest, NPCC, and Commission  
18 staff entered into discussions to determine final rates for PAL and CustomNet. As a result of  
19 those discussions, the parties entered a stipulation agreeing that the PAL and CustomNet  
20 rates that Qwest submitted in 2003 complied with Section 276 and the NST. Orders Nos. 06-  
21 515 at 2 n.4; 07-497 at 2. The Commission reviewed the rates and, after taking evidence and  
22 testimony, determined that they complied with the NST. Order No. 07-497 at 3.  
23 Accordingly, the Commission adopted the parties’ stipulation, establishing final, NST-  
24 compliant rates for PAL and CustomNet on November 15, 2007. *Id.* at 4.  
25  
26

1     **III.    The FCC Refund Order.**

2           In addition to Oregon, several other state utility commissions applied the NST to rates  
3     for payphone services. As in Oregon, the application of the NST to those rates often led state  
4     commissions to reduce the rates. PSPs in a number of states sought to compel BOCs to  
5     refund overpayments. In 2013, the FCC consolidated several of these cases and issued an  
6     order setting forth a framework for refunds. *In the matter of Implementation of the Pay*  
7     *Telephone Reclassification and Compensation Provisions of the Telecommunications Act of*  
8     *1996*, CC Docket No. 96-128, 28 FCC Rcd. 2615 (Feb. 20, 2013) (“Refund Order”). The  
9     Refund Order resolved several questions regarding the BOCs’ obligation to refund PSPs for  
10    overpayments.

11           First, the FCC ruled that state public utility commissions had the authority to order  
12    BOCs to issue refunds to PSPs for non-NST-compliant rates: “a state commission may order  
13    refunds for any time period after April 15, 1997 if it concludes that a BOC was charging  
14    PSPs a rate that was not NST-compliant, as a number of states have.” 28 FCC Rcd. at 2617.

15           Second, the FCC stated that state commissions, not the FCC or federal courts, were  
16    responsible for deciding whether to order refunds. The FCC noted it had “charged the states  
17    with the responsibility to ensure that BOC intrastate payphone line rates comply with the  
18    NST and provided the states with general guidance regarding compliance.” 28 FCC Rcd. at  
19    2633. Just as the states were responsible for determining whether payphone line rates were  
20    NST-compliant, the “issue of refunds was properly administered by the states.” *Id.* at 2634.

21           Third, the FCC held that a state commission had independent authority, separate and  
22    apart from the Waiver Order, to order refunds for non-NST-complaint rates. A BOC “that  
23    filed tariffs after May 19, 1997, or that simply relied on existing rates or filed cost studies for  
24    existing rates, would have been in violation of [the FCC’s] orders,” the FCC explained. *Id.* at  
25    2638. In such an instance, a “state commission may well find refunds to be appropriate  
26    pursuant to section 276 [of the TCA], Commission regulations, and relevant state laws if the

1 rates in such cases were challenged under state regulatory procedures and found to be non-  
2 compliant.” *Id.*

3 The FCC observed that some state utility commissions had appropriately ordered  
4 refunds for non-NST-compliant rates. For example, the Indiana Utility Regulatory  
5 Commission ordered refunds. The Indiana commission, like Oregon’s Commission, found  
6 that the telecommunication companies’ “payphone tariffs should only be approved on an  
7 interim basis, retroactive to April 15, 1997, and subject to refund pending further review.”  
8 *Id.* Once the Indiana Commission completed its review, it ordered the telecommunication  
9 companies “to lower their payphone rates and ordered refunds retroactive to April 15, 1997.”  
10 *Id.* South Carolina’s commission also ordered telecommunication companies to lower their  
11 rates and ordered refunds back to April 15, 1997. *Id.* Several other state commissions  
12 declined to order refunds based on state-law reasons. *Id.* at 2639-40. The FCC concluded  
13 that state commissions should determine refunds “based on the specific facts of the case  
14 before them” and noted that state commissions “may well find that refunds are appropriate.”  
15 *Id.* at 2638, 2640.

#### 16 **IV. Ancillary Proceedings in Docket DR 26 / UC 600.**

17 In May 2001, NPCC filed a complaint with Oregon’s Commission seeking, among  
18 other relief, to compel Qwest to issue refunds to PSPs for overpayments resulting from  
19 Qwest’s failure to timely charge NST-compliant rates. NPCC argued that Qwest was  
20 required to issue refunds pursuant to the Waiver Order. In 2011, the Commission granted  
21 Qwest’s motion for summary judgment, ruling that Qwest had not relied on the Waiver Order  
22 and, thus, was not subject to its refund requirement. NPCC appealed and the Oregon Court  
23 of Appeals affirmed the Commission. *Nw. Pub. Commc’ns Council v. Qwest Corp.*, 279 Or.  
24 App. 626, 647 (2016) (“*NPCC v. Qwest*”). The Court of Appeals concluded that Qwest did  
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1 not rely on the Wavier Order and was not, therefore, subject to its refund requirement. *Id.* at  
2 644-45.<sup>10</sup>

3 The Court of Appeals was clear, however, that the Commission could compel Qwest  
4 to issue refunds under other sources of law. Following a close reading, the Court of Appeals  
5 stated that under the Refund Order, “a state commission could order a refund based on  
6 sources of authority other than the Waiver Order.” *Id.* at 642. The Court of Appeals noted  
7 that “under the circumstances presented here, ‘a state commission may well find refunds to  
8 be appropriate pursuant’ to sources of authority other than the Waiver Order[.]” *Id.* at 644-  
9 45 (quoting Refund Order ¶ 45; alterations omitted).

#### 10 ARGUMENT

11 Section 276 of the TCA, the FCC’s orders, and the Oregon Court of Appeals decision  
12 in *NPCC v. PUC* provide that from April 15, 1997 forward BOC rates for payphone services  
13 must comply with the NST. Nonetheless, between April 15, 1997 and at least August 28,  
14 2003, Qwest charged and collected rates from PSPs that failed to comply with the NST.  
15 Those rates significantly exceeded the rates that the Commission determined to be NST-  
16 complaint in Order No. 07-497. As such, between April 15, 1997 and at least August 28,  
17 2003, Qwest significantly overcharged and the PSPs significantly overpaid for PAL and  
18 CustomNet. To NPCC’s knowledge, Qwest has never fully refunded the PSPs their  
19 overpayments.

20 Pursuant to Orders Nos. 96-107 (which made all Qwest’s rates interim subject to  
21 refund from May 1, 1996), 00-190 (adopting the Modified Stipulation in which Qwest  
22 recognized its potential to be obligated to pay additional refunds), 06-515 (providing that the  
23 Modified Stipulation applied to Order No. 01-810), and 07-497 (establishing final, NST-  
24 compliant PAL and CustomNet rates), Qwest was obligated to refund the difference between  
25

26 <sup>10</sup> NPCC has a motion pending before the Court of Appeals for reconsideration of  
this decision.

1 the unlawful, interim rates it charged to its PSP ratepayers beginning effective May 1, 1996  
2 and the final, NST-compliant rates approved by the Commission. The Commission should  
3 order Qwest to show cause why it is not in violation of Orders Nos. 96-107, 00-190, 00-191,  
4 06-515, and 07-497, the Telecommunication Act of 1996, and state law.

5 The Commission has the responsibility and authority to protect ratepayers from  
6 Qwest's unlawful, unjust, and unreasonable rates. The Commission is vested with the  
7 responsibility to "protect \* \* \* customers, and the public generally, from unjust and  
8 unreasonable exactions and practices." ORS 756.040(1). To carry out that responsibility, the  
9 Commission has the implied power to compel telecommunications utilities to issue refunds.  
10 Therefore, in the alternative to issuing an order to show cause, the Commission should clarify  
11 Order No. 07-497 by amending it to expressly require Qwest to issue refunds for any excess  
12 revenue it collected under rates that failed to comply with Orders Nos. 96-107, 00-190, 00-  
13 191, 06-515, and 07-497, the Telecommunication Act of 1996, and state law, less any  
14 refunds previously paid.

15 **I. Between 1996 and 2003, Qwest charged and collected unlawful rates for PAL**  
16 **and CustomNet.**

17 **A. Qwest charged and collected unlawful PAL rates.**

18 Effective May 1, 1996, the Commission made all Qwest's rates interim subject to  
19 refund. Order No. 96-107 at 4. On January 15, 1997, Qwest submitted Advice No. 1668,  
20 which set forth PAL rates for its new Smart PAL service to become effective on April 15,  
21 1997 and otherwise reconfirmed its existing PAL rates. Those rates remained in effect until  
22 December 31, 2001. Order No. 01-810 at 64. The rates submitted in Advice 1668 were  
23 neither final nor NST compliant. Advice No. 1668 makes no reference to the NST or to  
24 Qwest's actual costs and overhead for providing PAL. Furthermore, the submission included  
25 data estimating the "annual revenue impact," Advice No. 1668 at 1, of the rates, a factor  
26 Judge Wollheim made clear was impermissible. *NPCC v. PUC*, 196 Or. App. at 107

1 (Wollheim, J. concurring) (“including \* \* \* a market-driven return for Qwest in the rates is  
2 impermissible”). And, the Advice indicates that the “recurring rates for the Smart Pal line  
3 were developed using the existing price/cost relationship of the basic Pal,” rather than the  
4 actual cost plus overhead formulation required by the NST. Advice No. 1668 at 2. Thus, the  
5 rates in Advice 1668 were unlawful because a “BOC may not charge more for payphone line  
6 service than is necessary to recover from PSPs all monthly recurring direct and overhead  
7 costs incurred by BOCs in providing payphone lines.” Wisconsin Order ¶ 60.

8 Following Order No. 01-810, Qwest submitted new PAL rates, effective January 1,  
9 2002. Advice No. 1849 S1. Those rates were consistent with Order No. 01-810 and  
10 represented a “significant reduction[.]” of Qwest’s previous rates. Order No. 01-810 at 48.  
11 NPCC appealed those rates and, in *NPCC v. PUC*, the Court of Appeals reversed the  
12 Commission’s ruling on Qwest’s PAL rates, finding that the Commission had failed to apply  
13 the FCC’s orders. 196 Or. App. at 99-100. Thus, the rates Qwest began charging on January  
14 1, 2002, like its previous rates, were unlawful. Qwest charged those rates until it voluntarily  
15 “significantly reduced” its PAL rates effective on March 17, 2003. Order No. 06-515 at 2  
16 n.4.

17 **B. Qwest charged and collected unlawful CustomNet rates.**

18 The FCC’s orders require BOCs such as Qwest “to set payphone service rates and  
19 ‘unbundled features’ rates, including rates for fraud protection [*i.e.*, CustomNet], according  
20 to the FCC’s ‘new services test[.]’” *Davel Commc’ns, Inc. v. Qwest Corp.*, 460 F.3d 1075,  
21 1081 (9th Cir. 2006); Wisconsin Order ¶ 64 (The Payphone Orders required “payphone line  
22 services to be priced at cost-based rates in accordance with the new services test.”). Qwest  
23 did not submit new CustomNet rates on January 15, 1997 in Advice 1668. As such, until  
24 December 31, 2001, Qwest’s CustomNet rates remained the same rates provided for in the  
25 AFOR. Because Qwest merely relied on existing rates for CustomNet, and made no attempt  
26 to establish that the rates were NST-compliant, those rates were unlawful. A BOC “that



1 simply relied on existing rates \* \* \* would have been in violation of [the FCC's] orders.”  
2 Refund Order at 2638.

3 Qwest submitted new CustomNet rates that were the same as its old rates, effective  
4 January 1, 2002, following Order No. 01-810. In that Order, Qwest contended, and the  
5 Commission agreed, that Qwest was not required to file NST-compliant rates for CustomNet.  
6 Thus, Qwest again made no showing that its CustomNet rates beginning on January 1, 2002  
7 were NST-complaint. The Court of Appeals overturned the Commission's ruling with  
8 respect to CustomNet and ordered the Commission to reconsider its ruling in light of the  
9 FCC's orders. *NPCC v. PUC*, 196 Or. App. at 99-100; *Id.* at 108 (Wollheim, J. concurring)  
10 (“To permit Qwest to supply a needed payphone service at a rate above that level is  
11 inconsistent with that purpose and may be inconsistent with the FCC's orders.”). Because  
12 the FCC's orders required rates for CustomNet to comply with the NST, *Davel Comme'ns*,  
13 460 F.3d at 1081, Qwest's CustomNet rates beginning on January 1, 2002 were also  
14 unlawful. Qwest continued to charge the same rates for CustomNet until August 28, 2003.  
15 Order No. 06-515 at 2 n.4.

16 Federal law and *NPCC v. PUC* provide, in sum, that Qwest's PAL and CustomNet  
17 rates in effect from April 15, 1997 until at least August 28, 2003 were unlawful. Those  
18 unlawful rates were significantly higher than the rates the Commission ultimately determined  
19 were NST-compliant in 2007.<sup>11</sup> Accordingly, Qwest significantly overcharged and  
20 overcollected rates from PSPs from May 1, 1996 until at least August 28, 2003.

21  
22  
23 <sup>11</sup> The Commission's orders establish that the final, NST-compliant rates that the  
24 Commission adopted in Order No. 07-497 (which were identical to the rates Qwest  
25 voluntarily submitted in 2003, Order No. 06-515 at 2 n.4) were significantly lower than the  
26 rates Qwest charged before 2003. In Order No. 06-515, the Commission stated that the rates  
Qwest submitted in 2003 “significantly reduced” the rates in effect as a result of Order 01-  
810. Indeed, the rates adopted by the Commission in Order No. 07-497 were as much as 20  
times lower than the rates in effect before 2003. *See* Letter from L. Reichman to Hearings  
Division, Attachment A (March 31, 2006) (listing rate reductions). Qwest's PAL and  
CustomNet rates in effect before Order No. 01-810 were even higher. In Order No. 01-810,  
the Commission noted that the rates Qwest proposed (and the Commission adopted in Order

1     **II.     The Commission should order Qwest to show cause why it is not in violation of**  
2     **Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the Telecommunication**  
3     **Act of 1996, and state law.**

4             The Commission made all of Qwest's rates interim from May 1, 1996 until the  
5     Commission set final rates in this docket. Order No. 96-107. From April 15, 1997 until at  
6     least August 28, 2003, Qwest charged interim rates that unlawfully failed to comply the NST.  
7     To comply with the Commission's orders, Qwest was obligated to refund any overcharges it  
8     made on PSPs from May 1, 1996 (when Qwest's rates became interim and subject to refund)  
9     until the Commission set final, NST-compliant rates in Order No. 07-497. As explained  
10    below, there are two reasons: (1) In the Modified Stipulation adopted in Order No. 00-190,  
11    Qwest expressly agreed that it could be responsible for paying additional refunds in the event  
12    that an appeal of an order implementing the Stipulation lowered Qwest's rates and increased  
13    its refund obligation. In 2004, the Oregon Court of Appeals overturned the rates the  
14    Commission set in Order No. 01-810, which implemented the Stipulation. As a result of the  
15    Court of Appeals' decision, the Commission adopted new, NST-compliant PAL and  
16    CustomNet rates that were significantly lower than the rates overturned on appeal. The  
17    establishment of final, NST-compliant rates triggered Qwest's obligation to pay additional  
18    refunds. *See* § I.A.1, below. (2) In Order No. 96-107, the Commission made Qwest's rates  
19    interim and subject to refund from May 1, 1996. Qwest's PAL and CustomNet rates  
20    remained interim until the Commission set final rates in Order No. 07-497. Upon setting  
21    final rates, Qwest was obligated to refund the difference between the interim rates and the  
22    final rates to comply with Order No. 06-107. *See* § I.A.2, below.

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26    No. 01-810) represented a "significant reduction[]" from Qwest's PAL rates in effect  
beginning May 1, 1996. Order No. 01-810 at 48.

1           A.     Qwest is responsible for refunding its ratepayers their overpayments.

2                     1.     Orders No. 00-190 required Qwest to issue refunds.

3           In the Modified Stipulation to Order No. 00-190, Qwest acknowledged that it could  
4 be subject to issue additional refunds if its rates were modified or overturned on appeal.  
5 Order No. 00-190, Appendix A ¶ 5 (Qwest's "obligation to refund monies to customers and  
6 to reduce its ongoing rates may be modified on appeal[] \* \* \* by issuing a judgment  
7 incorporating or requiring different refunds or rate reductions[.]"). In Order No. 01-810, the  
8 Commission set rates for PAL and CustomNet. On appeal, however, the Court of Appeals  
9 overturned those rates and directed the Commission to reconsider PAL and CustomNet rates  
10 in light of the FCC's orders. *NPCC v. PUC*, 196 Or. App. at 100. As a result of the appeal,  
11 the Commission applied the NST and adopted rates that were significantly lower than the  
12 rates overturned on appeal. Orders Nos. 06-515 at 2 n.4 & 07-497. Thus, the Court of  
13 Appeals' decision and Order No. 07-497 modified Qwest's obligation to issue refunds.  
14 Accordingly, Qwest should have issued the refunds it agreed it would pay if rates were  
15 lowered or additional refunds required as a result of an appeal.

16           Qwest may argue that the Modified Stipulation provides for, but does not require,  
17 Qwest to issue refunds. Such an interpretation distorts the intention of paragraph 5 of the  
18 Modified Stipulation. As the Commission explained in Order No. 06-515, "Qwest  
19 specifically agreed to accept the risk that subsequent appeals of the Commission's order  
20 implementing the Stipulation might result in a situation where Qwest was required to make  
21 refunds or rate reduction in addition to those set forth in the Stipulation. The language of the  
22 agreement demonstrates that the Company was fully cognizant of the potential consequences  
23 of its decision when it executed the Stipulation." *Id.* at 11. By accepting the risk that its  
24 rates might be modified on appeal, Qwest assumed the obligation to refund overpayments to  
25 its ratepayers.  
26

1 Qwest may also argue that it has already paid to the PSPs all the refunds it owes.  
2 This argument is also incorrect. Those refunds do not complete Qwest's refund obligations  
3 for two reasons. First, Qwest paid refunds to PSPs pursuant to Order No. 00-190 and 00-191.  
4 Those refunds were allocated among ratepayers based on an interim rate design that was later  
5 adopted as the final rate design in Order No. 01-810. However, the Court of Appeals  
6 overturned that rate design in *NPCC v. PUC*. As such, the PSP ratepayers did not receive  
7 sufficient refunds to make the interim PAL and CustomNet rates NST-compliant. In  
8 paragraph 5 of the Modified Stipulation, Qwest accepted the risk that its refund obligation  
9 could be modified on appeal. The Court of Appeals' decision, and the Commission's order  
10 implementing that decision, increased Qwest's refund obligation. Second, Qwest paid  
11 refunds shortly after the Commission issued Orders Nos. 00-190 and 00-191 in 2000. To  
12 NPCC's knowledge, Qwest has never paid the PSPs any additional refunds after 2000.  
13 However, Qwest continued to charge the PSPs interim PAL and CustomNet rates that were  
14 not final and not NST compliant until at least 2003. To comply with its own  
15 acknowledgement that its obligation to issue refunds may be modified by a subsequent  
16 appeal, and with federal and state law establishing that Qwest's PAL and CustomNet rates  
17 were unlawful, Qwest must issue full and complete refunds.

18 This conclusion is reinforced by Qwest's reservation of its right to demand additional  
19 payments from its ratepayers in the event that an appeal reduced the size of its rate  
20 reductions: In the Modified Stipulation, the company reserved the right "to seek recovery of  
21 any overpayments \* \* \* in the event that [Qwest's] refund and/or rate reduction obligation is  
22 reduced" on appeal. Order No. 00-190, Appendix A, ¶ 5. Had the present circumstances  
23 been reversed, and the Court of Appeals had held that Qwest was entitled to raise rather than  
24 lower its rates, Qwest could have demanded additional payments from the PSPs. Qwest  
25 cannot have it both ways. Any argument Qwest advances that the paragraph 5 does not  
26

1 require additional refunds belies Qwest's own stipulation that, had an appeal resulted in a  
2 change favorable to Qwest, it could demand additional money from its ratepayers.

3 Furthermore, Qwest's own actions demonstrate that it knew that the Court of  
4 Appeals' decision in *NPCC v. PUC* would require it to issue additional refunds. As  
5 discussed above, Qwest voluntarily reduced its PAL and CustomNet rates in 2003.  
6 Following the remand from the Court of Appeals in 2004, Qwest proposed that its 2003 rates  
7 were NST compliant. Qwest also requested that the Commission allow it to recover lost  
8 revenues from the rate reduction by rebalancing its other ratepayers' rates. Order No. 06-  
9 515. Because Qwest had already reduced its prospective PAL and CustomNet rates, the only  
10 revenues the rebalancing would recoup would be the additional refunds Qwest would be  
11 obligated to pay if its proposed rates were adopted by the Commission. Thus, Qwest's  
12 request to rebalance its rates demonstrates that Qwest knew that it would be responsible for  
13 additional refunds back to May 1, 1996 if the Commission adopted its 2003 PAL and  
14 CustomNet rates as final, NST-compliant rates. Accordingly, Order No. 00-190 required  
15 Qwest to issue additional refunds.

16 **2. Order No. 96-107 required Qwest to issue refunds.**

17 Order No. 96-107 terminated the AFOR and made all of Qwest's "rates for services  
18 [after May 1, 1996] \* \* \* interim rates subject to refund with interest, at a rate of 11.2  
19 percent."<sup>12</sup> *Id.* As the Commission's staff explained, the rates were interim "pending the  
20 outcome of the company's current rate filing, UT 125." *Id.*, Appendix A at 5. Thus, Qwest's  
21 PAL and CustomNet rates were interim and subject to refund until final rates were set in this  
22 docket, UT 125.<sup>13</sup> The Commission set final rates for PAL and CustomNet in Order No. 07-

23 \_\_\_\_\_  
24 <sup>12</sup> Order No. 00-190 reduced the rate of interest to 8.77 percent.

25 <sup>13</sup> Orders Nos. 96-183 at pp. 3-4 and 97-171 at 104 both adopted a refund  
26 methodology based on the difference between the final permanent rate and any higher  
interim rate. At the hearing on adoption of the Modified Stipulation both Qwest and the  
Commission's staff argued that an individual would only be entitled to a refund once  
permanent rates were established and the individual had paid a higher interim rate for a  
service than the permanent rate. Order No. 00-190 at 9 & 12. Order No. 00-190 at 13

1 497, effectively concluding the rate-setting phase of UT 125 and replacing the interim rates  
2 with final rates.<sup>14</sup> Because the final rates are lower than the interim rates, Qwest is “subject  
3 to refund” the difference. To comply with Order No. 96-107, Qwest was required to refund  
4 the difference between the final rates and the interim rates.

5 This conclusion is supported by applicable case law. In *Pacific Northwest Bell*  
6 *Telephone Co. v. Katz*, 116 Or. App. 302 (1992), the Court of Appeals reviewed an order of  
7 the Commission refunding \$10 million to Pacific Northwest Bell’s (“PNB”) ratepayers. In  
8 that case, the Commission permitted PNB to charge and collect rates for a service on an  
9 interim rate schedule. *Id.* at 306. Under those interim rates, PNB collected more revenue  
10 than permitted under the Commission’s authorized revenue level for PNB. *Id.* The  
11 Citizen’s Utility Board intervened to seek refunds for PNB’s ratepayers. *Id.* The  
12 Commission ordered PNB to refund the over collection. *Id.* On appeal, the Court of Appeals  
13 concluded that the Commission had implied authority pursuant to ORS 756.040 to compel  
14 PNB to issue refunds. *Id.* at 310. The Court of Appeals also held that PNB was “not entitled  
15 to retain excess revenues collected under an interim rate schedule that was not in compliance  
16 with the authorized revenue level.” *Id.*

17 As in *Pacific Northwest Bell Telephone*, Qwest collected rates subject to an interim  
18 rate schedule. By Order No. 96-107, those rates were expressly subject to refund with  
19 interest. The FCC’s orders, *NPCC v. PUC*, and the Commission’s Order No. 07-497 setting  
20 final, NST-compliant PAL and CustomNet rates establish that Qwest’s interim rates were  
21 unlawful. Accordingly, like PNB, Qwest is “not to entitled to retain excess revenues  
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23 specifically held that the refund methodology established in Order No. 97-171 had been  
24 preserved and that methodology as set forth in Order No. 97-171 was specifically readopted  
in Order No. 00-191 at p. 2.

25 <sup>14</sup> PAL and CustomNet rates were not final until Order No. 07-497. The rates  
26 remained interim after Order No. 01-810 because NPCC filed an appeal. An appealed  
interim rate does not become final until “the reviewing court upholds the Commission’s  
order.” *In the Matter of the Application of Portland General Electric Company*, PUC Docket  
Nos. DR 10, UE 88, & UM 989, Order No. 08-487 at 8 (Sept. 9, 2008).

1 collected under an interim rate schedule.” *See Pac. Nw. Bell Tel.*, 116 Or. App. at 310.  
2 Qwest should show cause how it has complied with the TCA, state law, and the  
3 Commission’s orders.

4 **B. The Commission has authority to issue an order to show cause.**

5 The Commission derives its authority from Oregon Revised Statutes Chapters 756,  
6 757, 758, and 759. In ORS 756.040(1), the legislature provided that the Commission’s  
7 mission is to protect utility “customers, and the public generally, from unjust and  
8 unreasonable exactions and practices and to obtain for them adequate service at fair and  
9 reasonable rates.” The Commission’s implementing statutes vest the Commission with  
10 plenary authority to carry out this broad mission: “The commission is vested with power and  
11 jurisdiction to supervise and regulate every public utility and telecommunications utility in  
12 this state, and to do all things necessary and convenient in the exercise of such power and  
13 jurisdiction.” ORS 756.040(2).

14 In addition to those powers expressly granted by the Commission’s statutes, it “is  
15 well settled that an agency has such implied powers as are necessary to enable the agency to  
16 carry out the powers expressly granted to it.” *Pac. Nw. Bell Tel.*, 116 Or. App. at 309-10.  
17 The Commission’s express and implied powers are extremely broad: The Commission “has  
18 been granted the power to investigate utilities and to make whatever orders it deems justified  
19 or required by the results of its investigations. ORS 756.515. Thus, \* \* \* PUC has been  
20 granted the broadest authority—commensurate with that of the legislature itself—for the  
21 exercise of its regulatory function.” *Id.* at 309 n.5 (quotation marks, citation, and alterations  
22 omitted).

23 Consistent with the broad grant of authority, the Commission previously has issued  
24 orders requiring utilities to show cause. For example, in *In re TelexFree*, Docket CP 1556,  
25 Order (May 28, 2014), the Commission ordered the respondent to show cause why its  
26 certificate of authority should not be cancelled. And, in *In re DPI Teleconnect, LLC*, Docket

1 CP 1235, Order at 3 (July 15, 2004), the Commission ordered DPI to “to show cause why the  
2 Commission should consider a new request for a certificate of authority to provide  
3 telecommunications service in Oregon as a competitive provider.” In *In re Shady Cove*  
4 *Waterworks, LLC*, Docket WA 81, Ruling, (June 12, 2013), the Administrative Law Judge  
5 issued an order requiring the parties show cause why the matter should not be closed. In  
6 light of the Commission’s broad express and implied powers, the Commission has the  
7 authority to order Qwest to show cause why it is not in violation of the law and its orders.

8 **III. In the alternative, the Commission should amend Order No. 07-497 to expressly**  
9 **require Qwest to issue refunds for the excess revenue it collected pursuant to**  
10 **unlawful rates.**

11 **A. Federal law and the Oregon Court of Appeals decision in *NPCC v. PUC***  
12 **required Qwest to file rates for PAL and CustomNet that complied with**  
13 **the NST from April 15, 1997 forward.**

14 Section 276 of the TCA “substantially modified the regulatory regime governing the  
15 payphone industry by providing, in general terms, that dominant carriers may not subsidize  
16 their payphone services from their other telecommunications operations and may not ‘prefer  
17 or discriminate in favor of [their] payphone service[s]’ in the rates they charge to  
18 competitors.” *Davel Commc’ns, Inc. v. Qwest Corp.*, 460 F.3d 1075, 1081 (9th Cir. 2006)  
19 (quoting 47 U.S.C. § 276(a)) (alterations in original). To carry out this mandate, the FCC  
20 issued the Payphone Orders, the Clarification Order, the Waiver Order, and the Wisconsin  
21 Order. Those orders directed BOCs such as Qwest to set rates for payphone services  
22 according to the NST. *Id.*; Order of Recons. ¶ 163; Wisconsin Order ¶¶ 46, 68. The  
23 Wisconsin Order, which clarified the application of the NST, made clear that a “BOC *may*  
24 *not* charge more for payphone line service than is necessary to recover from PSPs all  
25 monthly recurring direct and overhead costs incurred by BOCs in providing payphone lines.”  
26 Wisconsin Order ¶ 60 (emphasis added). The Payphone Orders required BOCs to file NST-  
compliant rates that were effective from April 15, 1997 forward: “[A]ll required tariffs, both  
intrastate and interstate, \* \* \* must be effective no later that April 15, 1997.” Order on



1 Recons. ¶ 163. A BOC “that simply relied on existing rates or filed cost studies for existing  
2 rates, would have been in violation of [the FCC’s] orders.” Refund Order at 2638.

3 As explained in § I, above, between April 15, 1997 and at least August 28, 2003,  
4 Qwest charged and collected rates from PSPs that failed to comply with the NST. Under the  
5 FCC’s Refund Order, “a state commission may order refunds for any time period after April  
6 15, 1997 if it concludes that a BOC was charging PSPs a rate that was not NST-compliant, as  
7 a number of states have.” 28 FCC Rcd. at 2617.

8 **B. The Commission has the authority and responsibility to compel Qwest to**  
9 **issue refunds.**

10 Oregon law firmly establishes that the Commission has the authority to compel Qwest  
11 to issue refunds for unlawful overcharges. In *Gearhart v. Pub. Util. Comm’n of Oregon*, 356  
12 Or. 216, 218 (2014), the Oregon Supreme Court described the Commission’s authority. That  
13 case involved the Commission’s determination of rates for Portland General Electric  
14 (“PGE”). In 1993, PGE retired the Trojan nuclear facility ahead of schedule. *Id.* at 222.  
15 Despite its early retirement, PGE sought to recover in rates the remaining balance of its  
16 capital investment in the Trojan facility. *Id.* The Commission opened a rate proceedings and  
17 set PGE’s rates in 1995. *Id.* Following an appeal, in 2000, the Commission reset PGE’s  
18 rates to comply with a remand order. *Id.* at 224. After another appeal, the Commission  
19 reexamined the rates it set between 1995 and 2000 and the rates in effect after 2000. *Id.* at  
20 226-29. In a 2008 order, the Commission ruled that the rates set between 1995 and 2000  
21 were too low, but the rates set between 2000 and 2008 were too high. *Id.* at 229. The  
22 Commission “ordered PGE to issue a refund to the post-2000 ratepayers to compensate for  
23 the amount of th[e] difference [between the rates PGE charged and the rates the Commission  
24 subsequently determined would have been just and reasonable] plus interest at PGE’s  
25 authorized rate of return from 2000[.]” *Id.* Another appeal followed and the parties  
26

1 requested that Supreme Court address, among other issues, “whether the PUC had authority  
2 to order PGE to issue refunds to its customers.” *Id.* at 231.

3 The Supreme Court held that the Commission has authority to order refunds. The  
4 Supreme Court explained that “when a PUC order issued in the exercise of its ratemaking  
5 authority has been reversed and remanded after a reviewing court determines that there was a  
6 legal error, the PUC can again use ratemaking principles on remand to determine the effect of  
7 its error on the outcome of the proceeding.” *Id.* at 243. The Court further explained that  
8 “[r]efunds are one way of correcting [legal] errors, and if the PUC could not order refunds, it  
9 would be limited in its ability to protect ratepayers.” *Id.* at 244. The implied power to order  
10 refunds, the Court reasoned, “is necessary to the PUC’s ability to carry out its express duty to  
11 obtain ‘adequate service at fair and reasonable rates.’” *Id.* at 247-n.19 (quoting ORS  
12 756.010(1)).

13 The Commission is vested with the responsibility to “protect \* \* \* customers, and the  
14 public generally, from unjust and unreasonable exactions and practices.” ORS 756.040(1).  
15 Pursuant to ORS 756.568, the Commission “may at any time, upon notice to the public utility  
16 or telecommunications utility and after opportunity to be heard \* \* \* , rescind, suspend or  
17 amend any order made by the commission.” As explained in detail above, § I, from April  
18 15,1997 until at least August 28, 2003, Qwest charged and collected unlawful PAL and  
19 CustomNet rates. Those rates were not only unlawful, they also interfered with the TCA’s  
20 purpose to promote a competitive market for payphone services. To remedy Qwest’s unjust  
21 and unreasonable exactions, the Commission should, pursuant to ORS 756.568, clarify Order  
22 No. 07-497 to provide that Qwest must issue refunds for any excess revenue it collected  
23 under rates that failed to comply with Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-  
24 497, the Telecommunication Act of 1996, and state law, less refunds previously paid. *See*  
25 *Pac. Nw. Bell Tel. Co.*, 116 Or. App. at 310 (affirming Commission order compelling PNB to  
26 refund excessive revenues collected subject to interim rates); Refund Order at 2617 (“a state

1 commission may order refunds for any time period after April 15, 1997 if it concludes that a  
2 BOC was charging PSPs a rate that was not NST-compliant”).

3 **C. Other states have ordered BOCs to refund revenue collected pursuant to**  
4 **non-NST-compliant rates.**

5 In *Indiana Bell Telephone Co. v. Indiana Utility Regulatory Commission*, 855 N.E.2d  
6 357 (Ind. Ct. App. 2006), the Indiana Court of Appeals affirmed the order of Indiana’s state  
7 utility commission compelling refunds. In that case, the Indiana Utility Regulatory  
8 Commission (“IURC”) approved rates submitted by telecommunication carriers for  
9 payphone services in 1997. *Id.* at 360. In 2002, after the FCC issued the Wisconsin Order,  
10 the IURC elected to review the rates it had approved in 1997. *Id.* at 361. The IURC  
11 determined that the rates should be reduced and the telecommunications companies “shall  
12 refund an amount equal to subscriber line charges assessed since April 15, 1997 to present.”  
13 *Id.* On appeal, the Indiana Court of Appeals affirmed.

14 In 1999, the South Carolina Public Service Commission (“SCPSC”) ordered  
15 BellSouth Telecommunications to issue refunds for overpayments made as a result of non-  
16 NST-compliant rates. *In re: Request of BellSouth Telecommunications, Inc. for Approval of*  
17 *Revisions to its General Subscriber Service Tariff*, S.C. Pub. Serv. Comm’n Docket No. 97-  
18 124-C, Order No. 1999-285 (Apr. 19, 1999). In 1997, BellSouth submitted proposed rates  
19 for payphone services that it contended were in compliance with the TCA. *Id.* at 5. The  
20 SCPSC opened a docket to review BellSouth’s proposed rates. *Id.* While the SCPSC  
21 considered the rates, it ruled that “BellSouth must either reimburse or provide credit to its  
22 payphone customers from April 15, 1997, if the rates approved in this proceeding are lower  
23 than BellSouth’s existing tariffed rates.” *Id.* In 1999, the SCPSC determined that  
24 BellSouth’s proposed rates were too high. Consistent with its previous orders, the SCPSC  
25 ordered BellSouth “to make refunds or give credits, including appropriate interest at the rate  
26 of 8.75% per annum, back to April 15, 1997.” *Id.* at 25.

1 The Commission should follow the persuasive precedent set by Indiana and South  
2 Carolina and clarify Order No. 07-497 by amending it to expressly require Qwest to issue  
3 refunds for any excess revenue it collected under rates that failed to comply with Orders Nos.  
4 96-107, 00-190, 00-191, 06-515, and 07-497, the Telecommunication Act of 1996, and state  
5 law, less any refunds previously paid.

6 **CONCLUSION**

7 For the foregoing reasons, the Commission should grant NPCC's motion requesting  
8 the Commission issue an order requiring Qwest to show cause why it is not in violation of  
9 Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the Telecommunication Act of  
10 1996, and state law. In the alternative, the Commission should grant NPCC's motion  
11 requesting the Commission clarify Order No. 07-497 by amending it to expressly require  
12 Qwest to issue refunds for any excess revenue it collected under rates that failed to comply  
13 with Orders Nos. 96-107, 00-190, 00-191, 06-515, and 07-497, the Telecommunication Act  
14 of 1996, and state law, less any refunds previously paid.

15 DATED this 26th day of January, 2017.

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	
Reclassification and Compensation Provisions of	)	CC Docket No. 96-128
the Telecommunications Act of 1996	)	
	)	
Illinois Public Telecommunications Association's	)	
Petition for a Declaratory Ruling	)	
Regarding the Remedies Available for Violations	)	
of the Commission's Payphone Orders	)	
	)	
The Southern Public Communication	)	
Association's Petition for a Declaratory Ruling	)	
Regarding the Remedies Available for Violations	)	
of the Commission's Payphone Orders	)	
	)	
Petition of the Independent Payphone Association	)	
of New York, Inc. to Pre-empt Determinations of	)	
the State of New York Refusing to Implement the	)	
Commission's Payphone Orders, and For a	)	
Declaratory Ruling	)	
	)	
Petition of the Florida Public Telecommunications	)	
Association, Inc. for a Declaratory Ruling and for	)	
an Order of Preemption Concerning the Refund of	)	
Payphone Line Rate Charges	)	
	)	
Petition of the Payphone Association of Ohio to	)	
Preempt the Actions of the State of Ohio Refusing	)	
to Implement the FCC's Payphone Orders,	)	
Including the Refund of Overcharges to Payphone	)	
Providers in Ohio, and for a Declaratory Ruling	)	
	)	
The Michigan Pay Telephone Association's	)	
Petition for Declaratory Ruling Regarding	)	
The Prices Charged by AT&T Michigan	)	
For Network Access Services Made	)	
Available to Payphone Providers in Michigan	)	

**DECLARATORY RULING AND ORDER**

Adopted: February 20, 2013

Released: February 27, 2013

By the Commission: Commissioner Clyburn dissenting and issuing a statement.

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## I. INTRODUCTION

1. In this order, the Commission provides further guidance to state commissions and payphone service providers (PSPs) regarding the requirements of section 276 of the Communications Act, as amended (the Act) and the Commission's interpretation of that provision.<sup>1</sup> We reinforce that section 276 of the Act requires Bell Operating Companies (BOCs) to have cost-based rates for payphone access lines, that the Commission has determined that rates that comply with the new services test (NST) meet this statutory requirement, and that BOCs that did not have NST-compliant rates in effect could be

<sup>1</sup> 47 U.S.C. § 276. See 47 C.F.R. § 64.1300 *et seq.* See also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (Sept. 20, 1996) (*Initial Payphone Order*), Order on Reconsideration, 11 FCC Rcd 21233 (Nov. 8, 1996) (*Payphone Reconsideration Order*), *aff'd in part and remanded in part*, *Illinois Pub. Telecomms. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997); Second Report and Order, 13 FCC Rcd 1778 (Oct. 9, 1997) (*Second Payphone Order*), *vacated and remanded*, *MCI Telecomms. Corp. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998); Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (Feb. 4, 1999) (*Third Payphone Order*), *aff'd*, *American Pub. Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000); *Wisconsin Pub. Serv. Comm'n; Order Directing Filings*, Bureau/CPD No. 00-01, Memorandum Opinion and Order, 17 FCC Rcd 2051, 2064, para. 42 (2002) (*Wisconsin Payphone Order*), *aff'd* *New England Pub. Comms. Council, Inc. v. FCC*, 334 F.3d 69 (D.C. Cir. 2003). (The *Initial Payphone Order* and the *Payphone Reconsideration Order* are collectively known as the *Payphone Orders*.)

required to issue refunds. Also, we deny five petitions for declaratory ruling filed by PSP associations<sup>2</sup> because we find that the state commissions acted within the scope of the Commission's delegation of authority to determine whether payphone rates are tariffed in accordance with section 276 of the Act. We also find that the requirements in the state commissions' decisions were not inconsistent with the Commission's regulations, and therefore we decline to grant any requests for preemption of the requirements imposed in those decisions.<sup>3</sup> We further clarify that a state commission may order refunds for any time period after April 15, 1997 if it concludes that a BOC was charging PSPs a rate that was not NST-compliant, as a number of states have.<sup>4</sup> Finally, we reject the PSPs' assertion that the April 1997 *Second Bureau Waiver Order* requires the refunds they seek. We note, however, that the *Second Bureau Waiver Order* does not limit states' ability to reconsider prior actions denying refunds and to order refunds based on their own analysis of state and federal law and the application of those laws to the particular facts in the cases before them.<sup>5</sup>

2. This order also responds to a petition for declaratory ruling filed by the Michigan Pay Telephone Association (MPTA) by determining that the current payphone usage rate in Michigan is not NST-compliant.<sup>6</sup> As such, we remand to the Michigan Public Service Commission (Michigan Commission), and direct them to require the carrier to establish a new, NST-compliant payphone usage rate consistent with the guidance in this order, and the Commission's *Payphone Orders*.

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<sup>2</sup> See Illinois Public Telecommunications Association Petition for a Declaratory Ruling, CC Docket No. 96-128 (filed July 30, 2004) (IPTA Petition); The Southern Public Communication Association Petition for a Declaratory Ruling, CC Docket No. 96-128 (filed Nov. 9, 2004) (SPCA Petition); Petition of the Independent Payphone Association of New York, Inc. for an Order of Pre-Emption and Declaratory Ruling, CC Docket No. 96-128 (filed Dec. 29, 2004) (IPANY Petition); Petition of the Florida Public Telecommunications Association, Inc. for Declaratory Ruling and for an Order of Preemption, CC Docket No. 96-128 (filed Jan. 31, 2006) (FPTA Petition); Petition of the Payphone Association of Ohio to Preempt the Actions of the State of Ohio Refusing to Implement the FCC's Payphone Orders, Including the Refund of Overcharges to Payphone Providers in Ohio, and for a Declaratory Ruling, CC Docket No. 96-128 (filed Dec. 28, 2006) (PAO Petition). Both SPCA and IPANY filed motions to consolidate their petitions with the other pending petitions. See Motion of the Southern Public Communication Association to Consolidate its Petition for a Declaratory Ruling with the Petition for a Declaratory Ruling of the Illinois Public Communications Association, CC Docket No. 96-128 (filed Nov. 9, 2004); Motion of the Independent Payphone Association of New York, Inc. to Consolidate its Petition for an Order of Pre-emption and a Declaratory Ruling with (1) the Petition for a Declaratory Ruling of the Illinois Public Communications Association and (2) the Southern Public Communication Association Petition for a Declaratory Ruling, CC Docket No. 96-128 (filed Dec. 29, 2004) (IPANY Motion to Consolidate). In this order, we grant the SPCA and IPANY Motions to Consolidate.

<sup>3</sup> See *Payphone Reconsideration Order*, 11 FCC Rcd at 21308, para. 163.

<sup>4</sup> See *infra* para. 48.

<sup>5</sup> See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, 12 FCC Rcd 21370 (CCB rel. Apr. 15, 1997) (*Second Bureau Waiver Order*).

<sup>6</sup> See The Michigan Pay Telephone Association's Second Petition for Declaratory Ruling Regarding The Prices Charged by AT&T Michigan for Network Access Services Made Available to Payphone Providers in Michigan, CC Docket No. 96-128 (filed May 22, 2006) (MPTA Petition). As explained below, MPTA had filed a previous petition for declaratory ruling in this proceeding in 1999. See *infra* para. 34.

## II. BACKGROUND

### A. Payphone Services

3. Congress enacted section 276 to “promote competition among payphone service providers and promote the widespread deployment of payphone service to the benefit of the general public.”<sup>7</sup> To advance these pro-competitive statutory goals, Congress directed the Commission to “terminat[e] the current system of payphone regulation” and “eliminate all discrimination between BOC and independent payphones and all subsidies or cost recovery for BOC payphones.”<sup>8</sup> In addition, section 276 required the Commission to “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone”<sup>9</sup> and to discontinue “all intrastate and interstate payphone subsidies”<sup>10</sup> in favor of the per-call compensation plan.

4. In its 1996 *Initial Payphone Order*, the Commission concluded that, in order for a BOC to be eligible for dial-around compensation, it must offer individual central office coin transmission service to PSPs under nondiscriminatory, public, tariffed offerings if the BOC provided those services for its own payphone operations.<sup>11</sup> The Commission also concluded that BOCs must provide coin service so competitive payphone providers can offer payphone services using either “smart payphones” or “dumb payphones” that utilize central office coin services.<sup>12</sup> Because the Commission recognized that BOCs may have an incentive to charge their competitors unreasonably high prices for these services, it concluded that “the [NST] is necessary to ensure that central office coin services are priced reasonably.”<sup>13</sup> The NST requires a BOC to provide cost studies for its payphone service rates sufficient to establish that such charges will not recover more than a just and reasonable portion of its overhead costs from a particular service.<sup>14</sup>

5. The Commission concluded in the *Initial Payphone Order* that tariffs for payphone services should be filed with the Commission as part of the BOC’s access services to ensure that the

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<sup>7</sup> 47 U.S.C. § 276(b)(1).

<sup>8</sup> H.R. Rep. No. 104-204, at 88 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 54.

<sup>9</sup> 47 U.S.C. § 276(b)(1)(A).

<sup>10</sup> 47 U.S.C. § 276(b)(1)(B).

<sup>11</sup> *Initial Payphone Order*, 11 FCC Rcd at 20614-15, para. 146. We note that, in the *Initial Payphone Order* and the *Payphone Reconsideration Order*, the Commission referred to “incumbent [local exchange carrier] LEC” obligations, not “Bell Operating Company” or BOC obligations. In the *Wisconsin Payphone Order*, however, the Commission clarified that section 276 requires only BOCs, and not incumbent LECs generally, to provide payphone lines at cost-based rates. The Commission stated that, “[b]ecause sections 276(a) and (b)(1)(C) apply only to BOCs, we do not find that Congress has expressed with the requisite clarity its intention that the Commission exercise jurisdiction over the intrastate payphone prices of non-BOC LECs.” *Wisconsin Payphone Order*, 17 FCC Rcd at 2064, para. 42. The court of appeals agreed. *New England Pub. Comms. Council, Inc. v. FCC*, 334 F.3d at 78.

<sup>12</sup> See *Initial Payphone Order*, 11 FCC Rcd at 20614-15, para. 146.

<sup>13</sup> *Id.*

<sup>14</sup> “Each tariff filing submitted by a price cap LEC that introduces a new loop-based service, as defined in § 61.3(pp) of this part – including a restructured unbundled basic service element (BSE), as defined in § 69.2(mm) of this chapter, that constitutes a new loop-based service – that is or will later be included in a basket, must be accompanied by cost data sufficient to establish that the new loop-based service or unbundled BSE will not recover more than a just and reasonable portion of the carrier’s overhead costs.” 47 C.F.R. § 61.49(f)(2).

services are reasonably priced and do not include subsidies.<sup>15</sup> The Commission also concluded that BOCs must file revised carrier common line (CCL) tariffs with the Commission no later than January 15, 1997 “to reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs [that were] currently recovered through those charges, scheduled to take effect April 15, 1997.”<sup>16</sup> In discussing tariffing requirements, the Commission stated that section 276 does not refer to, or require, the application of sections 251 and 252 to incumbent LEC payphone services, and it instead concluded that *Computer III* tariff procedures and pricing are more appropriate for basic payphone services provided by BOCs to other payphone providers.<sup>17</sup> The Commission stated that any inconsistent state requirements with regard to pricing of payphone services are preempted.<sup>18</sup>

6. In the *Payphone Reconsideration Order*, the Commission modified the federal tariffing requirements of payphone services and provided additional guidance for BOC tariff filings.<sup>19</sup> In that order, the Commission specified the appropriate cost methodology for payphone lines and expressly required that the tariffs for LEC payphone services be: “(1) cost based; (2) consistent with the requirements of section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory.”<sup>20</sup> The Commission also required that tariffs for payphone access lines be filed with the states, rather than the Commission, and it directed that state commissions apply the appropriate cost methodology and the *Computer III* guidelines for tariffing such intrastate services. The Commission also permitted states to ask the Commission to review these tariffs if they were unable to do so themselves.<sup>21</sup> The Commission explained that it “will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of section 276” as articulated by the Commission.<sup>22</sup> A subsequent order made clear, however, that “[a]ny party who believes that a particular LEC’s intrastate tariffs fail to meet [the Commission’s] requirements has the option of filing a complaint with the Commission.”<sup>23</sup> The Commission required tariffing in both the federal and state jurisdiction of any basic network services or unbundled payphone features used by the BOC’s payphone operations.<sup>24</sup>

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<sup>15</sup> *Initial Payphone Order*, 11 FCC Rcd at 20615, para. 147.

<sup>16</sup> *Id.* at 20633, para. 183.

<sup>17</sup> *Id.* at 20615, para. 147.

<sup>18</sup> *Id.* See also 47 U.S.C. § 276(c).

<sup>19</sup> See *Payphone Reconsideration Order*, 11 FCC Rcd 21233. The Commission reiterated its conclusion from the *Initial Payphone Order* that BOCs must provide tariffed, nondiscriminatory basic payphone services that enable independent providers to offer payphone services using either “smart payphones” or “dumb payphones” or some combination of the two in a manner similar to the BOCs. See *id.* at 21307-08, para. 162.

<sup>20</sup> *Id.* at 21308, para. 163.

<sup>21</sup> See *id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomms. Act of 1996*, CC Docket No. 96-128, Order, 12 FCC Rcd 20997, para. 30 n.93 (CCB rel. Apr. 4, 1997) (*First Bureau Waiver Order*). To file a complaint, “[a]ny person, any body politic, or municipal organization, or State commission, complaining of anything done or omitted to be done by any common carrier subject to [common carrier regulation], in contravention of the provisions thereof, may apply to said Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission.” 47 U.S.C. §208(a).

<sup>24</sup> See *Payphone Reconsideration Order*, 11 FCC Rcd at 21307-08, para. 162.

7. In the *Payphone Reconsideration Order*, the Commission further concluded that, where the BOCs had already filed intrastate tariffs for these services, no further tariff filings would be required if the states determined that those previously filed tariffs were consistent with the Commission's *Payphone Orders*.<sup>25</sup> The Commission also permitted the BOCs to begin receiving dial-around compensation if they were able to self-certify compliance with the requirement that their rates be NST complaint.<sup>26</sup>

8. On April 4, 1997, and April 15, 1997, the Common Carrier Bureau (Bureau)<sup>27</sup> granted limited waivers to the BOCs, which allowed them additional time to file interstate and intrastate tariffs for payphone services in compliance with the guidelines contained in the *Payphone Orders*.<sup>28</sup> In the waiver orders (one for federal tariffs and one for state tariffs), the Bureau extended until May 19, 1997, the deadline for BOCs to file NST-compliant interstate and intrastate tariffs and remain eligible to receive dial-around compensation as of April 15, 1997, as long as they were in compliance with all of the other requirements set forth in the *Payphone Reconsideration Order*.<sup>29</sup> The Bureau ruled, however, that a BOC that seeks to rely on the waiver "must reimburse their customers or provide credit, from April 15, 1997, in situations where the newly tariffed rates are lower than the existing tariffed rates."<sup>30</sup>

9. On March 2, 2000, the Bureau released the *Wisconsin Bureau Order*, which directed the four largest incumbent local exchange carriers in Wisconsin to submit to the Commission copies of their tariffs for intrastate payphone services that set forth the rates, terms and conditions associated with payphone services.<sup>31</sup> The *Wisconsin Bureau Order* responded to a letter order from the Wisconsin Commission, which concluded that it "lacks jurisdiction under state law to ensure that the rates, terms, and conditions applicable to providing basic payphone services comply with the requirements of section 276 of the Act and the Commission's implementing rules."<sup>32</sup> The *Wisconsin Bureau Order* also required the carriers to provide supporting documentation in compliance with the requirements of section 276 and the Commission's implementing rules, including the NST.<sup>33</sup> Finally, the *Wisconsin Bureau Order* provided additional guidance as to what the BOCs needed to demonstrate to satisfy the NST.<sup>34</sup>

<sup>25</sup> See *id.* at 21308, para. 163.

<sup>26</sup> See *id.* at 21293, para. 131 (dial-around compensation is the payment carriers make to PSPs when the carrier's customers use payphones to make calls that do not directly compensate PSPs, such as access code calls, subscriber 800 calls, and other toll-free calls). See *id.* at 21238, para. 7.

<sup>27</sup> The Common Carrier Bureau became the Wireline Competition Bureau in 2002 as part of organizational changes at the Commission. See generally *Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau*, Order, 17 FCC Rcd 4672 (2002).

<sup>28</sup> See *First Bureau Waiver Order*, 12 FCC Rcd 20997 (1997) (regarding interstate tariffs); *Second Bureau Waiver Order*, 12 FCC Rcd 21370 (1997) (regarding intrastate tariffs).

<sup>29</sup> See *Second Bureau Waiver Order*, 12 FCC Rcd at 21379, para. 19.

<sup>30</sup> See *id.* at 21379-80, para. 20.

<sup>31</sup> *Wisconsin Pub. Serv. Comm'n; Order Directing Filings*, CCB/CPD No. 00-01, Order, 15 FCC Rcd 9978 (CCB rel. Mar. 2, 2000) (*Wisconsin Bureau Order*) (the *Wisconsin Bureau Order* and the *Wisconsin Payphone Order* will be collectively referred to as the *Wisconsin Payphone Orders*).

<sup>32</sup> *Id.* at 9979, para. 3.

<sup>33</sup> See *id.* at 9980, para. 5.

<sup>34</sup> See *id.* at 9981-82, paras. 9-12.



10. On application for review, the Commission, in the *Wisconsin Payphone Order*, affirmed in part and modified in part the *Wisconsin Bureau Order*.<sup>35</sup> The Commission provided states more specific guidance regarding the calculation of BOC payphone line rates pursuant to the NST. Specifically, the Commission determined that: (1) states should use an appropriate forward-looking economic cost methodology, such as TELRIC or TSLRIC; (2) states may use overhead loading factors applicable to unbundled network elements (UNE) or may establish ceilings for loading factors using the methodology from either the *Physical Collocation Tariff Order* or the *ONA Tariff Order*; (3) BOCs must reduce the monthly per-line charge determined under the NST by the amount of the applicable federally tariffed subscriber line charge (SLC); and (4) the NST applies to usage-sensitive as well as flat-rate elements of the charges for services offered to PSPs.<sup>36</sup>

11. Subsequent to the release of the *Wisconsin Payphone Order*, a number of state commissions required the BOCs to lower the payphone line rates being charged to PSPs, and in some states the BOCs voluntarily lowered their payphone line rates to ensure compliance with the NST, as clarified by the Commission.<sup>37</sup>

#### **B. Petitions for Declaratory Ruling**

12. There are five petitions for declaratory ruling pending before the Commission in this docket, all regarding whether various state commissions erred in failing to provide refunds to PSPs. As discussed below, although all the petitions raise similar questions and request similar relief, each petition presents unique procedural facts. There is an additional petition filed by the MPTA requesting relief based on the local usage service rate established by the Michigan Commission. The MPTA petition raises a different but related issue to the other petitions and is also resolved in this order.

##### **1. Illinois Public Telecommunications Association (IPTA) Petition for a Declaratory Ruling**

###### **a. The Petition**

13. On July 30, 2004, the IPTA filed a petition for declaratory ruling claiming that Illinois Bell Telephone Company d/b/a SBC Illinois (SBC), Verizon North, Inc. and Verizon South, Inc. (collectively Verizon) violated the Commission's requirements that rates for local telephone network services provided to competing PSPs meet the NST.<sup>38</sup> The petition requests a ruling that: (1) the PSP members of the IPTA are entitled to refunds from SBC and Verizon for the time periods in which BOC payphone rates and charges in Illinois exceeded the NST; (2) the Illinois Commerce Commission (ICC) decision denying the IPTA members refunds is inconsistent with the Commission's *Payphone Orders*; and (3) SBC and Verizon were ineligible to receive dial-around compensation for the period of time in which

<sup>35</sup> See *Wisconsin Payphone Order*, 17 FCC Rcd at 2051.

<sup>36</sup> See *id.* at 2067-71, paras. 51-65; see also *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, Second Report and Order, 12 FCC Rcd 18730 (1997); *Open Network Architecture Tariffs of Bell Operating Companies*, CC Docket No. 92-91, Order, 9 FCC Rcd 440 (1993).

<sup>37</sup> See, e.g., Mississippi Pub. Serv. Comm'n, Complaint of the Southern Pub. Communication Ass'n for Refund of Excess Charges by BellSouth Telecommunications, Inc. Pursuant to its Rates for Payphone Line Access, Usage and Features, Order, Docket No. 2003-AD-927, at 2 (rel. Sept. 1, 2004) (MPSC Refund Order); Petition for Expedited Review of BellSouth Telecommunications, Inc.'s Intrastate Tariffs for Pay Telephone Access Services (PTAS) Rate With Respect to Rates for Payphone Line Access, Usage, and Features, by Florida Public Telecomms. Ass'n, Final Order on Arbitration of Complaint, Order No. PSC-04-0974-FOF-TP, at 5 (rel. Oct. 7, 2004) (FLPSC Payphone Order).

<sup>38</sup> See IPTA Petition at 3.

their rates were in excess of the NST.<sup>39</sup> The Bureau issued a public notice requesting comments on IPTA's petition on August 6, 2004.<sup>40</sup>

**b. State Procedural History**

14. In 1995, prior to this Commission's *Payphone Orders*, SBC and the IPTA agreed to a discounted rate schedule for payphone usage, to extend through June 30, 2005, which was approved by the ICC.<sup>41</sup> Similarly, prior to release of the *Payphone Orders*, the ICC approved Verizon's payphone rates.<sup>42</sup> In response to the Commission's *Payphone Orders*, SBC did not file any new tariffs with the ICC.<sup>43</sup> Instead, SBC relied upon the tariffs already on file and submitted additional cost documentation on May 15, 1997, which was accepted by the ICC.<sup>44</sup> Pursuant to the *Payphone Orders*, however, Verizon filed supplemental documentation and reduced certain payphone rates on May 19, 1997.<sup>45</sup> The ICC declared Verizon's rates competitive on October 7, 1997 and did not act to suspend the tariffs.<sup>46</sup>

15. On May 8, 1997, the IPTA filed a petition with the ICC asserting that SBC and Verizon were charging network service rates to IPTA payphone service providers in excess of the cost-based rates required by the NST.<sup>47</sup> IPTA requested, among other things, that the ICC order refunds to its members of any amounts that SBC or Verizon charged in excess of cost-based rates that complied with the NST. On December 17, 1997, the ICC initiated an investigation into SBC's and Verizon's compliance with the NST.<sup>48</sup> On November 12, 2003, the ICC issued an order which concluded that: (1) SBC's rates for payphone services did not satisfy the NST; (2) Verizon's rates for payphone services did not satisfy the NST; and (3) refunds to PSPs were prohibited by federal and Illinois law and should not be issued.<sup>49</sup> IPTA appealed the ICC's decision to the Appellate Court of Illinois.

16. On November 23, 2005, the Appellate Court of Illinois affirmed the ICC's decision.<sup>50</sup> The court agreed with the ICC's decision that, because it had previously approved the payphone rates being

<sup>39</sup> *See id.*

<sup>40</sup> *Comments Sought on Illinois Pub. Telecomms. Association's Petition for a Declaratory Ruling Concerning Refund of Payphone Line Rate Charges*, CC Docket No. 96-128, Public Notice, 19 FCC Rcd 14939 (WCB 2004). A list of parties who filed comments and reply comments on this petition is in the attached Appendix.

<sup>41</sup> Illinois Commerce Comm'n, *Investigation Into Certain Payphone Issues as Directed in Docket 97-0225*, ICC Docket No. 98-0195, at 5-6 (rel. Nov. 12, 2003) (ICC Payphone Order).

<sup>42</sup> *See* BOC IPTA Comments at 5.

<sup>43</sup> *See id.*

<sup>44</sup> *See id.*

<sup>45</sup> *See id.* at 6.

<sup>46</sup> *See* ICC Payphone Order at 6.

<sup>47</sup> *See* IPTA Petition at 5.

<sup>48</sup> *See* ICC Payphone Order at 2.

<sup>49</sup> *See id.* at 42-43. The ICC reasoned that, because it had already approved SBC's and Verizon's rates, the filed tariff doctrine barred refunds. Moreover, the ICC noted that "from the time that the FCC established its NST through today, there had been *no complaint to formally challenge the rates at issue in this case.*" *Id.* (emphasis in original).

<sup>50</sup> *Illinois Pub. Telecomms. Ass'n v. Illinois Commerce Comm'n, Illinois Bell Telephone Company d/b/a/ SBC Illinois, Verizon North, Inc., and Verizon South, Inc.*, ICC Docket No. 98-0195, Order, Case No. 1-04-0225 (Ill. App. Ct. 2005).

charged, SBC and Verizon were entitled to rely on those rates for as long as they were in effect.<sup>51</sup> Accordingly, the court held “that the subsequent reduction in those rates in November 2003 afford[ed] no right of action for a refund of the difference between the old and new rates” based on the doctrine prohibiting retroactive ratemaking.<sup>52</sup> The Illinois Supreme Court subsequently denied IPTA’s petition for leave to appeal the state court decision.<sup>53</sup>

**2. The Southern Public Communication Association (SPCA) Petition for Declaratory Ruling**

**a. The Petition**

17. On November 9, 2004, the SPCA filed a petition for declaratory ruling with the Commission.<sup>54</sup> The petition seeks a ruling that: (1) SPCA members are entitled to refunds of the tariffed payphone line rate charges they paid to BellSouth Telecommunications, Inc. (BellSouth) from April 15, 1997 to October 1, 2003 to the extent those charges exceeded rates that comply with the NST; (2) the Mississippi Public Service Commission (MPSC) did not properly follow and apply the Commission’s NST; (3) the MPSC should not have dismissed the SPCA’s complaint without an evidentiary hearing; and (4) MPSC should re-evaluate its dismissal of the claims in the complaint. The petition also asked the Commission to determine whether or not BellSouth was eligible to receive dial-around compensation on or before October 1, 2003.<sup>55</sup> The Bureau issued a public notice requesting comments on SPCA’s petition on November 19, 2004.<sup>56</sup>

**b. State Procedural History**

18. On May 19, 1997, BellSouth filed with the MPSC a monthly, flat pay telephone access service rate of \$46.00 per-line per-month.<sup>57</sup> In an order dated July 14, 1997, the MPSC approved the BellSouth tariff to be effective as of April 15, 1997, which the SPCA did not appeal.<sup>58</sup> In 2003, pursuant to a settlement agreement between BellSouth and SPCA, BellSouth agreed to lower the pay telephone access rate from \$46.00 per-line per-month to \$24.99 per-line per-month and to reduce the line rate by the amount of the SLC, which further reduced the rate to \$17.86 per-line per-month.<sup>59</sup> This rate became effective on October 1, 2003.<sup>60</sup> On December 19, 2003, SPCA filed a complaint with the MPSC

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<sup>51</sup> *See id.* at 8.

<sup>52</sup> *See id.*

<sup>53</sup> *Illinois Pub. Telecomms. Ass’n v. Illinois Commerce Comm’n*, No. 102166, 219 Ill.2d 565 (2006).

<sup>54</sup> *See* SPCA Petition. “The SPCA is a Louisiana not-for-profit trade association representing 14 independent payphone providers in Mississippi.” *Id.* at 5.

<sup>55</sup> *See id.* at 4-5.

<sup>56</sup> *Comments Sought on Southern Public Telecomms. Association’s Petition for a Declaratory Ruling Concerning Refund of Payphone Line Rate Charges; Pleading Cycle Established*, CC Docket No. 96-128, Public Notice, 19 FCC Rcd 22796 (WCB 2004). A list of parties who filed comments and reply comments on this petition is in the attached Appendix.

<sup>57</sup> SPCA Petition at 7. *See also id.* at Exhibit C.

<sup>58</sup> *Mississippi Pub. Serv. Comm’n, BellSouth Telecommunications, Inc., In re: Notice of Tariff Filing for Flat Rate Options Customer Provided Public Telephones and Smartline Service for Public Telephones*, Order, Docket 97-UN-0302 (rel. July 14, 1997) (MPSC Payphone Order).

<sup>59</sup> SPCA Petition at 8. *See also* SPCA Petition at Exhibit F.

<sup>60</sup> *Id.*

requesting refunds of excess payphone line charges by BellSouth.<sup>61</sup> SPCA claimed that the MPSC did not properly evaluate BellSouth's rates in 1997, and that BellSouth's subsequent lowering of the rate in 2003 indicates that the rate was never compliant with the NST.<sup>62</sup> On September 1, 2004, the MPSC denied SPCA's request and granted BellSouth's motion to dismiss.<sup>63</sup> The MPSC concluded that issuing refunds would violate the prohibition against retroactive ratemaking, as well as the filed rate doctrine.<sup>64</sup> The MPSC also rejected SPCA's claim that the *Wisconsin Payphone Order* preempted the MPSC's order approving the BellSouth tariffs.<sup>65</sup> The SPCA's petition for judicial review of the MPSC's decision is currently pending in federal court.

**3. Petition of the Independent Payphone Association of New York, Inc. (IPANY) for an Order of Pre-Emption and Declaratory Ruling**

**a. The Petition**

19. On December 29, 2004, the IPANY filed a petition for declaratory ruling and order of preemption with the Commission.<sup>66</sup> IPANY's petition requests that the Commission: (1) preempt rulings of the State of New York, which it claims conflict with the Commission's various *Payphone Orders*; and (2) require Verizon to give refunds to PSPs where rates were not compliant with the NST.<sup>67</sup> The Bureau issued a public notice requesting comments on IPANY's petition on January 7, 2005.<sup>68</sup>

**b. State Procedural History**

1. In December 1996, the New York Public Service Commission (NYPSC) instituted a proceeding in which it directed Verizon and other LECs in New York to file any tariff revisions that would be necessary to comply with the *Payphone Orders*.<sup>69</sup> Verizon filed new payphone tariffs for its smart-line services but did not file new tariffs for its public access lines (PAL), or "dumb" payphone lines.<sup>70</sup> Verizon claimed that no changes were required to the existing PAL rates for the rates to comply with the NST.<sup>71</sup> The NYPSC approved the tariffs on a temporary basis on March 31, 1997.<sup>72</sup> Verizon

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<sup>61</sup> See MPSC Refund Order at 1.

<sup>62</sup> See *id.* at 2.

<sup>63</sup> See generally, MPSC Refund Order.

<sup>64</sup> See *id.* at 3.

<sup>65</sup> See *id.*

<sup>66</sup> See IPANY Petition. "IPANY is a not-for-profit trade association representing over 80 IPPs in the State of New York." *Id.* at 7.

<sup>67</sup> See *id.* at 1-2. Verizon was formerly known as New York Telephone.

<sup>68</sup> *Independent Payphone Ass'n of New York's Petition for Pre-Emption and Declaratory Ruling Concerning Refund of Payphone Line Rate Charges; Pleading Cycle Established*, CC Docket No. 96-128, Public Notice, 20 FCC Rcd 476 (WCB 2005). See also, *Implementation of the Pay Telephone Reclassification and Compensation Provisions Of the Telecomms. Act of 1996*, CC Docket No. 96-128, Order Extending Time For Reply Comments, 20 FCC Rcd 1609 (WCB 2005). A list of parties who filed comments and reply comments on this petition is in the attached Appendix.

<sup>69</sup> IPANY Petition at 7. See also BOC IPANY Comments at 4.

<sup>70</sup> See IPANY Petition at 7.

<sup>71</sup> See BOC IPANY Comments at 4.

filed tariff revisions on May 19, 1997 for certain additional features for its smart payphone lines but did not file any new rates for the PALs.<sup>73</sup>

20. On July 30, 1997, the NYPSC sought comment on the tariffs submitted by the incumbent LECs.<sup>74</sup> IPANY filed comments arguing that Verizon's rates were excessive and unlawful and did not comply with the NST.<sup>75</sup> The NYPSC kept the proceeding open but took no action for more than two years.<sup>76</sup> On December 2, 1999, IPANY filed a petition with the NYPSC urging it to take final action on its proceeding, to determine that the pre-existing tariffs are unlawful, and to order refunds.<sup>77</sup> The NYPSC instead instituted a second proceeding on these issues.<sup>78</sup>

21. In an October 12, 2000 order, the NYPSC ruled that Verizon's payphone rates, including the PAL rates, were reasonable and satisfied the NST.<sup>79</sup> The NYPSC concluded that, with regard to the PALs, the current rates for Verizon's payphone services recover direct-embedded cost plus a reasonable contribution toward common costs and overhead.<sup>80</sup> However, the NYPSC noted that traditionally, under the NST, the Federal Communications Commission allowed rates one to two times above direct-embedded costs, and Verizon's payphone rates included common costs and overhead at 30% above direct-embedded cost.<sup>81</sup> Although IPANY had submitted the *Wisconsin Bureau Order* during the course of the proceeding to argue that rates should be set using a TELRIC type methodology, the NYPSC found that IPANY's reliance on the *Wisconsin Bureau Order* was misplaced.<sup>82</sup> The NYPSC concluded that the *Wisconsin Bureau Order* only applied to the named Wisconsin LECs, and that the approach used in the order did not preclude the methodology used by the NYPSC in evaluating Verizon's rates.<sup>83</sup> IPANY filed a petition for rehearing of the NYPSC's order, which was denied on September 21, 2001.<sup>84</sup>

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<sup>72</sup> New York Pub. Serv. Comm'n, Proceeding on Motion of the Comm'n to Review Regulation of Coin Telephone Services Under Revised Federal Regulations Adopted Pursuant to the Telecomms. Act of 1996, Order Approving Tariff on a Temporary Basis, Case No. 96-C-1174 (rel. Mar. 31, 1997).

<sup>73</sup> See BOC IPANY Comments at 5.

<sup>74</sup> See IPANY Petition at 8.

<sup>75</sup> See *id.*

<sup>76</sup> See *id.*

<sup>77</sup> See *id.* at 8-9.

<sup>78</sup> See New York Pub. Serv. Comm'n, Petition filed by the Independent Payphone Ass'n of New York, Inc. that the Comm'n Modify New York Telephone Company's Wholesale Payphone Service Rates and Award Refunds; Proceeding on Motion of the Commission to Review Regulation of Coin Telephone Services Under Revised Federal Regulations Adopted Pursuant to the Telecommunications Act of 1996, Order Approving Permanent Rates and Denying Petition for Rehearing, Case Nos. 99-C-1684, 96-C-1174 at 6 (rel. Oct. 12, 2000) (NYPSC Payphone Order).

<sup>79</sup> See NYPSC Payphone Order at 7-8.

<sup>80</sup> See *id.* at 6.

<sup>81</sup> See *id.*

<sup>82</sup> See *id.* at 6-7.

<sup>83</sup> *Id.* at 7.

<sup>84</sup> New York Pub. Serv. Comm'n, Petition filed by the Independent Payphone Ass'n of New York, Inc. that the Comm'n Modify New York Telephone Company's Wholesale Payphone Service Rates and Award Refunds; Proceeding on Motion of the Commission to Review Regulation of Coin Telephone Services Under Revised Federal

(continued . . .)

22. IPANY then appealed the NYPSC's decision to the Supreme Court of New York, New York's trial-level court. Rejecting IPANY's argument that the *Wisconsin Payphone Orders* had to be considered by the NYPSC, the Supreme Court concluded that neither of the *Wisconsin Payphone Orders* was applicable to the proceeding, because IPANY had failed to exhaust its administrative remedies and should have filed a petition with the NYPSC asking for Verizon's rates to be modified prospectively based on the *Wisconsin Payphone Orders*.<sup>85</sup> Accordingly, the court considered the state of the law as of December 1996. The court expressed concern that Verizon's pre-existing PAL rates apparently were based on embedded costs, which are historical and would not necessarily comply with the NST, and it remanded the issue to the NYPSC to determine whether the rates complied with the NST.<sup>86</sup> The court also concluded that IPANY would be entitled to refunds should the NYPSC conclude that Verizon's rates did not comply with the NST.<sup>87</sup>

23. Both Verizon and IPANY appealed the Supreme Court decision to the State Supreme Court, Appellate Division. The Appellate Division agreed that the Supreme Court did not have to consider the *Wisconsin Payphone Orders* in making its decision, because IPANY could have petitioned the NYPSC to change Verizon's rates in response to the *Wisconsin Payphone Orders*, but did not, and, therefore, failed to exhaust its administrative remedies.<sup>88</sup> Moreover, the Appellate Division concluded that, even if the NYPSC lowered Verizon's rates, IPANY would not be entitled to refunds because the Commission's refund orders only contemplated refunds for the period between April 15, 1997 and May 19, 1997.<sup>89</sup> IPANY's requests for rehearing and permission to appeal were denied.<sup>90</sup>

24. On June 30, 2006, pursuant to complaints from PSPs regarding Verizon's PAL rates, the NYPSC reduced the rates Verizon could charge PSPs on a prospective basis.<sup>91</sup> The NYPSC based its decision on a white paper proposed by its advisory staff which estimated costs on the basis of a long-run incremental cost analysis. The NYPSC also sought comment as to whether it should further review the propriety of the rates that were in effect prior to the June 2006 Rate Order.<sup>92</sup> On May 24, 2007, the NYPSC noted the existing IPANY Petition before the Commission and concluded that, pending a Commission decision, it would not investigate whether the prior PAL rates complied with the NST

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Regulations Adopted Pursuant to the Telecommunications Act of 1996, Order Denying Petition for Rehearing of October 12, 2000 Order, Case Nos. 99-C-1684, 96-C-1174 (rel. Sept. 21, 2001).

<sup>85</sup> *Independent Payphone Ass'n of New York, Inc., and Teleplex Coin Communications, Inc. v. Pub. Serv. Comm'n of the State of New York and Verizon New York, Inc.*, Decision and Order, Index No. 413-02, RJI No. 01-02-ST2369, at 17-18 (State of New York Supreme Court rel. July 31, 2002) (*NY Supreme Court Order*).

<sup>86</sup> *See id.* at 19.

<sup>87</sup> *See id.* at 21-22.

<sup>88</sup> *Independent Payphone Ass'n of New York, Inc., et al. v. Pub. Serv. Comm'n of the State of New York and Verizon New York, Inc.*, Memorandum and Order, 5 A.D.3d 960, at 4 (New York, Supreme Court, Appellate Division, Third Judicial Department, rel. Mar. 25, 2004) (*NY Appellate Court Order*).

<sup>89</sup> *See id.* at 5.

<sup>90</sup> *See* IPANY Petition at 13.

<sup>91</sup> *See* New York Pub. Serv. Comm'n, Complaint of Phone Management Enterprises, Inc. and Other Pay Telephone Operators Against Verizon New York, Inc. for Refunds Relating to Unlawful Underlying Payphone Services Rates; Complaint of American Payphone Communications, Inc. Against Verizon New York Inc. Concerning Alleged Refunds Relating to Unlawful Underlying Payphone Service Rates, Order Resolving Complaints and Inviting Comments Regarding Public Access Line Rates, Case Nos. 03-C-0428, 03-C-0519 (rel. June 30, 2006) (June 2006 Rate Order).

<sup>92</sup> *Id.* at 14.

before they were superseded.<sup>93</sup> The NYPSC concluded that the Commission's ruling on the IPANY petition might render the remand proceeding unnecessary or affect the relief provided in that proceeding, and therefore that the prudent course would be to refrain from conducting further proceedings until the Commission had issued a final decision.<sup>94</sup>

**4. Petition of the Florida Public Telecommunications Association, Inc. (FPTA) for a Declaratory Ruling and for an Order of Preemption**

**a. The Petition**

25. On January 31, 2006, the FPTA filed a petition for declaratory ruling and order of preemption with the Commission.<sup>95</sup> The petition asks the Commission to: (1) find that, from April 15, 1997 to November 10, 2003, BellSouth collected end user common line (EUCL) charges in addition to unadjusted local payphone access line charges in contravention of section 276 of the Communications Act; (2) order BellSouth to refund to the relevant PSPs the payphone line charges those providers paid to BellSouth from April 15, 1997 to November 10, 2003 with interest, to the extent those charges exceeded rates that complied with section 276 of the Act, including any EUCL charge amounts collected during that time period; and (3) preempt the Florida Public Service Commission (FLPSC) ruling that BellSouth's rates were legally sustainable.<sup>96</sup> The Bureau issued a public notice requesting comments on FPTA's petition on February 8, 2006.<sup>97</sup>

**b. State Procedural History**

26. On August 11, 1998, the FLPSC issued an order, which concluded that the existing BellSouth tariffs for payphone line services were cost-based, consistent with section 276 of the Communications Act, and non-discriminatory.<sup>98</sup> FPTA protested the order but subsequently withdrew its protest, and the order became final on January 19, 1999.<sup>99</sup> On March 26, 2003, subsequent to the release of the *Wisconsin Payphone Order*, FPTA filed a petition with the FLPSC, requesting an expedited review of BellSouth's tariffs that included payphone line rates.<sup>100</sup> In its petition before the FLPSC, FPTA argued that BellSouth's payphone rates did not meet the NST, because the rates included the amount of

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<sup>93</sup> New York Pub. Serv. Comm'n, Complaint of Phone Management Enterprises, Inc. and Other Pay Telephone Operators Against Verizon New York, Inc. for Refunds Relating to Unlawful Underlying Payphone Services Rates; Complaint of American Payphone Communications, Inc. Against Verizon New York Inc. Concerning Alleged Refunds Relating to Unlawful Underlying Payphone Service Rates, Order Denying Rehearing and Addressing Comments, Case Nos. 03-C-0428, 03-C-0519 (rel. May 24, 2007).

<sup>94</sup> *Id.* at 17, 24.

<sup>95</sup> See FPTA Petition. "The FPTA is a trade association that serves the legal, regulatory and legislative interests of independent PSPs and related public telecommunications providers in Florida." *Id.* at 1-2.

<sup>96</sup> See *id.* at 2.

<sup>97</sup> *Pleading Cycle Established for Florida Pub. Telecomms. Ass'n, Inc. Petition for Declaratory Ruling and Order of Preemption*, CC Docket No. 96-128, Public Notice, 21 FCC Rcd 1373 (WCB 2006). A list of parties who filed comments and reply comments on this petition is in the attached Appendix.

<sup>98</sup> See Fl. Pub. Serv. Comm'n, Establishment of Intrastate Implementation Requirements Governing Federally Mandated Deregulation of Local Exchange Company Payphones, Notice of Proposed Agency Action Order Approving Federally Mandated Intrastate Tariffs For Basic Payphone Services, Order No. PSC-98-1088-FOF-TL (rel. Aug. 11, 1998).

<sup>99</sup> See FLPSC Payphone Order at 4.

<sup>100</sup> See *id.*

the EUCL.<sup>101</sup> FPTA also argued that Florida independent PSPs were entitled to refunds for the rates that exceeded the Commission's NST from April 15, 1997 to November 10, 2003, "because these rates failed to reflect any reduction or provide any credit for the collection of the EUCL charge."<sup>102</sup> On October 27, 2003, BellSouth filed a revision to its General Subscriber Services Tariff to reduce its approved and effective payphone rates by the amount of the federal EUCL charge.<sup>103</sup> The rate reduction became effective on November 10, 2003.<sup>104</sup>

27. On October 7, 2004, the FLPSC issued an order which concluded that BellSouth's payphone line rates between April 15, 1997 and November 10, 2003 were legally sustainable, and were consistent with BellSouth's tariffs and the FLPSC's controlling orders.<sup>105</sup> The FLPSC further concluded that refunds were not appropriate because FPTA withdrew its protest of the FLPSC's order approving BellSouth's initial rates, did not challenge the state commission's orders in any forum, and for years its members paid the rates set forth in BellSouth's tariffs.<sup>106</sup> On December 6, 2004, the Supreme Court of Florida dismissed the FPTA's appeal of the FLPSC Payphone Order as not timely filed.<sup>107</sup>

## 5. Payphone Association of Ohio (PAO) Petition for Preemption and Declaratory Ruling

### a. The Petition

28. On December 28, 2006, PAO filed a petition for preemption and declaratory ruling with the Commission.<sup>108</sup> The petition asks the Commission to: (1) establish the rights of PAO members to refunds of payphone access line rate overcharges dating back to April 15, 1997; (2) preempt the actions of the Public Utilities Commission of Ohio (PUCO) that PAO alleges are inconsistent with this Commission's regulations and the NST; and (3) order SBC to disgorge itself of dial-around compensation collected pursuant to section 276 of the Act and the Commission's rules and orders promulgated under it.<sup>109</sup> The Bureau issued a public notice requesting comments on PAO's petition on January 12, 2007.<sup>110</sup>

### b. State Procedural History

29. On December 9, 1996, the PUCO initiated a proceeding to implement the requirements of section 276 of the Act and the Commission's *Payphone Orders*.<sup>111</sup> By entry issued December 19, 1996,

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<sup>101</sup> See FPTA Petition at 9-11.

<sup>102</sup> *Id.* at 8.

<sup>103</sup> See *id.* at 5.

<sup>104</sup> See *id.*

<sup>105</sup> See FLPSC Payphone Order at 14.

<sup>106</sup> See *id.* at 13.

<sup>107</sup> *Florida Public Telecomms. Ass'n, Inc. v. J. Terry Deason*, Case No. SC04-2271 (rel. Dec. 6, 2004) (unpublished decision).

<sup>108</sup> See PAO Petition. "The PAO is a not-for-profit corporation organized under the laws of the State of Ohio and is comprised of independent payphone providers operating therein." *Id.* at 3.

<sup>109</sup> See *id.* at 1-2.

<sup>110</sup> *Pleading Cycle Established for Payphone Association of Ohio Petition to Preempt the Actions of the State of Ohio, and for a Declaratory Ruling*, CC Docket No. 96-128, Public Notice, 22 FCC Rcd 296 (WCB 2007). A list of parties who filed comments and reply comments on this petition is in the attached Appendix.

<sup>111</sup> PAO Petition at 4.



the PUCO directed all incumbent LECs operating within Ohio to file by January 15, 1997, tariffs with the requisite access line provisions for “smart” and “dumb” payphones.<sup>112</sup> The PUCO issued another entry on May 22, 1997, in which it noted the requirement for incumbent LECs to remove from their intrastate rates, any charges that recover the costs of the payphones.<sup>113</sup> To ensure that requirement was satisfied, the PUCO required all incumbent LECs to file by June 12, 1997, “case information detailing all 1996 payphone revenues and expenses, and payphone plant, reserve, and other payphone related items in rate base as of December 31, 1996.”<sup>114</sup> The PUCO also instructed each incumbent LEC to review its respective payphone tariff to ensure it is consistent with the requirements of section 276 of the Act, the Commission’s regulations and the PUCO investigation, and to file any proposed tariff amendments by June 22, 1997.<sup>115</sup> On September 25, 1997, the PUCO issued an entry approving SBC’s tariff as consistent with the Act, the Commission’s decisions in this docket and the PUCO’s May 22, 1997 entry.<sup>116</sup>

30. On June 30, 1997, PAO filed a motion to conduct an evidentiary hearing to determine if incumbent LECs are in compliance with section 276 of the Act.<sup>117</sup> By entry dated January 28, 1999, the PUCO granted PAO’s motion for an evidentiary hearing.<sup>118</sup> The PUCO concluded that there was insufficient evidence at that time to satisfy it that the payphone tariffs of SBC fully comply with the requirements of section 276 of the Act and the Commission’s rules.<sup>119</sup> However, the PUCO noted that SBC had approved payphone tariffs in effect, and its decision to investigate “does not relieve any person from the terms and conditions of those tariffs pending a Commission order once the investigation is completed.”<sup>120</sup>

31. On June 17, 2002, PAO filed a motion to expand the scope of the proceeding and to compel the incumbent LECs to comply with the NST as set forth by the *Wisconsin Payphone Order*.<sup>121</sup> By entry dated November 26, 2002, the PUCO revisited and revised the issues relevant to the proceeding

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<sup>112</sup> Public Utilities Comm’n of Ohio, Commission’s Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services, Entry, Case No. 96-1310-TP-COI (rel. Dec. 20, 1996).

<sup>113</sup> Public Utilities Comm’n of Ohio, Commission’s Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services, Entry, Case No. 96-1310-TP-COI at 4 (rel. May 22, 1997).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 7.

<sup>116</sup> Public Utilities Comm’n of Ohio, Commission’s Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services, Entry, Case No. 96-1310-TP-COI at 2-3 (rel. Sept. 25, 1997).

<sup>117</sup> PAO Petition at 4-5.

<sup>118</sup> Public Utilities Comm’n of Ohio, Commission’s Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services, Entry, Case No. 96-1310-TP-COI (rel. Jan. 28, 1999).

<sup>119</sup> *Id.* at 5.

<sup>120</sup> *Id.*

<sup>121</sup> Public Utilities Comm’n of Ohio, Commission’s Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services, Entry, Case No. 96-1310-TP-COI at 1 (rel. Nov. 26, 2002).

in light of the *Wisconsin Payphone Order*.<sup>122</sup> The PUCO dismissed the non-RBOCs from the proceeding and concluded that the core issue was whether SBC was providing payphone services at forward-looking, cost based rates.<sup>123</sup> In addition, the PUCO imposed an interim, forward-looking rate for payphone services that was to be subject to a true-up.<sup>124</sup> On January 16, 2003, the PUCO issued an entry on rehearing, which ordered SBC to file tariff revisions incorporating the interim rates.<sup>125</sup> On September 1, 2004, the PUCO issued an opinion and order in its proceeding.<sup>126</sup> The PUCO concluded that the overhead loading factors SBC proposed were not compliant with the NST, and therefore reduced the rates for payphone services.<sup>127</sup> Although the PUCO did require a true-up between the interim rates and the permanent rates, it did not address PAO's claim that refunds were required back to April 15, 1997.<sup>128</sup> However, in its October 27, 2004 entry on rehearing, the PUCO rejected PAO's claims for refunds back to April 1, 1997.<sup>129</sup> The PUCO agreed with SBC's arguments that such refunds would constitute retroactive ratemaking and PAO inappropriately relied on documents that were previously stricken from the record.<sup>130</sup> The Supreme Court of Ohio affirmed the PUCO's decision on June 28, 2006.<sup>131</sup> The court concluded that the PUCO's refusal to address the issue of refunds for any period before the interim tariff rates were approved in 2003 was not manifestly against the weight of the evidence, and therefore, rejected PAO's claim.<sup>132</sup>

## 6. Michigan Pay Telephone Association (MPTA) Petition for Declaratory Ruling

### a. The Petition

32. On May 22, 2006, the MPTA filed a petition for declaratory ruling with the Commission.<sup>133</sup> MPTA asks the Commission to "resolve an outstanding legal controversy with respect to

<sup>122</sup> *Id.* at 11.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 11-12.

<sup>125</sup> Public Utilities Comm'n of Ohio, Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services, Second Entry On Rehearing, Case No. 96-1310-TP-COI (rel. Jan. 16, 2003).

<sup>126</sup> Public Utilities Comm'n of Ohio, Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services, Opinion and Order, Case No. 96-1310-TP-COI (rel. Sept. 1, 2004)(PUCO Payphone Order).

<sup>127</sup> *Id.* at 30.

<sup>128</sup> *Id.*

<sup>129</sup> Public Utilities Comm'n of Ohio, Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services, Entry on Rehearing, Case No. 96-1310-TP-COI (rel. Oct. 27, 2004)(PUCO Rehearing Order).

<sup>130</sup> *Id.* at 16-17.

<sup>131</sup> *Payphone Association of Ohio v. Public Utilities Commission of Ohio*, 849 N.E.2d 4 (Ohio 2006).

<sup>132</sup> *Id.* at 9-10.

<sup>133</sup> See generally MPTA Petition. "The [MPTA] is a Michigan nonprofit corporation organized for the purpose of promoting and advancing the interests of Independent Payphone Providers ("IPPs") operating in the state of Michigan." *Id.* at n.1. The MPTA had filed a previous petition with the Commission in which it argued that the Michigan Commission had filed to set rates according to the NST, which the Commission granted and remanded

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the Commission's directives regarding intrastate payphone access line rates, and to preempt a decision by the Michigan Public Service Commission that is inconsistent with 47 U.S.C. § 276.<sup>134</sup> In its state proceedings reviewing AT&T Michigan's payphone line rates, the Michigan Commission adopted two separate, non-uniform overhead allocations for two parts of the payphone line rate, one for the fixed recurring rate and one for the local usage service rate.<sup>135</sup> MPTA contends that this use of non-uniform overhead allocations without justification makes the local usage service rate not NST compliant.<sup>136</sup> The Bureau issued a public notice requesting comments on MPTA's petition on June 2, 2006.<sup>137</sup>

#### b. Procedural History

33. On May 8, 1999, the Michigan Commission issued an order denying in part a complaint filed by the MPTA challenging the rates charged by Ameritech and GTE<sup>138</sup> in response to the Commission's *Payphone Orders*.<sup>139</sup> The Michigan Commission found, among other things, that the MPTA did not meet its burden to prove that the BOCs' payphone service rates were not NST compliant.<sup>140</sup> The Michigan Court of Appeals affirmed the Michigan Commission's determinations.<sup>141</sup> MPTA applied for leave to appeal to the Michigan Supreme Court<sup>142</sup> and also sought this Commission's review of the Michigan Commission's decision in a petition for declaratory ruling filed November 10, 1999.<sup>143</sup> Shortly after this Commission released the *Wisconsin Payphone Orders* providing additional clarification to the industry, the Common Carrier Bureau released an order granting the MPTA First Petition.<sup>144</sup> Specifically, the order found that the decision of the Michigan Commission appeared "to be

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back to the Michigan Commission. See *Michigan Payphone Association Petition for Declaratory Ruling*, CCB/CPD No. 99-35, Order, 17 FCC Rcd 4275 (CCB 2002) (*MPTA 2002 Order*).

<sup>134</sup> *Id.* at 1.

<sup>135</sup> See MPTA Petition at 2.

<sup>136</sup> See generally MPTA Petition. The MPTA Petition is different than the five other petitions for declaratory ruling discussed in this order because it asks the Commission to address the appropriate application of the new services test, whereas the other five petitions for declaratory ruling request that the Commission address a controversy involving the appropriateness of refunds when charges are allegedly in excess of NST-compliant rates.

<sup>137</sup> See *Pleading Cycle Established for Michigan Pay Telephone Association Petition for Declaratory Ruling*, CC Docket No. 96-128, 21 FCC Rcd 6289 (WCB 2006). A list of parties who filed comments and reply comments on this petition is in the attached Appendix.

<sup>138</sup> "At the time of initiating the underlying proceeding at the Michigan Public Service Commission, Michigan Bell Telephone Company was an affiliate of Ameritech Corporation. Through various corporate transactions in the interim years, Michigan Bell Telephone Company is now an subsidiary of AT&T, Inc." See MPTA Petition at n.2.

<sup>139</sup> See In the matter of the complaint of the Michigan Pay Telephone Association, et al. v. Ameritech Michigan and GTE North Incorporated, MPSC Case No. U-11756, Order (rel. Mar. 8, 1999) (Michigan Commission 1999 Order).

<sup>140</sup> See *id.* at 8.

<sup>141</sup> See In the matter of the complaint of the Michigan Pay Telephone Association, et al. v. Ameritech Michigan and GTE North Incorporated, MPSC Case No. U-11756, Order, at 2 (rel. Mar. 16, 2004) (Michigan Commission 2004 Order).

<sup>142</sup> See *id.* at 3.

<sup>143</sup> See Michigan Pay Telephone Association's Petition for Declaratory Ruling Regarding The Prices Charged by Ameritech Michigan And GTE North, Inc. for Network Access Services Made Available to Payphone Providers in Michigan, CC Docket No. 96-128 (filed Nov. 10, 1999) (MPTA First Petition).

<sup>144</sup> See generally *MPTA 2002 Order*. After the Commission's order was released, the MPTA and the Michigan Commission "filed a joint motion before the Michigan Supreme Court to remand this matter back to the [Michigan]

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inconsistent with the *Wisconsin Order*<sup>145</sup> and remanded the proceeding back to the state commission to re-evaluate its decision “concerning the pricing of BOCs’ intrastate payphone line rates and overhead ratios to ensure compliance with the *Wisconsin Order*.”<sup>146</sup>

34. On May 26, 2006, MPTA filed this petition for declaratory ruling with the Commission.<sup>147</sup> MPTA argues that on remand the Michigan Commission “failed to implement this Commission’s mandates with respect to one of the largest cost components the payphone providers face in their monthly billing—AT&T Michigan’s usage rates.”<sup>148</sup> MPTA says that the Michigan Commission “adopted a separate overhead allocation for usage, and not only failed to identify what the overhead allocation was, but reached its conclusion by merely comparing local usage rates with the rates charged for toll usage to business customers, which is not a cost-based service.”<sup>149</sup> By comparing “local usage to the non-cost-based toll usage service” the Michigan Commission’s actions were “antithetical to the specific mandates of the new services test and Section 276.”<sup>150</sup> The MPTA asks that the Commission grant the MPTA Petition and find “that the [Michigan Commission] failed to properly interpret and follow the Commission’s New Services Test with respect to AT&T’s local usage overhead allocation service and rate.”<sup>151</sup>

### C. Other Requests for Commission Action

35. In addition to the six petitions for declaratory ruling discussed above, the Commission received other requests for guidance or clarification with regard to the implementation of the NST. The Supreme Judicial Court of the Commonwealth of Massachusetts sent the Commission a letter requesting the Commission’s guidance as to the appropriateness of ordering refunds when a state commission subsequently determined that payphone rates were not NST compliant, but had earlier allowed the existing rates to remain in effect based upon the incumbent LEC’s certification that the rates were NST compliant.<sup>152</sup> The court sent this letter several weeks after it issued an order staying for six months from February 16, 2006, an appeal by the New England Public Communications Council, Inc., so relevant questions could be presented in letter format to the Commission.<sup>153</sup> The Bureau issued a public notice on

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Commission for further consideration in light of the *Wisconsin Order*. On June 24, 2002, the Michigan Supreme Court vacated the Court of Appeals’ decision and remanded this case back to the [Michigan] Commission.” Michigan Commission 2004 Order at 3.

<sup>145</sup> See *MPTA 2002 Order*, 17 FCC Red at 4276, para. 3.

<sup>146</sup> See *id.*

<sup>147</sup> See generally MPTA Petition.

<sup>148</sup> MPTA Petition at 2.

<sup>149</sup> *Id.* at 3.

<sup>150</sup> *Id.*

<sup>151</sup> See Letter from Henry T. Kelly, Counsel, Michigan Pay Telephone Association to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128, at Attach., p. 12 (filed Jan. 28, 2010).

<sup>152</sup> See Letter from Maura S. Doyle, Clerk, Commonwealth of Massachusetts, Supreme Judicial Court, to Kevin J. Martin, Chairman, Federal Communications Commission, CC Docket No. 96-128 (filed Mar. 15, 2006) (Massachusetts Letter).

<sup>153</sup> See *New England Public Communications Council, Inc. v. Department of Telecommunications and Energy and Verizon Communications of New England, Inc.*, Order, No. SJ-2004-0327 (Mass. Sup. Jud. Ct. Mar. 6, 2006).

the court's order and letter and announced that it would consider the court's request in conjunction with the PSP petitions for declaratory ruling pending before it.<sup>154</sup>

36. The Oregon Public Utility Commission also sent a letter to the Commission requesting prompt action on the pending petitions for declaratory ruling and specifically asking whether the *Second Bureau Waiver Order* requires refunds of a portion of payphone access line rates back to April 15, 1997 if those rates do not comply with the Commission's NST.<sup>155</sup>

### III. DISCUSSION

#### A. Preemption of State Commission Orders Regarding Refunds in This Proceeding Is Not Warranted

37. We deny the IPTA, SPCA, IPANY, FPTA, and PAO petitions. As discussed more fully below, section 276(c) states that "to the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements."<sup>156</sup> Because we conclude that the requirements in the state commission decisions before us are not inconsistent with the Commission's regulations, we do not preempt those decisions.<sup>157</sup>

38. In its *Payphone Reconsideration Order*, the Commission charged the states with the responsibility to ensure that BOC intrastate payphone line rates comply with the NST and provided the states with general guidance regarding compliance.<sup>158</sup> The Commission stated that rates must be: (1) cost-based; (2) consistent with the requirements of section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory.<sup>159</sup> The Commission further stated that states must apply these requirements and the *Computer III* guidelines for tariffing such intrastate services, but that they may ask the Commission to review these tariffs if they are unable to do so themselves.<sup>160</sup> Moreover, the Commission permitted the BOCs to self-certify compliance with the NST and to begin collecting dial-around compensation as of April 15, 1997.<sup>161</sup> The Commission

<sup>154</sup> *New England Public Communications Council, Inc. Filing of Letter from Supreme Judicial Court of Massachusetts Regarding Implementation of the Pay Telephone Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Public Notice, 21 FCC Rcd 3519 (WCB 2006).

<sup>155</sup> See Letter from Lee Beyer, Chairman, and John Savage and Ray Baum, Commissioners, Oregon Public Utility Commission, to Kevin Martin, Chairman, Federal Communications Commission, CC Docket No. 96-128 (filed Nov. 23, 2005) (Oregon Letter).

<sup>156</sup> 47 U.S.C. § 276(c).

<sup>157</sup> Because we conclude that the state commission decisions are not inconsistent with the Commission's orders, we decline to order reparations as requested by the PSPs. See, e.g., IPTA Petition at 3; Letter from Robert F. Aldrich, Attorney, APCC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128 at 2-8 (filed Oct. 25, 2006) (APCC Oct. 25<sup>th</sup> *Ex Parte* Letter).

<sup>158</sup> See *Payphone Reconsideration Order*, 11 FCC Rcd at 21308, para. 163.

<sup>159</sup> See *Id.*

<sup>160</sup> See *Id.*

<sup>161</sup> *Id.* at 21293, paras. 130-31. We reject PSP arguments that the Commission should determine that the BOCs were not entitled to begin collecting dial-around compensation as of April 15, 1997. See IPTA Petition at 3; SPCA Petition at 12; PAO Petition at 25. The petitioners have not submitted any evidence that the BOCs' self-certifications were defective or fraudulent, or that the BOCs knew when the self-certifications were submitted that their payphone rates were not NST-compliant. See *Ameritech Illinois, US West Communications Inc., et al., v. MCI Telecommunications Corporation, and Ameritech Illinois, Pacific Bell, et al., v. Frontier Communications Services, Inc. et al.*, Memorandum Opinion and Order, 14 FCC Rcd 18643 (CCB 1999) (finding that certification letters were

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did not specifically address whether refunds should be issued if a subsequent proceeding determined that the rates the BOCs self-certified were not consistent with the NST. Like other tariff and rate-setting procedures, the issue of refunds was properly administered by the states.<sup>162</sup> Significantly, however, the Commission made clear that NST-compliant rates were a quid pro quo for receiving dial-around compensation.<sup>163</sup> To the extent that states ultimately determine that BOC rates were not NST-compliant while the BOC was receiving dial-around compensation at any time after April 15, 1997, the date on which the BOC obligation to have NST-compliant rates took effect, we clarify that states may consider that fact when determining whether refunds are appropriate.

39. In the *Wisconsin Payphone Order*, the Commission provided states with more specific guidance on how to implement the NST. Specifically, the Commission stated that, in applying the NST: (1) states should use an appropriate forward-looking economic cost methodology, such as TELRIC or TSLRIC; (2) states may use overhead loading factors applicable to unbundled network elements or may establish ceilings for loading factors using the methodology from either the *Physical Collocation Tariff Order* or the *ONA Tariff Order*; (3) BOCs must reduce the monthly per-line charge determined under the NST by the amount of the applicable federally tariffed subscriber line charge (SLC); and (4) states should apply the NST to usage-sensitive as well as flat-rate elements of the services offered to PSPs.<sup>164</sup>

40. Pursuant to the guidance provided in these orders, the state commissions at issue held proceedings on whether payphone rates were NST-compliant and thus met the requirements of section 276 of the Act. Each state commission, after considering the specific facts before them, concluded that refunds for the differences in rates were not appropriate. The orders resulting from these proceedings are the subject of the petitions addressed in this order.<sup>165</sup> Based on the evidence submitted in the record, we conclude that these state commissions followed the Commission's orders and fulfilled the duties with which the Commission charged them in the *Payphone Orders* and the *Wisconsin Payphone Order*.<sup>166</sup> Indeed, each state commission analyzed whether refunds were appropriate, and determined, for different

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satisfactory certification of compliance with the prerequisites to receiving payphone compensation outlined in the *Payphone Orders*). Nonetheless, should a state determine that a particular BOC's rates were not NST-compliant, even though the BOC had certified that they were and that the BOC had been collecting payphone compensation, this would present a strong argument that refunds should be ordered.

<sup>162</sup> “[M]any of the FCC’s orders specify LECs bear the burden of demonstrating or justifying their tariff rates to state regulators and are responsible for ensuring their rates are NST compliant.” *TON Services, Inc. v. Qwest Corp.*, 493 F.3d 1225, 1241 (10th Cir. 2007) (*TON v. Qwest*) (internal citations omitted).

<sup>163</sup> See *Initial Payphone Order*, 11 FCC Rcd at 20605, para. 127; see also *First Bureau Waiver Order*, 12 FCC Rcd at 21011-12, para. 30. We note that, in order to receive dial around compensation, Qwest (then US West) certified, by letters to IXCs, to state commissions, and to the Commission, that, as of May 20, 1997, it had met all requirements necessary to receive payphone compensation in all of its states except for New Mexico. Qwest certified its compliance for New Mexico on November 12, 1997. See Letter from Lynn Starr, Vice President, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128 at Attachment 3 (filed May 17, 2007) (*Qwest Certification Letters*). Thus, any state commission proceeding considering Qwest’s compliance with section 276 may properly consider whether Qwest’s certifications of compliance alone satisfy its obligations to comply with the *Payphone Orders* and section 276, or whether an affirmative demonstration of NST-compliant rates is required to resolve issues of refund liability.

<sup>164</sup> *Wisconsin Payphone Order*, 17 FCC Rcd at 2065-71, paras. 45-65.

<sup>165</sup> See generally ICC Payphone Order; MPSC Refund Order; NYPSC Payphone Order; FLPSC Payphone Order; PUCO Payphone Order; PUCO Rehearing Order.

<sup>166</sup> “We will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276.” *Payphone Reconsideration Order*, 11 FCC Rcd at 21308, para. 163.

reasons, that they were not.<sup>167</sup> Nothing in the record here persuades us that the state commissions misapplied federal or state law or regulations, or established requirements that are inconsistent with the Commission's regulations. Accordingly, we conclude that preemption is not warranted under these circumstances.

41. In reaching this conclusion, we reject the PSPs' arguments that section 276 provides them with an absolute right to refunds in the cases before us.<sup>168</sup> Although section 276 establishes requirements for payphone rates, it does not dictate whether refunds are due under any given set of circumstances. Notably, no party to this proceeding is contending today that the payphone line rates are currently out of compliance with the NST or otherwise inconsistent with federal law; rather, the sole question is whether certain states improperly denied refunds. Nothing in section 276 requires that the Commission be the arbiter of specific refund disputes. Thus, in deciding whether to award refunds, the state commissions properly looked to applicable state and federal law and regulations, and decided, for reasons specific to each state's analysis, not to order refunds. In Illinois, the ICC based its rejection of refunds on the Illinois filed tariff doctrine and the IPTA's failure to file a formal complaint.<sup>169</sup> In Mississippi, the MPSC concluded that refunds would violate the filed tariff doctrine and the prohibition against retroactive ratemaking.<sup>170</sup> The courts in New York ruled that IPANY was not entitled to refunds in part because it failed to properly raise the *Wisconsin Payphone Order* before the state commission, and therefore failed to exhaust its administrative remedies.<sup>171</sup> In Florida, the FLPSC concluded that refunds were not appropriate, in part because the FPTA did not challenge the FLPSC's orders approving BellSouth's rates.<sup>172</sup> Finally, in Ohio, the PUCO concluded that refunds were not appropriate because of the state prohibition against retroactive ratemaking and the filed rate doctrine.<sup>173</sup> Although these decisions deny refunds in situations where a BOC's rates were not NST-compliant by April 15, 1997, they are not inconsistent with the Commission's orders and regulations implementing section 276 of the Act. Consequently, preemption is not warranted.<sup>174</sup>

<sup>167</sup> See generally ICC Payphone Order; MPSC Refund Order; NYSPSC Payphone Order; FLPSC Payphone Order; PUCO Payphone Order; PUCO Rehearing Order.

<sup>168</sup> See, e.g., IPTA Petition at 9-13; IPANY Petition at 15-17; SPCA Petition at 12-15.

<sup>169</sup> ICC Payphone Order at 42-43.

<sup>170</sup> MPSC Refund Order at 4.

<sup>171</sup> NY Appellate Court Order at 4.

<sup>172</sup> FLPSC Payphone Order at 13-14.

<sup>173</sup> PUCO Rehearing Order at 16-17; PUCO Comments at 14-16.

<sup>174</sup> We reject APCC's argument that the *Verizon New England* case requires the Commission to preempt the state actions here. See Letter from Albert H. Kramer and Robert F. Aldrich, Attorneys, APCC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128, pp. 2-3 (filed Oct. 1, 2007); *Verizon New England, Inc. v. Maine Public Utilities Commission*, 2007 WL 2509863 (1<sup>st</sup> Cir., No. 06-2151, Sept. 6, 2007) (*Verizon New England*). In *Verizon New England*, the court noted a clear conflict between the Commission interpretation of the requirements of federal law and the states' implementation of the Commission's direction. Specifically, the states required Verizon to make certain network elements available that the Commission said no longer need be made available, and the states applied a pricing methodology, TELRIC, that the Commission held was inapplicable in the relevant circumstances. *Verizon New England* at 6-7. The court found that before the district court in Maine could resolve the dispute between Verizon and the state public utility commission, the question of whether line sharing and dark fiber are required to be unbundled should be referred to the Commission. Here, the Commission provided guidance to the states regarding how payphone rates should be set, but was silent as to the circumstances that would justify refunds. No party suggests that the states misapplied the Commission's pricing

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42. Further, we reject APCC's argument that the Commission must order refunds for overcharges for payphone line rates because any failure to do so would result in an improper subdelegation of our authority to the states.<sup>175</sup> Consistent with the statute, the Commission created a flexible regulatory framework under which states administer intrastate payphone line rates, with recourse being tariff review by the Commission should the states be unable to do that themselves.<sup>176</sup> Under this framework, BOCs tariff their payphone line rates at the states; the states review those rates consistent with the NST methodology adopted by the Commission; and the states order reductions as appropriate. In turn, the Commission has retained oversight to ensure that payphone access lines are NST-compliant, and more broadly, that the requirements of section 276 are followed.<sup>177</sup> The Commission's implementation of section 276(a) reflects this dual regulatory structure, and both the states and the Commission have significant roles. We find that states, as part of their tariff review responsibilities, are well-positioned to resolve refund disputes arising from the tariffs they review. In fact, the states that have reviewed the tariffs and/or cost support filed by BOCs, or that have considered whether existing BOC tariffs were NST-compliant, are better positioned than we are to decide related refund disputes, because they are more familiar with the specific details of each case. In the instant proceedings, the state commissions were able to decide the refund disputes before them, and we find that they acted in a manner not inconsistent with the statute and the approach the Commission formulated in the *Payphone Reconsideration Order*.<sup>178</sup> Thus, no improper delegation resulted from the states deciding refund issues.

43. We also reject arguments from the PSPs that the state commissions should have known that payphone rates must be established using forward-looking costs.<sup>179</sup> Prior to the clarification provided by the *Wisconsin Payphone Order*, it is evident that some state commissions believed that payphone rates based on historical costs were consistent with the NST. We note that the Commission initially created the NST in the Price-Cap Proceeding to encourage the introduction of new services while preventing the avoidance of price-cap rules.<sup>180</sup> The Commission required carriers seeking to introduce a new service to meet a "net revenue test" which relied on a forecast increase in demand reflected in the

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guidance, nor is there any basis for reviewing, much less preempting, the states' refund decisions, beyond any further direction states may find in this order.

<sup>175</sup> See APCC Oct. 25<sup>th</sup> *Ex Parte* Letter at 8-14; Letter from Albert H. Kramer and Robert F. Aldrich, Attorneys, APCC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128 (filed Dec. 22, 2006) (APCC Dec. 22<sup>nd</sup> *Ex Parte* Letter); see also Letter from Robert F. Aldrich, Attorney, APCC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128 (filed Feb. 23, 2007) (APCC Feb. 23<sup>rd</sup> *Ex Parte* Letter).

<sup>176</sup> See *supra* paras. 5-7.

<sup>177</sup> See *Second Bureau Waiver Order*, 12 FCC Rcd at 21379, n.60 (noting that the Commission "retains jurisdiction under Section 276 to ensure that all requirements of that statutory provision[,] . . . including the intrastate tariffing of payphone services, have been met"); see also *Wisconsin Payphone Order*, 17 FCC Rcd at 2060, para. 31 (retaining jurisdiction over the intrastate component of payphone line rates).

<sup>178</sup> In other words, neither section 276 nor our orders and regulations implementing section 276 requires a state to order refunds to PSPs if it later determines that a filed tariff overcharged PSPs. Rather than adopt a single, federal policy in this area, the Commission has delegated to the states authority to consider whether refunds are appropriate. See *infra* section III.B.

<sup>179</sup> See, e.g., Letter from Robert F. Aldrich, Attorney, APCC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128 (filed Oct. 12, 2006) (APCC Oct. 12<sup>th</sup> *Ex Parte* Letter).

<sup>180</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Further Notice of Proposed Rulemaking, 3 FCC Rcd 3195, 3320-22, paras. 232-36 (1988) (*Further Notice*); see also *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6824-25, paras. 312-21 (1990) (*Second Report and Order*).



annual access filing, and would in essence establish a “price floor” for the new service.<sup>181</sup> Although the Commission discussed and applied the NST in subsequent orders, it was not until the *Wisconsin Payphone Order* that the Commission clearly explained that, with regard to payphone rates, states should apply a forward-looking methodology consistent with TELRIC or TSLRIC.<sup>182</sup>

44. Moreover, our conclusion with regard to the pending petitions seeking refunds is consistent with the *Wisconsin Reconsideration Order*, in which the Commission denied the Wisconsin Pay Telephone Association’s request for the Commission to evaluate all cost support materials submitted by Ameritech and Verizon and determine an appropriate payphone line rate for the state of Wisconsin.<sup>183</sup> The Commission found that the Wisconsin Commission had initially decided that it did not have jurisdiction over payphone rates, which resulted in the request for Commission review of the state filings.<sup>184</sup> Following the Commission’s *Wisconsin Payphone Order*, the state commission reconsidered its decision and reviewed the BOC payphone rates.<sup>185</sup> The Commission found that there was no reason to interfere with the state proceeding.<sup>186</sup> Likewise, there is no justification for the Commission to interfere with the state commission proceedings at issue here.

45. Finally, we clarify the refund obligation established in the *Second Bureau Waiver Order*.<sup>187</sup> That order granted a narrow and limited waiver to the BOCs to permit them a short additional period of time—from April 15, 1997 until May 19, 1997—to file tariffs for payphone lines that comply with the Commission’s orders implementing section 276 of the Act. With regard to refunds, the *Second Bureau Waiver Order* states, “[a] LEC who seeks to rely on the waiver granted in the instant Order must reimburse its customers or provide credit from April 15, 1997 in situations where the newly tariffed rates, when effective, are lower than the existing tariffed rates.”<sup>188</sup> Thus, in conjunction with granting a limited extension of time for the BOCs to file NST-compliant rates, the order held the PSPs harmless by requiring refunds in situations where the newly tariffed rates are lower than the existing tariffed rates.<sup>189</sup> In this way, the refund mechanism confirmed the date upon which the Commission had required that NST-compliant rates must be in effect. Accordingly, if a BOC filed a tariff after April 15, 1997, but on or before May 19, 1997, that lowered payphone rates, we find that once that tariff was effective, the

<sup>181</sup> *Further Notice*, 3 FCC Rcd at 3376-77, paras. 323-24. Specifically, the “net revenue test” would require a new service to “generate a net revenue increase in the following time periods: within the lesser of a 24-month period after an annual price cap tariff becomes effective that incorporates the new service or 36 months from the date the new service becomes effective.” *Id.* at 3377, para. 323. The Commission also stated that “the net revenue increase be measured against revenues generated from services in the same price cap basket, and should be calculated based on present value.” *Id.* at 3377, para. 324.

<sup>182</sup> See *Wisconsin Payphone Order*, 17 FCC Rcd at 2065-67, para. 43-50.

<sup>183</sup> *Wisconsin Public Service Commission, Order Directing Filings*, CCB/CPD No. 00-1, Order on Reconsideration, 21 FCC Rcd 7724 (2006) (*Wisconsin Reconsideration Order*).

<sup>184</sup> See *id.* at 7726-27, para. 6.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Thus we reject the petitioners’ argument that the *Second Bureau Waiver Order* requires open-ended refunds. See IPTA Petition at 11-12; SPCA Petition at 12-14; IPANY Petition at 23-29; FPTA Petition at 4-5; PAO Petition at 12-15.

<sup>188</sup> *Second Bureau Waiver Order*, 12 FCC Rcd at 21382, para. 25; see also *id.* at 21371, para. 2 (also discussing the terms upon which a LEC may rely on the waiver request).

<sup>189</sup> See *Second Bureau Waiver Order*, 12 FCC Rcd at 21379, para. 19.

*Second Bureau Waiver Order* requires that refunds be paid from April 15, 1997, to the effective date of the tariff. The *Second Bureau Waiver Order* did not specifically discuss the applicability of refunds where a carrier filed tariffs after May 19, 1997, or did not file new tariffs, but instead relied on existing rates, or only filed cost studies for existing rates.<sup>190</sup> We find that this would raise very different issues with regard to potential liability for refunds. Under the *Reconsideration Order*, we expressly required that tariffs setting forth compliant rates be filed with the states by April 15, 1997. This tariff filing obligation was mandatory, except where the states acted to exempt the carriers from the necessity of a new filing.<sup>191</sup> Nothing in the *Second Bureau Waiver Order* modified this Commission requirement; it merely extended the filing date to May 19, 1997, for those carriers availing themselves of the waiver. Accordingly, we reject Qwest's contention that BOCs that relied on existing tariffs for payphone services were not required to make further filings with the states on or before May 19, 1997.<sup>192</sup> Therefore, absent a state exemption, a BOC that filed tariffs after May 19, 1997, or that simply relied on existing rates or filed cost studies for existing rates, would have been in violation of our orders.<sup>193</sup> A state commission may well find refunds to be appropriate pursuant to section 276, Commission regulations, and relevant state laws if the rates in such cases were challenged under state regulatory procedures and found to be non-compliant.

46. Our conclusion that the *Second Bureau Waiver Order* did not impose an open-ended refund obligation is not "inconsistent with the clear purpose of the . . . [*Second Bureau Waiver Order*] to

<sup>190</sup> See, e.g., FPTA Petition at 8; *TON v. Qwest*, 493 F.3d at 1232 ("The Commission ordered the states to 'act on the tariffs filed pursuant to this Order within a reasonable period of time,' but was silent as to whether the LECs, PSPs, or the Commission itself should take action if the states failed to conduct the inquiry required by the Payphone Orders and was similarly silent on a suggested process for regulators or PSPs to follow if LECs failed to submit the required tariffs and supporting documentation.") (internal citation omitted).

<sup>191</sup> *Payphone Reconsideration Order*, 11 FCC Rcd at 21308, para. 163. This order created a limited exception to the filing requirement that could be triggered only by affirmative action by the states: "Where LECs have already filed intrastate tariffs for these services, states may, after considering the requirements of this order, the *Report and Order*, and Section 276, conclude: 1) that existing tariffs are consistent with the requirements of the *Report and Order* as revised herein; and 2) that in such case no further filings are required." *Id.*; see also *Second Bureau Waiver Order*, 12 FCC Rcd at 21373, para. 8 (reiterating that states could exempt LECs from the tariff filing requirement under these limited circumstances).

<sup>192</sup> Letter from Lynn Starr, Vice-President, Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128, at 2-3 (filed Sept. 26, 2007) (Qwest September 2007 *Ex Parte* Letter). Qwest argues that the Bureau had explicitly rejected a request from APCC that the Commission order all payphone tariffs to be refiled, without exception. Although the Bureau did reject "the various alternatives to granting a waiver that were suggested by APCC," see *Second Bureau Waiver Order*, 12 FCC Rcd at 21380, para. 21, the Bureau did not—and indeed could not—eliminate the tariff filings required by the Commission's orders. Instead, it appears that APCC sought, and the Bureau rejected, tariff filing obligations more stringent than those previously mandated by the Commission. APCC's letter failed to mention that the Commission's order allowed states, at their discretion, to determine that no further tariff filings were necessary and thus to exempt particular LECs from filing new tariffs, and the Bureau declined to eliminate this option. As already noted, in paragraph 8 of the *Second Bureau Waiver Order*, the Bureau explained that "no further filings are required" only where the states, after review, concluded that existing tariffs satisfied the Commission's requirements.

<sup>193</sup> We also reject Qwest's argument that subsequent orders addressing the Wisconsin payphone filings somehow modified the Commission's previous tariff filing requirements. Qwest September 2007 *Ex Parte* letter at 3. See *Wisconsin Bureau Order*, 15 FCC Rcd 9978. In that case, the Bureau ordered Wisconsin LECs to file payphone tariffs and cost support for review by this Commission because the Wisconsin Commission had concluded that it lacked jurisdiction to determine whether the rates at issue satisfied the NST. Nothing in that order, or the subsequent Commission order largely affirming it, speaks to the separate and distinct question of when tariffs or cost support had to be filed with the states. See *Wisconsin Payphone Order*, 17 FCC Rcd 2051.

'bring the . . . [BOCs] into compliance' and to 'mitigate any delay' in establishing NST-compliant rates."<sup>194</sup> As we explain below, the *Second Bureau Waiver Order* imposed a limited refund obligation on the BOCs, but, importantly, did not in any way divest the state commissions of their authority to review payphone line tariffs for compliance with section 276 and Commission orders and to order refunds where appropriate. The Bureau's order notes repeatedly that the payphone line tariffs are subject to review by state commissions.<sup>195</sup> The refund provision in that order leaves both the BOCs and the PSPs subject to precisely the same rights and obligations, including the obligation for BOC payphone services tariffs to be NST-compliant, that applied had the April 15, 1997 deadline for NST-compliance not been extended.<sup>196</sup> If the BOCs failed to file NST-compliant rates, the PSPs could (and in many cases did) invoke state procedures to remedy the non-compliance, and in many such cases the PSPs received refunds. Given the availability of these remedies, denying refunds in those cases where the PSPs did not exercise their rights on a timely basis, failed to exhaust their administrative remedies, or otherwise failed to show they were legally entitled to refunds is in no way inconsistent with the *Second Bureau Waiver Order*.

#### B. Refunds in Other Proceedings Should Be Decided on a State-by-State Basis

47. We confirm that, consistent with section 276 and the Commission's *Payphone Orders*, states may, but are not required to, order refunds for any period after April 15, 1997 that a BOC does not have NST-compliant rates in effect. Further, we find that the *Second Bureau Waiver Order* was intended to provide only a limited extension of time within which the BOCs could file NST-compliant rates. Nothing in the *Second Bureau Waiver Order* affected a state commission's authority and obligation to apply relevant law and regulations to determine whether a BOC's rates were NST-compliant, including whether refunds are appropriate for periods where it finds a BOC's rates were not NST-compliant.<sup>197</sup> For this reason, we reject BOC claims that the *Second Bureau Waiver Order* prohibits refunds for periods after May 19, 1997.<sup>198</sup> Section 276 requires that any BOC providing payphone service "(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange operations or its exchange access operations, and (2) shall not prefer or discriminate in favor of its payphone service."<sup>199</sup> To meet these statutory requirements, the Commission's *Payphone Orders* required that BOC payphone rates be NST-compliant. Consistent with the statute and these Commission decisions, states can find that refunds are necessary for any period of time after April 15, 1997 during which BOCs' rates were not NST compliant. The states that are involved in the pending petitions are at various points in the procedural processes. Although they concluded, based upon the facts of the particular proceedings and

<sup>194</sup> See, e.g., Letter from Robert F. Aldrich, Attorney, APCC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128, at 17 (filed Sept. 12, 2006) (APCC Sept. 12<sup>th</sup> *Ex Parte* Letter).

<sup>195</sup> See, e.g., *Second Bureau Waiver Order*, 12 FCC Rcd at 21374 n.20 ("The Commission provided guidelines pursuant to which the states are to review the state tariffs . . ."); *id.* at 21379 n.60 ("The states must act on the tariffs filed pursuant to this Order within a reasonable period of time.").

<sup>196</sup> See *Payphone Reconsideration Order*, 11 FCC Rcd at 21308, para. 163.

<sup>197</sup> We believe this analysis provides the guidance the Oregon Commission requested in its letter to us. See *supra* para. 37.

<sup>198</sup> See, e.g., BOC IPTA Reply Comments at 7 ("In fact, the language of the [RBOC Coalition] letter and the surrounding circumstances make absolutely clear that the commitment referred to in the [*Second Bureau Waiver Order*] is of limited scope and cannot be read to mean that the LECs agreed to provide refunds whenever state commissions determine that payphone line rates should be lowered.").

<sup>199</sup> 47 U.S.C. § 276(a).

the relevant laws, that refunds were not required, states in these and other proceedings may well find that refunds are appropriate.

48. Indeed, the Commission is aware that several other state commissions have ordered refunds, and we do not question those conclusions in this order.<sup>200</sup> For example, in the *Indiana Payphone Order*, the Indiana Utility Regulatory Commission in 2000 found that the BOC payphone tariffs should only be approved on an interim basis, retroactive to April 15, 1997, and subject to refund pending further review. Accordingly, once the review was complete, the Indiana Commission required the BOCs to lower their payphone rates and ordered refunds retroactive to April 15, 1997.<sup>201</sup> Similarly, in the *South Carolina Payphone Order*, in 1999, the South Carolina Public Service Commission initiated an investigation into BellSouth's rates and confirmed that any rate reductions resulting from the proceeding would be applied retroactively. Accordingly, once the proceeding was concluded and the rates lowered, BellSouth was required to pay PSPs refunds back to April 15, 1997.<sup>202</sup>

49. Refund determinations should be made by the various state commissions based on the specific facts of the case before them. We recognize that each individual proceeding involves its own unique set of facts, procedural postures, and relevant state and federal statutes. With regard to similar proceedings and consistent with our previous direction to the states regarding their administration of intrastate payphone rates pursuant to section 276, we therefore leave to the states the responsibility for deciding whether refunds are appropriate.<sup>203</sup> Because we conclude that the refund issue may properly be adjudicated by the states, we do not reach other issues raised by the parties, and find that those issues also may be considered by the states in their proceedings.<sup>204</sup>

<sup>200</sup> See, e.g., Indiana Utility Reg. Comm'n, *Indiana Payphone Association*, Cause No. 40830, Order on Less Than All of the Issues (rel. Sept. 6, 2000) (*Indiana Payphone Order*); South Carolina Pub. Serv. Comm'n, *BellSouth Telecommunications, Inc.*, Docket No. 97-124-C, Order Setting Rates for Payphone Lines and Associated Features (rel. Apr. 19, 1999) (*South Carolina Payphone Order*); Letter from Robert F. Aldrich, Attorney, APCC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128 at Tab 2, page 2 (filed Dec. 23, 2005).

<sup>201</sup> *Indiana Payphone Order* at 5. This decision of the Indiana Commission was recently upheld in part. See *Indiana Bell Telephone Company, Inc., et al. v. Indiana Utility Regulatory Commission, Office of Utility Consumer Counselor, et al.*, 855 N.E.2d 357 (Ind. Ct. App. 2006).

<sup>202</sup> *South Carolina Payphone Order* at 12.

<sup>203</sup> Accordingly, we advise the Oregon Commission and the Commonwealth of Massachusetts Supreme Judicial Court to apply this guidance in considering the refund issues in their respective pending cases.

<sup>204</sup> For example, the BOCs raised defenses such as res judicata, collateral estoppel, filed rate doctrine, and the ban on retroactive ratemaking, which the PSPs argued were not applicable. See, e.g., BOC IPANY Comments at 10-16 (raising defenses of res judicata and collateral estoppel); Implementation of the Local Competition Provision in the Telecommunications Act of 1996; No Federal Rule Preempts State Procedural Rules Governing the Availability of Refunds for State Payphone Line Rates, CC Docket No. 96-128 (filed Mar. 23, 2009); Implementation of the Local Competition Provision in the Telecommunications Act of 1996; Illinois Public Telecommunications Association Reply to AT&T and Verizon Preemption Comments of March 23, 2009, CC Docket No. 96-128 (filed Dec. 31, 2009); Implementation of the Local Competition Provision in the Telecommunications Act of 1996; Reply of the Independent Payphone Association of New York, Inc. to AT&T and Verizon Preemption Comments of March 23, 2009 (filed Jan. 21, 2010); BOC IPTA Comments at 15-17 (raising defense of filed rate doctrine); BOC SPCA Comments at 8 (raising defense of retroactive ratemaking); BOC FPTA Comments at 12-13 (arguing that ratemaking is a legislative function and any change would have to be prospective); IPTA Petition at 8-11 (raising the issue of the unlawful receipt of dial-around compensation); see also Letter from Brooks Harlow, Attorney, Northwest Public Communications Council (NPCC), to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128 (filed Sept. 19, 2006) (arguing against the application of laches and res judicata to NPCC's claim

(continued . . .)

### C. Resolution of the MPTA Petition

50. As an initial matter, similar to our decision regarding the five petitions above, we decline to preempt the Michigan Commission's orders in response to the MPTA Petition.<sup>205</sup> Although we conclude that the Michigan Commission has erred in its finding that a payphone usage rate is consistent with the NST, we find that the Michigan Commission erred by failing to explain how its usage rate is consistent with the NST and the Commission's *Payphone Orders*. Therefore, we remand to the Michigan Commission and direct it either to provide an adequate explanation of how its usage rate is consistent with the NST and the Commission's *Payphone Orders* or to require the carrier to justify a payphone usage rate consistent with the NST and the Commission's *Payphone Orders*.

51. The Commission's *Payphone Orders* established the requirement that payphone line rates be established in compliance with the NST to ensure the just and reasonable pricing of payphone services.<sup>206</sup> In the *Wisconsin Payphone Order*, the Commission confirmed that LEC tariffs should "comply with section 276 as implemented by the Commission and, as such, [the rates] should be cost-based, nondiscriminatory, and consistent with both section 276 and our *Computer III* tariffing guidelines. Thus, rates assessed by LECs for payphone services tariffed at the state level should satisfy the new services test."<sup>207</sup> The NST is a "cost-based test that sets the direct cost of providing the new service as a price floor and then adds a reasonable amount of overhead to derive the overall price of the new service."<sup>208</sup> In the *Wisconsin Payphone Order* the Commission clarified how states should implement the *Payphone Orders*, the Act, and the Commission's rules, confirming that "our pricing requirements do not mandate uniform overhead loading, provided that the loading methodology as well as any deviation from it is justified."<sup>209</sup> As such, "under the new services test and our precedent, BOCs bear the burden of affirmatively justifying their overhead allocations."<sup>210</sup>

52. The *Wisconsin Payphone Orders* hold that "cost study inputs and assumptions used to justify payphone line rates should be consistent with the cost inputs used in computing rates for comparable services offered to competitors."<sup>211</sup> We note, however, that the *Wisconsin Payphone Orders* did not provide a specific methodology by which LECs could determine "a just and reasonable portion of overhead costs to be attributed to services offered to competitors," but allowed for a "flexible approach to calculating BOCs' overhead allocation for intrastate payphone line rates" as long as the allocation is properly justified.<sup>212</sup>

(Continued from previous page) \_\_\_\_\_  
against Qwest); APCC Oct. 25<sup>th</sup> *Ex Parte* Letter at 15-20 (arguing that the filed rate doctrine and prohibition against retroactive ratemaking does not preclude refunds).

<sup>205</sup> See *supra* paras. 38-41.

<sup>206</sup> See *Initial Payphone Order*, 11 FCC Rcd at 20614-15, paras. 146-47; see also *Payphone Reconsideration Order*, 11 FCC Rcd at 21308, para. 163.

<sup>207</sup> *Wisconsin Payphone Order*, 17 FCC Rcd at 2055-56, para. 14 (internal citations omitted).

<sup>208</sup> *Id.* at 2054, para. 12. It has been established that payphone service is a new service subject to the NST. See *id.* at 2065-66, paras. 46-47.

<sup>209</sup> *Id.* at 2067, para. 52.

<sup>210</sup> *Id.* at 2069, para. 56.

<sup>211</sup> *Id.* at 2058, para. 24 (citing *Wisconsin Bureau Order*, 15 FCC Rcd at 9981-82, para. 10).

<sup>212</sup> See *Wisconsin Bureau Order*, 15 FCC Rcd at 9982, para. 11; *Wisconsin Payphone Order*, 17 FCC Rcd at 2069, para. 58.

53. We find that on remand the Michigan Commission chose to use the comparable service standard for applying the NST but erred in its application when it used two separate, non-uniform overhead allocations for AT&T Michigan's payphone rates' without justification and in choosing a service that was not comparable.<sup>213</sup> Specifically, the Michigan Commission adopted a cost-based overhead allocation rate for the monthly fixed recurring rate for AT&T Michigan's payphone service and a non-cost based overhead allocation for the payphone local usage rate.<sup>214</sup> AT&T Michigan has the burden to explain any departure from non-uniform overhead allocations, and AT&T Michigan has not justified the use of non-cost based overhead allocations for usage rates and cost-based overhead allocations for fixed monthly charges as was done by the Michigan Commission. This non-cost based overhead allocation for the usage rate was not requested by AT&T Michigan and thus was also not justified by AT&T Michigan.<sup>215</sup> The Michigan Commission erred in using a non-cost based overhead allocation for the payphone local usage rate without justification as required by the *Wisconsin Payphone Order*.<sup>216</sup>

54. In addition, the Michigan Commission found "that toll service is an appropriate competitive comparable service for local usage" without providing any justification as to why it accepted toll service, a service not subject to cost studies, and a service with which MPTA claims payphone providers do not compete, as a comparable service for purposes of establishing an overhead allocation for AT&T Michigan's payphone local usage rate.<sup>217</sup> Accordingly, we find that this lack of explanation renders the Michigan Commission's findings in violation of the NST.<sup>218</sup>

55. As such, we find that the payphone local usage rate in Michigan at issue in the MPTA's Petition is not compliant with the NST. We remand this proceeding to the Michigan Commission and direct it either to justify how using two different overhead allocations is consistent with the NST or to determine a proper payphone local usage rate in the state of Michigan consistent with this order.<sup>219</sup> We agree with the MPTA and do not find that this Commission needs to initiate a cost study for the state of

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<sup>213</sup> Pursuant to the MPTA Petition, only the appropriateness of the overhead allocation for AT&T Michigan's payphone local usage rate is before this Commission. See MPTA Petition at 2-3.

<sup>214</sup> See MPTA Petition at 2-3.

<sup>215</sup> The *Wisconsin Payphone Order* clarifies that it is the BOC that bears the "burden of affirmatively justifying their overhead allocations." *Id.* at 2069, para. 56. MPTA states that AT&T Michigan did not request, nor advocate for, a separate non-cost based overhead allocation for local usage service. See MPTA Petition at 3. We agree with the MPTA that in this proceeding the Michigan Commission proffered the use of toll service as a comparable service, resulting in the application of non-uniform overhead allocation factors. "However, the [Michigan Commission] ultimately created its own application of the new services test that approved a non-uniform, bifurcated rate structure applying a much higher, non-cost-based overhead allocation factor to be applied only to AT&T Michigan's usage services." MPTA Reply Comments at 9. Use of this non-cost based overhead allocation factor was not justified by AT&T Michigan, as we require, or by the Michigan Commission.

<sup>216</sup> See *supra* para. 52.

<sup>217</sup> Michigan Commission 2004 Order at 18.

<sup>218</sup> See *id.* "[T]he 'comparable competitive service' test requires comparison of overhead loadings for the local exchange service under review with a BOC service with which the competitive service provider competes." See APCC MPTA Comments at 5-6 (citing *Wisconsin Payphone Order*, 17 FCC Rcd at 2067-68, para. 53).

<sup>219</sup> We note that the Michigan Commission was correct in establishing a cost-based overhead allocation rate for the monthly fixed recurring rate for payphone services in Michigan. A similar, singular overhead allocation could be used to establish the per minute rate for local usage services in Michigan. See MPTA Petition at 2-3.

Michigan.<sup>220</sup> We also agree with parties to this proceeding that it is not appropriate for the Commission to address the question of any potential refunds in the state of Michigan, leaving that decision to the Michigan Commission upon its completion of this remand proceeding.<sup>221</sup>

#### IV. ORDERING CLAUSES

56. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 201, 202, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 201, 202, and 276, and sections 1.1 and 1.2 of the Commission's rules, 47 C.F.R. §§ 1.1 and 1.2, the Petition filed by the Illinois Public Telecommunications Association IS DENIED as set forth herein.

57. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 201, 202, and 276 of the Communications Act of 1934, as amended 47 U.S.C. §§ 4(i), 201, 202, and 276, and sections 1.1 and 1.2 of the Commission's rules, 47 C.F.R. §§ 1.1 and 1.2, the Petition filed by the Southern Public Communication Association IS DENIED as set forth herein.

58. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 201, 202, and 276 of the Communications Act of 1934, as amended 47 U.S.C. §§ 4(i), 201, 202, and 276, and sections 1.1 and 1.2 of the Commission's rules, 47 C.F.R. §§ 1.1 and 1.2, the Petition filed by the Independent Payphone Association of New York, Inc. IS DENIED as set forth herein.

59. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 201, 202, and 276 of the Communications Act of 1934, as amended 47 U.S.C. §§ 4(i), 201, 202, and 276, and sections 1.1 and 1.2 of the Commission's rules, 47 C.F.R. §§ 1.1 and 1.2, the Petition filed by the Florida Public Telecommunications Association, Inc. IS DENIED as set forth herein.

60. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 201, 202, and 276 of the Communications Act of 1934, as amended 47 U.S.C. §§ 4(i), 201, 202, and 276, and sections 1.1 and 1.2 of the Commission's rules, 47 C.F.R. §§ 1.1 and 1.2, the Petition filed by the Payphone Association of Ohio IS DENIED as set forth herein.

61. IT IS FURTHER ORDERED that, pursuant to section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, the SPCA and the IPANY motions to consolidate ARE GRANTED.

62. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 201, 202, and 276 of the Communications Act of 1934, as amended 47 U.S.C. §§ 4(i), 201, 202, and 276, and sections 1.1 and 1.2 of the Commission's rules, 47 C.F.R. §§ 1.1 and 1.2, the Petition filed by the Michigan Pay Telephone Association IS GRANTED in part, DENIED in part and REMANDED to the Michigan Commission as set forth herein.

#### FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

<sup>220</sup> “[T]he MPTA is not asking the FCC to analyze the underlying cost studies to determine what the direct cost of the local usage service should be, or to determine what the overhead allocation may be under any other cost methodology or alternative theories. The MPTA only requests that the Commission determine whether the [Michigan Commission] may adopt, without justification, a non-uniform overhead allocation for strictly the local usage service made available to IPPs in Michigan.” MPTA Reply Comments at 3.

<sup>221</sup> See BOC MPTA Comments at 8.

## APPENDIX

## List of Comments on Petitions

## Comments regarding the IPTA Petition for a Declaratory Ruling.

American Public Communications Council  
Atlantic Payphone Association, Inc.  
BellSouth Telecommunications, Inc., SBC Communications Inc., and the Verizon Telephone Companies (Bell Operating Companies – BOC) (BOC IPTA)  
Florida Public Telecommunications Association, Inc.  
Illinois Commerce Commission  
Independent Payphone Association of New York, Inc.  
New England Public Communications Council, Inc.  
Payphone Association of Ohio.

## Reply comments regarding the IPTA Petition for a Declaratory Ruling.

American Public Communications Council  
Atlantic Payphone Association, Inc.  
BellSouth Telecommunications, Inc., SBC Communications Inc., and the Verizon Telephone Companies (BOC IPTA)  
Illinois Public Telecommunications Association  
New England Public Communications Council, Inc.  
Public Utilities Commission of Ohio

## Comments regarding the SPCA Petition for a Declaratory Ruling.

American Public Communications Council  
BellSouth Telecommunications, Inc., SBC Communications Inc., and the Verizon Companies (BOC SPCA)  
Mississippi Public Service Commission  
Payphone Association of Ohio  
Public Utilities Commission of Ohio

## Reply comments regarding the SPCA Petition for a Declaratory Ruling.

Evercom Systems, Inc.  
Payphone Association of Ohio  
Southern Public Communication Association

## Comments regarding the Petition of IPANY for an Order of Pre-Emption and Declaratory Ruling.

American Public Communications Council  
BellSouth Telecommunications, Inc., SBC Communications Inc., and the Verizon Telephone Companies (BOC IPANY)  
Illinois Public Telecommunications Association  
New York State Department of Public Service  
Northwest Public Communications Council and the Minnesota Independent Payphone Association



Reply comments regarding the Petition of IPANY for an Order of Pre-Emption and Declaratory Ruling.

American Public Communications Council  
BellSouth Telecommunications, Inc., SBC Communications Inc., and the Verizon Telephone Companies (BOC IPANY)  
Illinois Public Telecommunications Association  
Independent Payphone Association of New York, Inc.  
Northwest Public Communications Council and the Minnesota Independent Payphone Association

Comments regarding the Petition of the FPTA for a Declaratory Ruling and for an Order of Preemption.

AT&T, Inc., BellSouth Telecommunications, Inc. and the Verizon Telephone Companies (BOC FPTA)  
American Public Communications Council  
Florida Public Service Commission  
Illinois Public Telecommunications Association  
Independent Payphone Association of New York, Inc.  
Northwest Public Communications Council and Minnesota Independent Payphone Association

Reply comments regarding the Petition of the FPTA for a Declaratory Ruling and for an Order of Preemption.

AT&T, Inc., BellSouth Telecommunications, Inc. and the Verizon Telephone Companies  
Florida Public Telecommunications Association, Inc.  
Independent Payphone Association of New York, Inc.  
Illinois Public Telecommunications Association  
Northwest Public Communications Council and Minnesota Independent Payphone Association

Comments regarding the PAO Petition for Preemption and Declaratory Ruling.

AT&T, Inc., and the Verizon Telephone Companies  
Public Utilities Commission of Ohio (PUCO)

Reply comments regarding the PAO Petition for Preemption and Declaratory Ruling.

Payphone Association of Ohio

Comments regarding the Michigan Pay Telephone Association Petition for Declaratory Ruling

American Public Communications Council (APCC MPTA)  
AT&T, Inc.  
AT&T, Inc., BellSouth Telecommunications, Inc. and the Verizon Telephone Companies (BOC MPTA)

Reply comments regarding the Michigan Pay Telephone Association Petition for Declaratory Ruling

American Public Communications Council  
AT&T, Inc.  
Michigan Pay Telephone Association

DISSENTING STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN

**Re:** *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128.*

Pay telephones (now commonly referred to as “payphones”) continue to be a vital link for consumers during public safety events, such as Super Storm Sandy, and when mobile service is otherwise unavailable. Not all low-income consumers have had the opportunity to obtain phone service through the Commission’s Lifeline program, so for them the availability of payphones remains a necessity in order to stay connected to employers, healthcare providers, friends, and family. Congress set forth a federal mandate for the Commission to ensure that the payphone market is competitive and that these telephones are widely available, and because I believe that the majority’s decision is contrary to the pro-competitive, federal policy encapsulated in Section 276 of the Communications Act and the Commission’s prior Orders implementing that policy, I respectfully dissent.

Historically, payphone services were provided by the local telephone company and regulated by the states. With the passage of the Telecommunications Act of 1996, Congress opened up the local telephone markets for competition and included the payphone market in its provisions. Specifically, in Section 276, Congress provided that the regional Bell operating companies (the “RBOCs”) would no longer subsidize their payphone service with their other operations; that they would not discriminate against third party operators offering payphone service; and that the Commission would establish the necessary regulations to implement regulations “[i]n order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.” 47 U.S.C. § 276 (a) & (b)(1). Furthermore, in order to advance competition and ensure widespread deployment of payphones, Congress directed the Commission to “take all actions necessary (including any reconsideration) to prescribe regulations that—establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every call . . . discontinue all intrastate and interstate payphone subsidies . . . [and] prescribe a set of nonstructural safeguards for [the RBOCs] . . . [that] at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding . . .” *Id.* § 276(b)(1)(A)-(C). Finally, Congress prioritized this new federal policy for payphones by stating that “[t]o the extent that any State requirements are inconsistent with the Commission’s regulations, the Commission’s regulations on such matters shall preempt such State requirements.” *Id.* § 276(c).

In response to this new federal mandate, the Commission, through a series of Orders, implemented new payphone service policies to allow independent service providers to purchase payphone access lines from incumbents at reasonable prices so that competition would be promoted in the marketplace. In addition, the Commission instituted per call compensation requirements so that all payphone providers would be compensated when consumers use a payphone to reach third party providers. The FCC’s *Initial Payphone Order* directed that all payphone tariffs be filed with the FCC and be treated “as a new service under the Commission’s price cap rules” which is “necessary to ensure that central office coin services are priced reasonably” and “do not include subsidies.” *Initial Payphone Order*, 11 FCC Rcd 20541, 20614 ¶ 146. The Commission further stated that “Section 276 specifically refers to the application of *Computer III* and *ONA* requirements, at a minimum for BOC provision of payphone services. Accordingly, we conclude that *Computer III* tariff procedures and pricing are more appropriate for basic payphone services provided by LECs to other payphone providers.” *Id.* Similar to the statute, the Order provided that state requirements inconsistent with these regulations are superseded by the Commission’s regulations. *Id.* at 20615 ¶ 147.

In the *Payphone Reconsideration Order*, the Commission directed carriers to file their intrastate payphone tariffs with state utility commissions, and it further explained how carriers should comply with the new services test. *Payphone Reconsideration Order*, 11 FCC Rcd 21233, 21308 ¶ 163. They must be “(1) cost-based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory.” *Id.* The *Payphone Reconsideration Order* further stated that “[s]tates must apply these requirements and the *Computer III* guidelines for tariffing such intrastate tariffs,” citing FCC rule 61.49(g)(2), which requires forward-looking cost supportive data, and the Commission’s *Open Network Architecture Order* that also describes forward-looking cost requirements. *See id.* at 21308 ¶ 163 & n. 492.<sup>1</sup> The Commission explicitly retained its jurisdiction to review intrastate tariffs where a state could not do so. *Id.* at 21308 ¶ 163. In a separate section of the *Payphone Reconsideration Order*, the Commission provided for dial-around compensation once a carrier was able to certify it had completed the requirements for implementing the new federal Section 276 regulatory scheme. *Id.* at 21293 ¶ 131. As part of its certification obligation, a carrier must certify its tariff rates were compliant with the new services test, *i.e.*, that they “reflect[ed] the removal of charges that recover the costs of payphones and any intrastate subsidies.” *Id.* The *Order on Reconsideration* delegated authority to the Common Carrier Bureau to determine whether a LEC has complied with all the requirements for receiving dial-around compensation.

As the due date for compliance with the new requirements neared, the Common Carrier Bureau issued two consecutive waiver orders that extended the filing deadlines for the new tariffs. In both, the Bureau stressed the linkage between the dial-around compensation with incumbent carriers’ compliance with the tariff requirements, and it reiterated the requirements for the tariffs. For example, in the *First Bureau Waiver Order*, it said “state tariffs for payphone services must be cost based, consistent with the requirements of Sections 276, nondiscriminatory, and consistent with the *Computer III* guidelines.” *First Bureau Waiver Order*, 12 FCC Rcd. 20997, 21012, ¶ 31. It further stated that “the guidelines for state review of intrastate tariffs are essentially the same as those included in the *[Initial] Payphone Order* for federal tariffs.” *Id.* 21012, ¶ 32. Also, the Bureau emphasized that “[t]he intrastate tariffs for payphone services, including unbundled features, and the state tariffs removing payphone equipment costs and subsidies must be in effect for a LEC to receive compensation in a particular state.” *Id.* 21012, ¶ 33. In the *Second Bureau Waiver Order*, the Bureau extended the state tariff deadline beyond the dial-around compensation date, so that tariffs would be due on May 19, 1997, but dial-around compensation would begin on April 15. *Second Bureau Waiver Order*, 12 FCC Rcd 21370, 21374 ¶10. Again, the Bureau emphasized the requirement that the tariffs comply with the Section 276 and the Commission’s requirements, although it had “delegated some of the tariffing requirements to the state jurisdiction.” *Id.* 21374, ¶ 11. Relying upon the RBOC Coalition’s commitment to reimburse or credit independent payphone providers where their rates would be lowered between April 15 and May 19 in order to come into compliance, the Bureau held that carriers “must reimburse it customers or provide them credit from April 15, 1997.” *Id.* 21379-80, ¶ 20.

Specifically noting the concern of MCI that the subsidies from payphone services will not have been removed before the incumbents receive dial-around compensation beginning April 15, 1997, the Bureau noted that the waiver does not waive the requirement that subsidies be removed, and again stated that carriers will be required to reimburse their customers from the date when dial-around compensation

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<sup>1</sup> If carriers’ tariffs already met these requirements, then they had the option to rely upon them.

begins. *Id.* 21379-80, ¶ 20. Rather than showing proof of the subsidy removal, the Commission permitted the carriers to certify to IXCs that they had done so. The Commission ordered the states to “act on the tariffs filed pursuant to this Order within a reasonable period of time,” *id.* at 21379 ¶ 19 n. 60, but was silent as to whether the LECs, payphone service providers, or the Commission itself should take action if the states failed to conduct the inquiry required by the *Payphone Orders* and was similarly silent on a suggested process for regulators or payphone service providers to follow if carriers failed to submit the required tariffs and supporting documentation. Additional Orders dealing with intrastate tariffs in Wisconsin were released—the first one by the Bureau in 2000, and then the Commission in 2002. *Wisconsin Pub. Serv. Comm’n; Order Directing Filings*, CCB/CPD No. 00-01, Order, 15 FCC Rcd 9978 (CCB rel. Mar. 2, 2000); *Wisconsin Pub. Serv. Comm’n; Order Directing Filings*, Bureau/CPD No. 00-01, Memorandum Opinion and Order, 17 FCC Rcd 2051 (2002) (collectively, the “*Wisconsin Payphone Orders*”). Both provided more specific information for states in their review of the intrastate payphone tariffs. After that additional guidance was provided, payphone rates were decreased in the five jurisdictions at issue in the case before us, and the question presented is whether Section 276 and/or the Commission’s policies require refunds between April 15, 1997 when the incumbents began receiving dial-around compensation and the lowering of their rates after May 19, 1997.

The majority finds that based on the evidence before us, the Commission’s Orders were followed and that refunds are not required, although it permits that the states may find that refunds are warranted based on their own reviews. In doing so, the majority believes that the states may rely on their own analysis and if under state law, refunds are not due then they are not required to issue them under federal law. The majority holds that there is a dual regulatory scheme under the statute, with both the Commission and states having roles, and declares that instead of one federal policy, the Commission delegated to the states the authority to consider whether refunds are appropriate. The majority also rejects the argument that the Commission’s decisions clearly established the requirement that the intrastate tariffs be based on forward-looking cost methodologies. I disagree with these conclusions as discussed below.

Congress established a new federal policy for the payphone marketplace in the 1996 Act and directed the Commission to ensure that it was pro-competitive, including that the implicit subsidies in the RBOC phone rates would be extracted. With respect to intrastate payphone rates, the Commission delegated its tariffing responsibilities to the states, but Congress clearly contemplated one federal policy—not a dual regulatory scheme—to promote competition and the widespread deployment of payphones. The Commission has a responsibility to ensure that the state proceedings comply with the Section 276 and the federal policy for a pro-competitive market and widespread deployment of payphones. Overseeing its delegation is critical for ensuring compliance with Congress’ directive. At no time, until the instant Declaratory Ruling and Order, has the Commission determined that it should not review the outcome of state proceedings when compliance issues have been raised. Indeed, the Commission’s decision here to not review the state actions from 1997 to 2003 is troublesome in that regard, but also on several other scores. First, the Commission’s Orders are clear that not only did the incumbents have to file their tariffs, but they had to comply with the statute, and the Commission’s requirements that they be cost-based, nondiscriminatory, and consistent with *Computer III*. While the majority is satisfied with that compliance, I am not—(more on that point in a moment.) Second, many states followed the new federal policy and implemented the statutory and Commission requirements faithfully, ensuring that in those states the pro-competitive requirements Congress directed and that the Commission required, were met. By abdicating its responsibility to oversee its delegation and to ensure the state proceedings are consistent with the statute and the Commission’s requirements, the Commission

cannot ensure that there is one federal policy that is fulfilling Congress' pro-competitive goals in payphone marketplace.<sup>2</sup>

I believe the Commission's *Initial Payphone Order* and *Order on Reconsideration* were clear that in filing cost-based tariffs that such tariffs had to meet the new services test and be based on forward-looking cost methodologies. First, the *Computer III* and *ONA* proceeding requirements are cited in both Orders. Second, in the *Order on Reconsideration*, the Commission cites both FCC rule 61.49(g)(2) and the *Open Network Architecture Order*. Third, the *Second Bureau Waiver Order* states that the filing guidelines for state tariffs "are essentially the same" as federal tariffs. All of these proceedings and rule cited relied upon forward-looking cost supportive data. Where RBOCs did not file cost-based tariffs using forward-looking cost methodologies by May 19, 1997, they were not in compliance with the Commission's Orders. No RBOC should be excused from this requirement at this late date by this Commission or any state regulatory commission. Not only is that outcome inequitable for independent payphone operators and consumers, it is a disservice to those states that followed the Commission's requirements. The fact that carriers adjusted their rates after the Commission's 2002 Wisconsin Payphone Order is evidence that these carriers' tariffs were not cost-based and did not rely upon forward-looking cost methodologies by May 19, 1997. While the Commission provided more specific guidance about the types of forward-looking cost methodologies that would be appropriate and how they should be used in the Wisconsin Payphone Orders, incumbents' earlier obligations were not altered so that they no longer had to comply with the Commission's previous Payphone Orders.

Those not in compliance with the new services test by May 19, 1997 benefitted from receiving dial-around compensation, contrary to the Commission's stated policy that such compensation is only available once carriers complied with the market-opening provisions of Section 276. In both Waiver Orders, the Bureau determined that it was not waiving the requirement that the tariffs meet the new services test, only that it was allowing additional time for the tariff filings. In fact, it stated in those Orders that the incumbents' tariffs must still meet the other requirements to remove subsidies, be nondiscriminatory, and consistent with *Computer III*. Moreover, in the *Second Bureau Waiver Order*, the Bureau gave assurances to competitors that refunds would be forthcoming where the tariffed rate is lowered. Today's decision finds that the *Second Bureau Waiver Order* was time-limited to when the tariffs were filed on May 19, and by doing so, removes the condition that the tariffs actually comply with the statute and the Commission's requirements as of May 19. I cannot agree that we should interpret the *Second Bureau Waiver Order* in this manner. The obligation to refund did not cease on May 19, which is why other states, including the South Carolina PSC, ordered refunds after that date when they completed their reviews of the tariff filings to ensure that they complied with the Commission's new services test.

Moreover, I disagree that it is appropriate for states to consider whether other principles, such as the filed rate doctrine, trump the underlying tariff requirements in Section 276 and the Commission's

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<sup>2</sup> The majority asserts that their decision is consistent with the *Wisconsin Reconsideration Order*, "in which the Commission denied the Wisconsin Pay Telephone Association's request for the Commission to evaluate all cost support materials submitted by Ameritech and Verizon and determine an appropriate payphone line rate for the state of Wisconsin." See para. 45, citing *Wisconsin Public Service Commission, Order Directing Filings*, CCB/CPD No. 00-1, Order on Reconsideration, 21 FCC Rcd 7724 (2006). That Order is inapposite, as the state regulatory body had reversed its initial decision and found that it had the jurisdiction to review the intrastate tariffs and was in process of doing so, and the Commission said it would not interfere with that process. Here, the petitioners are asking that the Commission review the state *decisions* with respect to payphone rates and whether refunds are warranted under Section 276 and the Commission's Payphone Orders.

requirements. As discussed above, it is the Commission's responsibility to ensure that the statute and the FCC's requirements have been met. It is appropriate for the Commission to consider these other issues itself. Indeed, several courts have held that the filed rate doctrine cannot be used as a defense to the tariff filing requirements themselves. *See, e.g., TON v. Qwest*, 493 F.3d 1225, 1236-37 (10<sup>th</sup> Cir. 2007); *Davel Communications, Inc. v. Qwest Corp.*, 460 F.3d 1075, 1085 (9<sup>th</sup> Cir. 2006). We have no assurances that consideration of these issues will result in a satisfactory outcome that is consistent with Congress' direction in Section 276 and judicial precedent; thus, I do not agree with the majority on this point.

To the extent that states are reviewing compliance and considering the majority opinion and my opinion, which I hope they will, and should they disagree with my interpretation of the statute and the Commission's Orders, I would like them to consider the equities. The incumbents clearly were instructed to remove the implicit subsidies in their payphone rates in order to obtain dial-around compensation in 1997. Where they did not do so for five years, it is inequitable and unjust that they received both dial-around compensation and unreasonable rates from independent payphone providers. Accordingly, they should be required to refund excessive rates.

Finally, I think it is important for us to consider why the implementation of the 1996 Act's pro-competitive goals are important—even at this late date of February 2013. Consumers benefit when there is competition. In this instance, where carriers can avoid the market opening provisions of the Act by keeping rates high and hampering their competitors, consumers are not served and the pro-competitive goals of the Act are unfulfilled. For five years in these five states, the marketplace for payphones was impacted, and consumers did not receive all the benefits that Congress intended.

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 125

In the Matter of	)	
	)	
QWEST CORPORATION, fka U S WEST	)	
COMMUNICATIONS, INC.	)	ORDER
	)	
Application for an Increase in Revenues.	)	

DISPOSITION: STIPULATION ADOPTED

**Procedural History**

On April 14, 2000, the Public Utility Commission of Oregon (Commission) entered Order No. 00-190, adopting a Stipulation between U S WEST Communications, Inc., now known as Qwest Corporation (Qwest), and the Commission Staff (Staff) in the revenue requirement phase (Phase I) of this docket.

On September 14, 2001, the Commission entered Order No. 01-810 establishing a rate design for the stipulated revenue requirement approved in Order No. 00-190. As part of Order No. 01-810, the Commission approved revised rates for public access lines (PAL) and CustomNet service, adopting the rate recommendations proposed by Qwest and agreed to by Staff. The Northwest Payphone Association, now known as Northwest Public Communications Council (NPCC), opposed the PAL and CustomNet rates adopted by the Commission, arguing that the rates were not developed in compliance with Section 276 of the Telecommunications Act of 1996.

On November 13, 2001, NPCC filed an application for reconsideration of Order No. 01-810. On January 8, 2002, the Commission entered Order No. 02-009 denying NPCC's application for reconsideration.

NPCC appealed Order Nos. 01-810 and 02-009 ("the rate design orders") to Marion County Circuit Court (Circuit Court). On October 1, 2002, the Circuit Court entered a judgment affirming the Commission's orders. NPCC thereafter filed an appeal with the Oregon Court of Appeals (Court).



On November 10, 2004, the Court entered a decision reversing and remanding Order Nos. 01-810 and 02-009.<sup>1</sup> The Court determined that the rate design orders were unlawful in that: (1) the Commission's rates for PAL did not comply with certain federal requirements, and (2) the Commission did not adequately consider whether Qwest's proposed rates for CustomNet were subject to the same federal requirements.

On March 13, 2006, the presiding Administrative Law Judge (ALJ) convened a telephone conference to establish procedures necessary to comply with the Court's remand. During the conference, Qwest indicated that it would file proposed PAL and Fraud Protection (formerly CustomNet) rates to comply with the Court's decision. Qwest also indicated that it would seek to adjust other Qwest rates because of the recalculation of payphone service rates.

On March 31, 2006, Qwest filed its proposed PAL and Fraud Protection rates. On April 25, 2006, Qwest filed a letter on behalf of the parties requesting that the Commission decide, as a threshold matter, whether Qwest may raise any customer rates to offset reduced revenues resulting from a Commission decision approving lower PAL and Fraud Protection rates. On September 11, 2006, the Commission entered Order No. 06-515 denying Qwest's proposal to raise residential Caller ID rates to offset a decrease in PAL and Fraud Protection rates resulting from the Court-ordered remand in docket UT 125.

As a result of Order No. 06-515, the unresolved issues on remand are whether the PAL and Fraud Protection rates filed on March 31, 2006, comply with the Court's remand to develop rates in compliance with applicable federal requirements, and in particular, the new services test prescribed by the Federal Communications Commission (FCC).

### **Stipulation**

Since Order No. 06-515 was entered, Staff has performed a cost review of the rates proposed by Qwest on March 31, 2006. In addition, a number of settlement conferences have been held to discuss whether the proposed rates are consistent with the Court's remand and applicable federal requirements.

On October 15, 2007, Qwest, NPCC, and Staff (collectively, the "Parties"), filed a Stipulation designed to resolve all outstanding issues. The parties agree that Qwest's proposed PAL and Fraud Protection rates filed on March 31, 2006, comply with federal requirements and satisfy the Court's remand. In support of this determination, the parties offer into evidence the testimony and exhibits of Staff witness John Reynolds.

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<sup>1</sup> *Northwest Public Communications Council v. Public Utility Commission of Oregon*, 196 Or. App. 94, 100 P.3d 776 (2004). The judgment of the Marion County Circuit Court effectuating the remand was entered in Case No. 02C12247 on or about May 19, 2005.

Mr. Reynolds reviewed Qwest's proposed rates to ensure that the methodology used to develop those rates was consistent with requirements in the FCC's new services test.<sup>2</sup> Specifically, Mr. Reynolds found:

- (a) The proposed rates do not recover more than direct costs plus a just and reasonable amount of overhead;
- (b) The cost studies used to develop the proposed rates employ Qwest's Integrated Cost Model (ICM), September 26, 2002, version. The ICM is a forward-looking cost model used by Qwest in current UNE filings and is consistent with the total service long run incremental cost (TSLRIC) method used in determining UNE costs;
- (c) Inputs used in the ICM cost study are consistent with those used in other current cost studies. Qwest used current (2002) input costs rather than input costs associated with earlier UNE dockets. To account for the difference between those costs, Qwest weighted the input investment by a "benchmark" ratio of approved UNE rates to the September 2002 study-calculated rates;
- (d) The overhead cost methodology is the same as is used in other Qwest studies and is consistent with the method used in UNE pricing;
- (e) To avoid double recovery, Qwest deducted the subscriber line charge (SLC) from the cost calculations to determine the tariff rate;
- (f) Certain additional "retail" costs, such as billing and sales expense, were appropriately included.

The calculations supporting Mr. Reynolds' analysis of Qwest's proposed rates are set forth in Confidential Staff Exhibit 2. The calculations disclose that the annual revenue generated by Qwest's proposed rates is very nearly the same as the forward looking cost computed by Mr. Reynolds.<sup>3</sup> The Commission concurs with the analysis set forth in Mr. Reynolds' testimony and exhibits, and agrees with his conclusion that Qwest's proposed PAL and Fraud Protection Rates satisfy the requirements of the new services test.

### Commission Decision

The Commission has reviewed the Stipulation, together with the testimony and exhibits filed in support of the agreement. Based upon our examination, we find that Qwest's proposed PAL and Fraud Protection rates filed March 31, 2006, are in compliance with applicable federal requirements, including the new services test, as mandated by the Court of

<sup>2</sup> The requirements of the new services test are detailed on pp. 2-3 of Mr. Reynolds' testimony.

<sup>3</sup> See Confidential Exhibit Staff/2, Reynolds/1, Line 6.

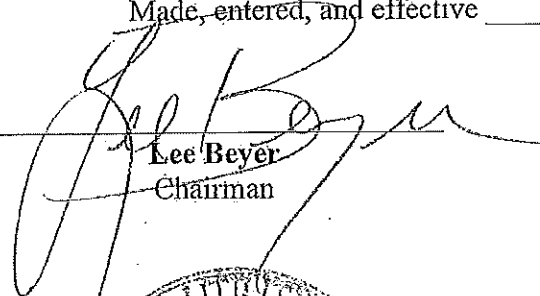
Appeals in its remand order. We therefore adopt the Stipulation and accept it and the supporting testimony and exhibits into the record in this docket.

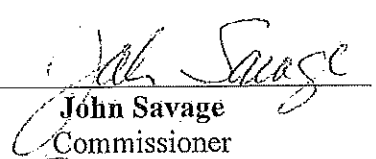
**ORDER**

IT IS ORDERED that:

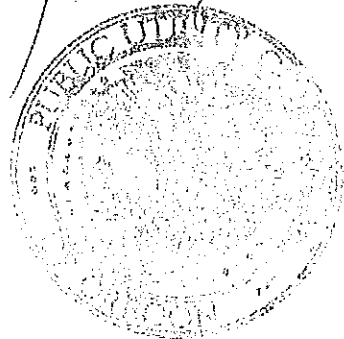
1. The Stipulation entered into among Qwest Corporation, Northwest Public Communications Council, and the Public Utility Commission of Oregon Staff is adopted.
2. The Public Access Line rates and Fraud Protection rates filed by Qwest Corporation on March 31, 2006, comply with applicable federal requirements and satisfy the remand of Order Nos. 01-810 and 02-009 mandated by the Oregon Court of Appeals in *Northwest Public Communications Council v. Public Utility Commission of Oregon*.

Made, entered, and effective NOV 15 2007

  
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**Lee Beyer**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
\_\_\_\_\_  
**Ray Baum**  
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UT 125

In the Matter of	)	
	)	
QWEST CORPORATION, fka U S WEST	)	
COMMUNICATIONS, INC.	)	ORDER
	)	
Application for an Increase in Revenues.	)	

DISPOSITION: QWEST RATE REBALANCING PROPOSAL DENIED

**Introduction**

The current proceedings in this docket are intended to implement the remand of Order Nos. 01-810 and 02-009 required by the Court of Appeals' decision in *Northwest Public Communications Council v. Public Utility Commission of Oregon*, 196 Or. App. 94, 100 P.3d 776 (2004) and the subsequent judgment of the Marion County Circuit Court<sup>1</sup> remanding the case to the Public Utility Commission of Oregon (Commission).

**Procedural History**

On April 14, 2000, the Public Utility Commission of Oregon (Commission) entered Order No. 00-190, adopting a Stipulation between U S WEST Communications, Inc. (now Qwest Corporation) (Qwest or the Company), and the Public Utility Commission Staff (Staff) in the revenue requirement phase (Phase I) of this docket. Among other things, the Stipulation obligated Qwest to implement customer refunds of approximately \$240 million and a going-forward rate reduction of approximately \$63 million annually.

On September 14, 2001, the Commission entered Order No. 01-810, establishing a rate design for the stipulated revenue requirement approved in Order No. 00-190.<sup>2</sup> As part of Order No. 01-810, the Commission approved revised rates for

<sup>1</sup> The Circuit Court's remand was entered in Case No. 02C12247 on or about May 19, 2005.

<sup>2</sup> Order No. 01-810 also established permanent price caps and price floors for Qwest. Pursuant to Senate Bill 622, now codified as ORS 759.400 *et seq.*, telecommunications utilities were given the option to replace traditional rate of return regulation with price cap regulation. Qwest elected price cap regulation

public access lines (PAL) and CustomNet service, adopting rate recommendations proposed by Qwest and agreed to by Staff. The Northwest Payphone Association (now, the Northwest Public Communications Council or "NPCC") opposed the PAL and CustomNet rates adopted by the Commission, arguing that the rates were not developed in compliance with Section 276 of the Telecommunications Act of 1996.<sup>3</sup>

On November 13, 2001, NPCC filed an application for reconsideration of Order No. 01-810. On January 8, 2002, the Commission entered Order No. 02-009 denying NPCC's application for reconsideration.

NPCC appealed Order Nos. 01-810 and 02-009 (hereafter also, "the rate design orders") to Marion County Circuit Court. On October 1, 2002, the Court entered a judgment affirming the Commission's orders. NPCC thereafter filed an appeal with the Oregon Court of Appeals.

On November 10, 2004, the Court of Appeals entered a decision reversing and remanding Order Nos. 01-810 and 02-009. The Court determined that the rate design orders were unlawful in that: (1) the Commission's rates for PAL did not comply with certain federal requirements, and (2) the Commission did not adequately consider whether Qwest's proposed rates for CustomNet were subject to the same federal requirements.<sup>4</sup>

On March 13, 2006, the presiding Administrative Law Judge (ALJ) convened a telephone conference to establish procedures necessary to comply with the Court's remand. During the conference, Qwest indicated that it would file proposed PAL and Fraud Protection (formerly CustomNet) rates (jointly "payphone service rates") to comply with the Court's decision. Qwest also indicated that it would seek to adjust other Qwest rates because of the recalculation of payphone service rates.

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effective December 30, 1999. Qwest's initial price caps were the rates in effect at the time the utility elected price cap regulation. Pursuant to ORS 759.415, those price caps were superseded by rates established in Qwest's pending rate case. In other words, the price caps established in Order No. 01-810 entered in Phase II of this docket became the permanent price caps under the law. See Order No. 01-810 at 3.

<sup>3</sup> NPCC argued that the PAL and CustomNet rates proposed by Qwest did not satisfy the requirements of the "New Services Test," as mandated by the FCC's Payphone Orders. NPCC also argued that Qwest did not submit adequate cost information to the Commission. See Order No. 01-810 at 50-56.

<sup>4</sup> While NPCC's appeal was pending, Qwest filed Advice Nos. 1935 and 1946. Those filings became effective on March 17 and August 28, 2003, respectively, and significantly reduced Qwest's PAL rates. In fact, the proposed payphone service rates Qwest has filed in this case are the same rates approved in Advice Nos. 1935 and 1946 already in effect.

On March 31, 2006, Qwest filed its proposed PAL and Fraud Protection rates. It alleges that the lower payphone service rates reduce Qwest's revenues by approximately \$1 million per year.<sup>5</sup> To offset the reduction, Qwest proposes to increase the rate for residential Caller ID service by \$0.60 per month.

On April 25, 2006, Qwest filed a letter on behalf of the parties requesting that the Commission decide, as a threshold matter, whether Qwest may raise any customer rates to offset reduced revenues resulting from a Commission decision approving lower payphone service rates. On May 1, 2006, the ALJ issued a Ruling adopting the parties' procedural proposal.

### Opening Briefs

On May 19, 2006, Qwest and Staff filed opening briefs addressing Qwest's proposal to "rebalance" rates to offset the anticipated reduction in payphone service rates. NPCC did not file an opening brief.

Qwest argues that the Court of Appeal's remand order and ORS 756.568 authorize the Commission to reopen this case and to adjust other rates to offset the alleged revenue reduction that results from approving lower rates for payphone services. It further maintains that the Commission must rebalance rates in order to provide the Company with the opportunity to recover its authorized revenue requirement and to avoid "impermissible single-issue ratemaking" that would occur if the Commission were to adjust only Qwest's rates for payphone services.<sup>6</sup>

Staff advances the following arguments in opposition to Qwest's proposal to rebalance rates:

a. Qwest's proposal to raise its residential caller ID service to offset lower PAL rates assumes that the Oregon Court of Appeals reversed all aspects of the Commission's Order No. 01-810. The Court's decision, however, is limited to applying federal law to payphone services (PAL and CustomNet) and does not impact other aspects of Order No. 01-810.

b. Because Qwest seeks to implement PAL rates in this case that are identical to its existing PAL rates, there is no rate difference to offset. Qwest voluntarily lowered its current PAL rates in Advice No. 1935 more than a year before the Court of

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<sup>5</sup> Qwest's calculation is based upon the test year billing units utilized in Order No. 01-810.

<sup>6</sup> Qwest Opening Brief at 1.

Appeals issued its opinion in this matter. Having done so, Qwest cannot argue that the Court of Appeals decision now warrants rebalancing of customer rates.<sup>7</sup>

c. The price caps established in Order No. 01-810 were the last and only opportunity for the Commission to adjust Qwest's price caps for non-basic services such as residential Caller ID service. If Qwest contends that Order No. 01-810 is not a final order because of the Court of Appeals' decision, then the effective price caps must be the rates Qwest was charging when it elected price cap regulation in December 1999. However, because Qwest has been operating under the price caps established in Order No. 01-810, not the price caps in effect when it elected price cap regulation, a number of complex problems arise.<sup>8</sup>

d. Qwest's attempt to raise its residential Caller ID service is unlawful under ORS 759.410 and OAR 860-032-0190(4), which provide that Qwest cannot charge more than the established price caps for non-basic services. Having elected price cap regulation, Qwest cannot prospectively raise rates for non-basic services above the price caps established in Phase II. Qwest's proposal to increase residential Caller ID rates in this case must therefore be regarded not as a "prospective" rate increase, but rather as an unlawful attempt to treat Order No. 01-810 as "interim" in violation of the filed rate doctrine.

**ALJ Memorandum/Proposed Decision.** After reviewing the arguments advanced by the parties in their opening briefs, the ALJ issued a Memorandum dated June 7, 2006. The ALJ observed that the briefs filed by the parties did not address whether the Stipulation approved in Phase I of this docket precluded Qwest's rate rebalancing proposal. The ALJ prepared a proposed decision addressing the issue and provided the parties with an opportunity to address the matter in their reply briefs.

**Reply Briefs.** On June 23, 2006, the parties filed reply briefs. Qwest challenges the arguments advanced by Staff. As discussed more fully below, Qwest also maintains that the Phase I Stipulation is not applicable to matters before the Commission as a result of the Court's remand. Staff reiterates the arguments in its opening brief and concurs that Qwest's rebalancing proposal is not permitted under the Stipulation.<sup>9</sup>

<sup>7</sup> Staff also states that, by electing price cap regulation, Qwest opted out of traditional revenue requirement regulation and instead chose to have pricing flexibility for non-basic services limited only by "price caps" and "price floors." It asserts that Qwest cannot exercise its pricing flexibility (*i.e.*, to lower PAL rates) and then maintain that it should receive an offsetting revenue increase by way of raising an established "price cap" for its residential Caller ID service.

<sup>8</sup> For example, Staff states that the rates Qwest charged for analog Private Line service were below the price floors when the Company elected price cap regulation. Thus, if Qwest contends that Order No. 01-810 is not final, then it has been charging unlawful rates for analog Private Line service. See Order No. 01-810 at 16-17.

<sup>9</sup> NPCC also filed a reply brief relating to Staff's comments regarding the filed rate doctrine. NPCC takes the position that the state filed rate doctrine does not apply to PAL rates because the FCC preempted



### Commission Decision

I. The Stipulation. The ALJ's Memorandum/Proposed Decision interprets Paragraph 5 of the Phase I Stipulation to encompass the reduction in payphone rates that will likely be required as a result of the Court-ordered remand in this docket. The ALJ also found that the Stipulation precluded Qwest's proposal to offset the payphone rate reduction with an increase in Caller ID rates. The Commission concurs with the ALJ's interpretation of the Stipulation for the reasons set forth below:

1. Paragraph 5. Paragraph 5 of the Stipulation details the rights and obligations of the parties in the event the Stipulation is reversed or modified on appeal. It provides:

Appeal of the Commission's Order. The parties recognize that the Commission's order implementing the terms of this Stipulation may be subject to suit pursuant to ORS 756.580 by any party aggrieved by the terms of said order (hereinafter in this paragraph 5 referred to as an 'appeal'). In the event of such appeal, the parties shall advocate that the court(s) should affirm said order. Despite the pendency of any such appeal, U S WEST agrees to implement the terms of Paragraphs 1 and 2 of this Stipulation, forty-five days after the Commission has finally disposed of any motions requesting rehearing and/or reconsideration of the order implementing the terms of this Stipulation. The parties further recognize that the order adopting the terms of this Stipulation may be reversed and/or modified on appeal. The parties further recognize that U S WEST's obligation to refund monies to customers and to reduce its ongoing rates may be modified on appeal, either by the issuing of a judgment incorporating or requiring different refunds or rate reductions, or by the Court of Appeals refusing to dismiss the Appellate Litigation. In the event that an order implementing the terms of this Stipulation is reversed or modified on appeal, the parties agree that U S WEST will be entitled to a credit for refunds and rate reductions made under Paragraphs 1 and 2 of this Stipulation against any such increased refund and/or rate reduction obligation imposed by a judgment reversing or modifying the order adopting the terms of this Stipulation or any subsequent order. Notwithstanding anything herein to the contrary, the parties understand that U S WEST

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Qwest's PAL rates in 1996. Accordingly, NPCC requests that any Commission decision based on the filed rate doctrine be narrow in scope and address only residential caller ID service.

does not waive its rights, if any, to seek recovery of any overpayments – whether in the form of surcharges or rate increases – in the event that U S WEST’s refund and/or rate reduction obligation is reduced by a judgment reversing or modifying the order adopting the terms of this Stipulation or any other order. It is the intent of the parties to this Stipulation that the Commission’s order implementing the terms of this Stipulation contain provisions implementing the terms of this Paragraph 5 and, in the event that the order does not contain provisions implementing this Paragraph 5, the order will be deemed to be materially different from the terms of this Stipulation.

**2. Paragraph 5 encompasses NPCC’s appeal of Order Nos. 01-810 and 02-009.** Qwest argues that Paragraph 5 of the Stipulation encompasses only appeals of Order No. 00-190 adopting the Stipulation and does not apply to appeals of the rate design orders entered in Phase II of this docket (Order Nos. 01-810 and 02-009). In advancing this argument, Qwest appears to focus on the first four sentences of Paragraph 5, which variously refer to “the Commission’s order implementing the terms of this Stipulation,” “the order implementing the terms of this Stipulation,” and “the order adopting the terms of this Stipulation.”<sup>10</sup> While it might be possible to read those sentences to relate to Order No. 00-190, the fifth and sixth sentences of Paragraph 5 cannot be so narrowly construed.<sup>11</sup> Those sentences clearly encompass not only an appeal of Order No. 00-190 adopting the Stipulation, but also *an appeal of any subsequent Commission order implementing the terms of the Stipulation.*

Thus, the relevant inquiry for purposes of analyzing Paragraph 5 is whether the rate design orders entered in Phase II of this docket are orders “implementing the terms of the Stipulation.” If so, then any increased rate reduction obligation imposed on Qwest as a result of NPCC’s successful appeal of the Commission’s rate design orders is governed by Paragraph 5. As discussed below, the terms of that paragraph limit Qwest

<sup>10</sup> Qwest also states that the Stipulation is entitled “Stipulation to Resolve Matters on Appeal,” suggesting that Paragraph 5 was intended to address only the litigation pending at the time Order No. 00-190 was entered. Qwest Reply Brief at 10. This interpretation is refuted by the language in Paragraph 5 encompassing any order implementing the Stipulation.

<sup>11</sup> As noted, the fifth and sixth sentences provide:

The parties further recognize that U S WEST’s obligation to refund monies to customers and to reduce its ongoing rates may be modified on appeal, either by the issuing of a judgment incorporating or requiring different refunds or rate reductions, or by the Court of Appeals refusing to dismiss the Appellate Litigation. In the event that *an order implementing the terms of this Stipulation* is reversed or modified on appeal, the parties agree that U S WEST will be entitled to a credit for refunds and rate reductions made under Paragraphs 1 and 2 of this Stipulation against any such increased refund and/or rate reduction obligation imposed by a judgment reversing or modifying the order adopting the terms of this Stipulation *or any subsequent order.* (Emphasis supplied.)

to a credit for refunds and rate reductions made pursuant to the Stipulation, and do not authorize Qwest to increase customer rates to offset additional revenue reductions resulting from the Court of Appeals' decision.

**3. Order Nos. 01-810 and 02-009, entered in the rate design phase of this docket, are orders "implementing" the rate reductions in the Stipulation.** Not surprisingly, Qwest maintains that the Commission's Phase II rate design orders cannot be considered "an order implementing the terms of the Stipulation." It argues that the term "rate reductions" in Paragraph 5 is limited to the \$63 million overall rate reduction approved in Order No. 00-190, and cannot be construed to include reductions in specific customer rates required as a result of the appeal of the rate design orders. Qwest states:

Paragraph 5 provides that in the event an order adopting the terms of the Stipulation is reversed and/or modified on appeal, Qwest's 'obligation to refund monies to customers and to reduce its ongoing rates may be modified on appeal, either by the issuing of a judgment incorporating or requiring different refunds or rate reductions.' The 'obligation . . . to reduce its ongoing rates' referenced in this sentence can reasonably be construed only as the *overall amount of the revenue reduction* agreed to in the Stipulation, because that is the only rate reduction addressed by the Stipulation. Thus, when this sentence identifies the possibility that a judgment in an appeal of an order adopting the Stipulation may require 'different . . . rate reductions' or an increase in Qwest's 'rate reduction obligation,' the only rate reduction possibly referenced is the overall amount of the revenue requirement reduction, *i.e.*, \$63 million per year; that language did not refer to a reduction the Commission might make to a rate for a specific service in the future rate design proceedings.<sup>12</sup>

The Commission disagrees with Qwest's contention that the rate design orders entered in this docket are not orders "implementing" the rate reductions included in the Stipulation. Those rate reductions took the form of temporary bill credits for each class of service,<sup>13</sup> and effectively established an interim rate design that remained in effect until the Commission entered Order Nos. 01-810 and 02-009, establishing permanent rates in Phase II of this docket. In other words, the going-forward rate

<sup>12</sup> Qwest's Reply Brief at 12.

<sup>13</sup> The temporary bill credits are listed in Exhibit B of the Stipulation and resulted in monthly rate reductions of \$1.85 for private line service, \$2.47 for residential service, \$5.93 for simple business service, and \$6.68 for complex business service. The carrier common line rate paid by carrier access customers was also reduced.

reductions in the Stipulation were not finally implemented until the rate design was established.

Paragraph 2 of the Stipulation makes clear that the permanent rates established in the rate design phase of this docket were the final step in the process of "implementing" the \$63 million rate reduction in the agreement. That paragraph provides, in relevant part:

a. *Permanent rates, incorporating the \$63 million revenue reductions, shall be established in the rate design phase of Docket UT 125.* The parties hereby agree to take all actions necessary in order to conclude the rate design phase of Docket UT 125 as quickly as possible. In order to expedite this process, U S WEST agrees to file its rate design proposal no later than the later of November 15, 1999 or 30 days after the Court of Appeals lifts the stay as described in Paragraph 4(c). (Emphasis supplied.)

b. *Prior to the implementation of the rates described in Paragraph 2(a), above, U S WEST will give temporary bill credits to its Oregon local service customers who subscribe to the services set forth on Exhibit B and make a temporary rate reduction for its switched access customers on the following terms and conditions. . . .* (Emphasis supplied.)

The foregoing language not only undermines Qwest's claim that the "rate reductions" mentioned in Paragraph 5 do not encompass the rates established in the rate design portion of this docket, but also acknowledges the fact that revenue requirement and rate design are inseparably linked. Ironically, Qwest acknowledges this commonly understood regulatory concept in its brief:

As the Commission well knows, rate design is a balancing process in which individual rates are adjusted with the goal of achieving a rate design that provides a regulated company the opportunity to earn its allowed revenue requirement. The adjustment of each rate affects the overall revenue picture and may require adjustments to other rates so that the utility is neither deprived of the opportunity to earn its allowed return nor over-compensated for its services.<sup>14</sup>

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<sup>14</sup> Qwest Opening Brief at 6.

Thus, as Qwest observes, rate design is the process of formulating customer rates that will produce the revenue requirement the Commission has determined to be appropriate. It is, quite simply, the process of "implementing" the approved revenue requirement.<sup>15</sup> For Qwest to maintain that the rate reductions authorized in the revenue requirement phase of this case were not implemented in the rate design phase misconstrues the Stipulation and makes no sense from a regulatory standpoint.<sup>16</sup>

**4. The Stipulation does not permit Qwest's rate rebalancing proposal.**

In its brief, Qwest argues that it did not forego the right to rebalance rates in the event of a judicial decision reversing a Commission order implementing the Stipulation and increasing the amount by which Qwest must reduce its rates. Qwest points out that a waiver of rights must be clear and unequivocal and that nothing in the Stipulation "supports the conclusion that Qwest waived its right to seek rate rebalancing in the current remand proceeding . . ."<sup>17</sup>

Again, we disagree with Qwest's interpretation of the Stipulation. Paragraph 5 clearly states that Qwest shall only be "entitled to a credit for refunds and rate reductions made under Paragraphs 1 and 2 of [the] Stipulation," in the instance where a subsequent order implementing the Stipulation is reversed and the court imposes an increased refund or rate reduction obligation upon Qwest. With respect to this issue, the ALJ's proposed decision states:

Whereas paragraph 5 permits Qwest to seek a rate increase in the event a Court determines that Qwest's refund/rate reduction obligation should be *reduced*, it does not provide Qwest with the same opportunity where a Court finds that

<sup>15</sup> In a typical utility rate proceeding, the revenue requirement and rate design are addressed in the same Commission order. Qwest's revenue requirement and rate design were addressed separately in this proceeding in order to accommodate special circumstances. By adopting the revenue requirement in the Stipulation, the Commission was able to provide Qwest customers with immediate refunds totalling over \$200 million and also eliminate risks associated with pending litigation. As noted, the forward-looking "rate reductions" were administered as temporary bill credits in order to effectuate an interim rate design that would remain in place until final rates could be determined. The bill credits had the effect of immediately reducing customer rates on a going-forward basis, and also prevented Qwest from accruing future refund and interest liabilities while the final rate design was under consideration. See, e.g., Qwest Phase I Post-Hearing Brief, dated February 11, 2000, at 17.

<sup>16</sup> Qwest's position on this issue is also internally inconsistent. On the one hand, Qwest argues that the Commission must respond to the Court's remand by readjusting Qwest's rate design in a manner that will ensure the Company has an opportunity to earn its revenue requirement. On the other hand, for purposes of interpreting the Stipulation, it refuses to acknowledge that the rate design process implements the approved revenue requirement. In other words, Qwest wants the Commission to acknowledge the linkage between rate design and revenue requirement for purposes of implementing the Court's remand, but wants the Commission to ignore that linkage for purposes of interpreting the Stipulation.

<sup>17</sup> Qwest Reply Brief at 13, 15-16.

Qwest's obligation should be *increased*. In the latter circumstance, Qwest is limited to receiving a credit for refunds and rate reductions already made in accordance with the Stipulation. Conspicuously absent from paragraph 5 is any language indicating that Qwest is entitled to increase rates to offset any *increased* refund or rate reduction obligation resulting from an appeal of the Stipulation or other order. This omission stands in stark contrast to Qwest's specific reservation of rights in the event of a Court decision *reducing* its refund/rate reduction obligation. . . . [T]he language of paragraph 5 makes clear that, by agreeing to accept only a credit for the refunds and rate reductions included in the Stipulation, Qwest deliberately relinquished the right to seek an offsetting revenue increase in the event of an adverse ruling on appeal.<sup>18</sup>

The Commission agrees that the Stipulation does not permit Qwest to seek an offsetting revenue increase where the Company's rate reduction obligation is increased on appeal. Paragraph 5 accomplishes this result by limiting Qwest to a credit for refunds/rate reductions already made by the Company, and further, by deliberately omitting any language preserving Qwest's opportunity to seek recovery for any additional monetary obligations imposed upon the Company by the Court.

Despite Qwest's protestations to the contrary, it made perfect sense from a regulatory standpoint for the Company to agree to forego the prospect of rate rebalancing. As noted in Order No. 00-190, the revenue requirement approved in the Stipulation was the last such determination by the Commission because of Qwest's decision to opt out of traditional rate of return regulation under ORS 759.400 *et seq.* Likewise, the price cap/price floor determinations made in the rate design phase of this docket established permanent rates for Qwest on a going-forward basis. Completing those undertakings was inordinately difficult, entailed a substantial commitment of resources, and consumed several years' time. Qwest's rate rebalancing proposal would require revisiting many of those issues in yet another complex and protracted docket.<sup>19</sup> We cannot imagine that the Commission or any of the parties, including Qwest, would have been willing to agree to any scenario requiring the agency to start all over again if Qwest's refund/rate reduction

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<sup>18</sup> ALJ Memorandum/Proposed Decision at 5.

<sup>19</sup> We also find that Qwest's rate rebalancing proposal is flawed to the extent that it proposes resetting only residential Caller ID rates. Even if we agreed that rate rebalancing were required, it would be inappropriate to single out only one of Qwest's rates for review. Indeed, Qwest's proposal to limit rebalancing to Caller ID rates would entail the same "single-issue ratemaking" it accuses the Staff of endorsing.

obligations were increased.<sup>20</sup> That being the case, it is perfectly understandable why the Stipulation was drafted to preclude such a result.

**6. Summary.** The Commission concludes that the Stipulation in this docket does not permit Qwest's rate rebalancing proposal. Under the terms of that agreement, Qwest specifically agreed to accept the risk that subsequent appeals of the Commission's order implementing the Stipulation might result in a situation where Qwest was required to make refunds or rate reductions in addition to those set forth in the Stipulation. The language of the agreement demonstrates that the Company was fully cognizant of the potential consequences of its decision when it executed the Stipulation. Qwest cannot now be heard to complain that it is somehow prejudiced by having to reduce rates in response to a judicial determination without a corresponding offset, especially when that scenario is specifically provided for in the agreement. The simple fact is that Qwest took a calculated risk that did not turn out as expected. Relieving Qwest of the consequences of its agreement by raising other customer rates would contravene the terms of the Stipulation.

**II. The Scope of this Proceeding.** In addition to the foregoing, we agree with Staff that the Commission is without authority to reexamine Qwest's non-payphone rates in this remand proceeding. As noted above, Senate Bill 622, now codified as ORS 759.400 *et seq.*, allowed telecommunications utilities to opt out of traditional rate of return regulation by electing price cap regulation. In particular, ORS 759.405(1) provides that "[a] telecommunications carrier that elects to be subject to this section and ORS 759.410 shall be subject to the infrastructure investment and price regulation requirements of this section and ORS 759.410 and shall not be subject to any other regulation based on earnings, rates or rate of return." ORS 759.410(2) further provides that "[a] telecommunications carrier that elects to be subject to this section and ORS 759.405 shall be subject to price regulation as provided in this section and shall not be subject to any other retail rate regulation, including but not limited to any form of earnings-based, rate-based or rate of return regulation." For any utility electing price cap regulation, ORS 759.410 instructs the Commission to establish rates for basic services, as well as maximum prices (price caps) and minimum prices (price floors) for non-basic services.

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<sup>20</sup> Qwest might contend that Paragraph 5 envisions just such a scenario in the event of a Court decision reducing the Company's refund/rate reduction obligations. But that possibility was extremely unlikely, since Qwest was the only party with an interest in reducing its refund/rate reduction obligation, and it was committed under Paragraph 5 to support the terms of the Stipulation.

Qwest elected price cap regulation effective December 30, 1999.<sup>21</sup> Pursuant to ORS 759.415(1), Qwest's initial price caps were replaced by the permanent price caps established in Qwest's pending rate case; that is, in Order No. 01-810 entered in Phase II of this docket.<sup>22</sup>

Qwest's assertion that the Court's remand obligates the Commission to revisit all of the Company's rates necessarily presumes that the non-payphone service rates approved in Order No. 01-810 are not final and may therefore be revised. We disagree. ORS 756.565 provides that all rates and orders issued by the Commission "shall be in force and shall be prima facie lawful and reasonable, until found otherwise in a proceeding brought for that purpose under ORS 756.610." Subsection (2) of ORS 756.610 further provides that a petitioner seeking judicial review of a Commission order may apply to the Court of Appeals for a stay of the Commission's order pending the final disposition of the appeal.

In this case, no party obtained a stay of Order No. 01-810 establishing permanent rates in this docket, and the only rates challenged on appeal were those relating to payphone services. Absent the issuance of a stay by the Court, the unchallenged rates adopted in Order No. 01-810 became final and unappealable.<sup>23</sup> Thus, the only Qwest rates subject to revision in this remand proceeding are the PAL line and Fraud Protection rates addressed on appeal.

Consistent with this interpretation, the Court of Appeals did not instruct the Commission to revisit all of Qwest's non-payphone rates. Instead, the Court required only that the Commission "reconsider its order in light of the New Services Order and other relevant FCC orders." In other words, the Commission's obligation on remand is limited to ensuring that the rates for payphone services are calculated based upon the federal methodology prescribed by the FCC.

As a practical matter, Qwest's theory that all of its rates remain subject to review could easily result in a scenario whereby its rates – including price caps for non-basic services – are not finalized for years. If, for example, the Commission accepted Qwest's proposal and increased Caller ID rates to offset the reduction in payphone service

<sup>21</sup> To date, Qwest is the only telecommunications utility that has elected into price cap regulation.

<sup>22</sup> As noted above, Qwest's initial price caps were the rates in effect at the time the utility elected price cap regulation. ORS 759.415(1) provides that "[i]n a rate proceeding brought by a telecommunications carrier that elects to be subject to ORS 759.405 and 759.410, or by the Public Utility Commission against an electing telecommunications carrier, prior to January 1, 1999, that is on appeal on September 1, 1999, a final rate for a telecommunications service implemented as a result of the final judgment and order or negotiated settlement shall become the maximum rate for purposes of ORS 759.410." Since UT 125 began prior to January 1, 1999, and because this rate docket was on appeal as of September 1, 1999, the rates established by the Commission in Order No. 01-810 comprise Qwest's permanent price caps.

<sup>23</sup> The revenue requirement determination established in Order No. 00-190 is also final and unappealable. No party ever filed an appeal challenging that determination.



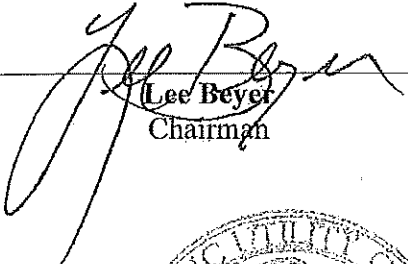
rates, there would be nothing to prevent an appeal of the revised Caller ID rates. A Court decision reversing the Commission's decision on the Caller ID rates would then, under Qwest's theory at least, precipitate still another review of all Qwest rates. This process could continue *ad infinitum*, resulting in a situation where the permanent price caps/floors contemplated by Senate Bill 622 remain in a constant state of limbo. Fortunately, the statutory scheme prevents such an outcome by limiting the Commission's rate review to the payphone service rates that were addressed by the Court on appeal.

**III. Other Arguments.** Because we have concluded that the Stipulation does not permit Qwest's rate rebalancing proposal, and that the scope of this proceeding is limited to payphone rates, it is unnecessary to address the remaining arguments advanced in this matter.

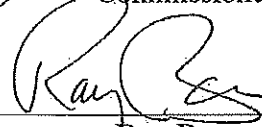
**ORDER**

IT IS THEREFORE ORDERED that the request by Qwest Corporation to increase residential Caller ID rates to offset a decrease in payphone service rates resulting from the Court-ordered remand in this docket is denied.

Made, entered, and effective SEP 11 2006

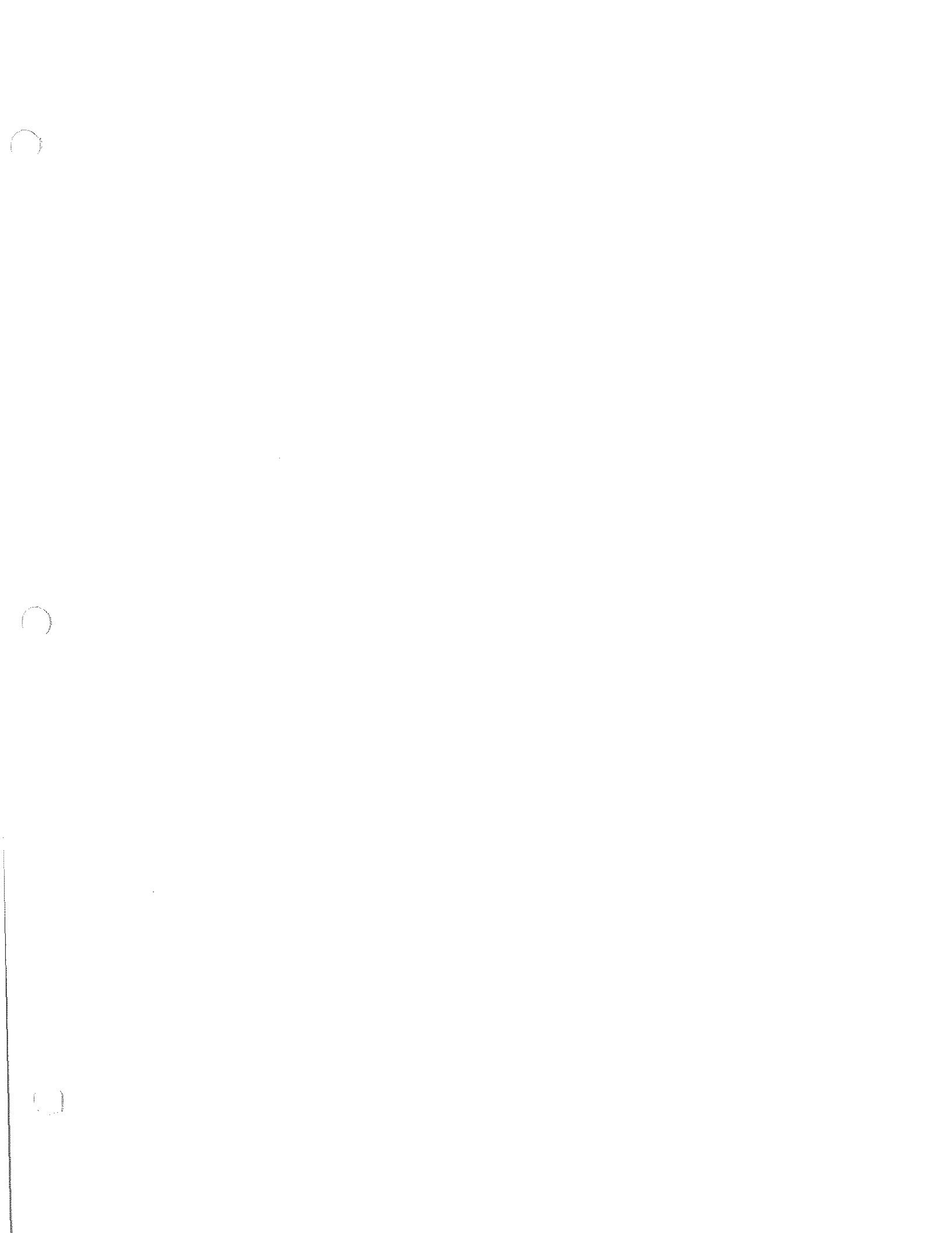
  
\_\_\_\_\_  
Lee Beyer  
Chairman

  
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John Savage  
Commissioner

  
\_\_\_\_\_  
Ray Baum  
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.





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March 31, 2006

**BY HAND DELIVERY**

Hearings Division  
Public Utility Commission of Oregon  
550 Capitol Street N.E., Suite 215  
Salem, Oregon 97301-2551

**Re: Docket No. UT 125**

To whom this may concern:

Pursuant to the First Conference Report in the above-referenced docket, issued March 21, 2006, Qwest hereby files its proposed rates for PAL and Fraud Protection, along with its proposed rate for Residential Caller ID. This filing is intended to implement the remand of Commission Order No. 01-810 (the "Order") required by the Court of Appeals' decision in *Northwest Public Communications Council v. Public Utility Commission of Oregon*, 196 Or. App. 94, 100 P.3d 776 (2004), and the subsequent Judgment Remanding Case to Public Utility Commission entered by the Marion County Circuit Court in Case No. 02C12247 on or about May 19, 2005.

This filing accomplishes two things. First, it proposes lower rates than the Commission approved in the Order for certain payphone services, including Public Access Line ("PAL") and Fraud Protection (formerly known as CustomNet), in order to comply with the federal requirements for those rates as mandated by the Court of Appeals' decision on judicial review of the Order. These proposed rates are supported by cost studies and calculations that demonstrate compliance with the new services test and support the rate deaveraging proposal. The lower payphone service rates result in a revenue reduction for Qwest in the amount of approximately \$1 million per year, based upon the test year units utilized in the Order. Second, to offset the revenue reduction that would result from approval of the new payphone service rates in this docket, this filing proposes to increase the rate for Residential Caller ID.

[13141-0126/PA060880.072]

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Perkins Coie LLP and Affiliates

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March 31, 2006  
Page 2

The specific rates that Qwest proposes for Commission approval are set forth in Attachment A to this letter. These rates are supported by the several exhibits to this letter, which include information that Qwest designates as confidential pursuant to the Protective Order in this matter, Order No. 96-045. We are filing an original plus five paper copies as well as electronic versions of each of these exhibits. This confidential information is being filed under seal and will be served only in electronic form upon those persons that have executed the Consent to be Bound by the Protective Order. This letter will summarize the contents of these exhibits.

Exhibit A provides Qwest's proposed rates for PAL, Fraud Protection, and Residential Caller ID. This exhibit also calculates the revenue impact of (1) the proposed payphone service rate reductions and (2) the proposed Residential Caller ID rate increase, based upon test year units. The deaveraged PAL rates listed in Exhibit A are calculated in Exhibits B and C, based on the costs in Exhibits D and E.

Exhibit B calculates the proposed deaveraged rates for PAL services based on the state average rates calculated in Exhibit C and a weighting of revenues and quantities by rate group. These calculations are based upon 2002 data, because this exhibit was developed in connection with Qwest's 2003 PAL rate filing.

Exhibit C calculates the state average rate for each PAL line element. The rates are calculated based on the TSLRIC costs provided in Exhibit D, and reflect the subtraction of the CALC as required by the FCC's orders.

Exhibit D is the 2002 PAL recurring cost study.

Exhibit E is the 2002 Fraud Protection cost study.

Exhibit F sets forth the Qwest PAL and Smart PAL cost comparison, using the ONA test-based ratios. This exhibit provides the FCC's price ceilings for PAL line services.

Sincerely yours,



Lawrence Reichman

cc: Attached service list

ATTACHMENT A

PRODUCT	USOC	UT 125 DEAVERAGED RATE	PROPOSED DEAVERAGED RATE
<b><u>PUBLIC ACCESS LINE - REDUCTION</u></b>			
Measured w/ 300 call allowance	15W		
Rate Group 1		\$26.00	\$13.94
Rate Group 2		\$28.50	\$15.28
Rate Group 3		\$30.50	\$16.35
Message w/ 300 call allowance	1W3		
Rate Group 1		\$26.00	\$15.19
Rate Group 2		\$28.50	\$16.65
Rate Group 3		\$30.50	\$17.82
PAL lines – measured (out)	16Q		
Rate Group 1		\$18.00	\$7.98
Rate Group 2		\$18.00	\$7.98
Rate Group 3		\$18.00	\$7.98
PAL lines – measured (2w)	17Q		
Rate Group 1		\$18.00	\$7.98
Rate Group 2		\$18.00	\$7.98
Rate Group 3		\$18.00	\$7.98
PAL lines – message	1MA		
Rate Group 1		\$18.00	\$7.98
Rate Group 2		\$18.00	\$7.98
Rate Group 3		\$18.00	\$7.98
PAL - flat	1KY		
Rate Group 1		\$26.00	\$8.78
Rate Group 2		\$28.50	\$9.62
Rate Group 3		\$30.50	\$10.30
PAL Carrier	1N8		
Rate Group 1		\$28.00	\$8.99
Rate Group 2		\$30.50	\$9.96
Rate Group 3		\$32.50	\$10.74
Smart Pal – flat (out)	5FO		
Rate Group 1		\$27.62	\$8.45
Rate Group 2		\$29.57	\$9.05
Rate Group 3		\$31.05	\$9.50
Smart Pal – flat (2w)	5FP		
Rate Group 1		\$27.62	\$9.50
Rate Group 2		\$29.57	\$10.17
Rate Group 3		\$31.05	\$10.68
Smart Pal – message	14C, 1NH		
Rate Group 1		\$19.24	\$8.61
Rate Group 2		\$19.24	\$8.61
Rate Group 3		\$19.24	\$8.61

PRODUCT	USOC	UT 125 DEAVERAGED RATE	PROPOSED DEAVERAGED RATE
PAL Usage			
Minutes		\$0.03	\$0.01
Message		\$0.07	\$0.02
Custom Net/Fraud Protection		\$2.00	\$0.11
<b>PROPOSED REVENUE OFFSET</b>			
Residential Caller ID	NNK	\$5.00	\$5.60
	NSD	\$5.00	\$5.60

## SERVICE LIST

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Seattle, WA 98101-2352

*\*Denotes signatory to Protective Order*



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3

4

ORIGINAL

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

RECEIVED

DR 26/ UC 600

JAN 25 2005

THE NORTHWEST PUBLIC )  
 COMMUNICATIONS COUNCIL, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 QWEST CORPORATION, )  
 )  
 Defendant )

Public Utility Commission of Oregon  
Administrative Hearings Division

PUBLIC UTILITY  
COMMISSION OF OREGON  
STAFF'S REPLY TO QWEST'S  
CROSS-MOTION FOR  
SUMMARY JUDGMENT

**INTRODUCTION**

The Public Utility Commission of Oregon Staff ("Staff") takes this opportunity to comment on the cross-motions of the Northwest Public Communications Council ("NPCC") and Qwest Corporation ("Qwest") that have been filed in this docket. At this time, Staff's comments are limited to a discussion of its understanding of the interplay of this docket with the Oregon Court of Appeals decision to reverse and remand the Public Utility Commission of Oregon's ("Commission") UT 125 rate design order determination that Qwest's payphone access line ("PAL") rates are compliant with the new services test as outlined by federal law. While Staff does not presently take a position on the merits of the cross-motions for summary judgment, Staff reserves the right to comment on the parties' positions as this docket proceeds.

**DISCUSSION**

**1. The Court of Appeals remand of the Commission's order in UT 125.**

On November 10, 2004, the Oregon Court of Appeals reversed and remanded the portion of the Commission's Order No. 01-810, the final order issued in Docket UT 125, which determined that Qwest's PAL rates were consistent with the federal new services test. The Court, in brief, determined that the Commission-approved PAL rates were not consistent with the federal new services test.

DOCKETED

Based upon the Oregon Court of Appeal's decision, the matter is currently again before the Commission to determine PAL rates consistent with the federal new services test and the Court's remand. However, it is Staff's understanding that the ultimate determination as to the appropriate PAL rates is independent and separate from the issues presented in the parties cross-motions for summary judgment and does not, and should not, be considered as part of this particular proceeding.

The UT 125 remand will establish a PAL rate that is consistent with the federal new services test. That determination, however, is independent of this proceeding. If, and only if, the Commission were to determine that Qwest was subject to refund liability for its PAL rates in this proceeding would the UT 125 remand be pertinent. Furthermore, the UT 125 remand decision would only be pertinent to the calculation of the *amount* of refunds. However, if it turns out that there is refund liability and thus a refund amount, Staff's expectation is that it would be determined, at a later time, in this proceeding and not the UT 125 remand proceeding. The UT 125 proceeding is separate and distinct from the issues presented in this docket and unnecessary for resolution of this proceeding.

**2. The parties' cross-motions for summary judgment only request a determination of refund liability and not a refund calculation.**

The NPCC has made clear that it is only requesting summary judgment on Qwest's liability to refund money to NPCC members and not the refund amount. *See* NPCC's Motion for Summary Judgment at 2-3. Thus, calculation of possible damages is not in front the Commission at this time.

Of course, if the Commission determines there is refund liability, there may be issues related to what is the correct refund amount. For example, as Qwest as pointed out the NPCC members have received refunds for rates charged during a portion of the time period for which it they currently seek a refund. *See* Qwest's Summary Judgment Opening Memorandum at 24-25. As mentioned above, Staff's expectation is that if the Commission were to determine that Qwest had refund liability, the amount of refunds

would be determined, at a future time, in this docket (as opposed to the UT 125 remand proceeding). Staff reserves the right, if refund liability is determined, to participate in determining the appropriate amount of refunds.

**3. At this time, Staff does not have a position of the issue of refund liability.**

The current issue presented appears to revolve around a Federal Communications Commission (“FCC”) Waiver Order and, specifically, whether Qwest relied on the Waiver Order. As noted throughout both parties’ motions, the issue of refund liability is based entirely upon FCC orders. At the heart of this dispute is the issue of whether Qwest relied on the Waiver Order. This is not an issue that Staff participated in at the time, nor does Staff have any specialized information or documentation as to whether Qwest relied on the Waiver Order.

According to the parties, the Waiver Order and its component refund provisions were a result of an agreement that the FCC made with the RBOC Coalition, of which Qwest was a member. While both the parties seemingly accept that this issue is within the jurisdiction of the Oregon Commission, Staff is uncertain as to why the issue would not be more appropriately decided by the FCC, the agency that issued the Waiver Order and is familiar with the particular facts and circumstances surrounding the Waiver Order. Staff would be interested in hearing from the parties on why the FCC is not a more appropriate forum and reserves the right to comment on whether the Oregon Commission is the appropriate jurisdictional forum for this dispute.

In sum, Staff views the current issue in this proceeding as whether Qwest relied on the Waiver Order and, if so, what reliance on the Waiver Order means regarding refund liability. Staff does not have a position of the merits of that issue, as it currently understands it. Staff, however, reserves the right to comment as appropriate and as issues arise.<sup>1</sup>

---

<sup>1</sup> For example, Qwest raises this issue of the filed rate doctrine. See Qwest’s Summary Judgment Opening Memorandum at 20. However, Qwest seems to agree that the Waiver Order creates an exception to the filed rate doctrine, if it had relied on the Waiver Order. See Id. at 9. Thus, Qwest’s reliance on the filed

CONCLUSION

Staff takes this opportunity to comment on its view of the interplay between this proceeding and the proceeding related to the Oregon Court of Appeals remand of the Commissions final order in UT 125. Staff's understanding is that the current issue before the Commission is limited to whether Qwest has any refund liability for PAL rates. Whether or not Qwest has refund liability for PAL rates revolves around whether it relied on the FCC Waiver Order (and what obligations such reliance would create). While Staff does not have comments on the merits of that issue, it wonders why the FCC, which issued the Waiver Order, is not the more appropriate forum for this dispute. Staff also reserves its rights to comment on issues that may develop in this proceeding.

DATED this 25<sup>th</sup> day of January 2005.

Respectfully submitted,

HARDY MYERS  
Attorney General



---

Jason W. Jones, #00059  
Assistant Attorney General  
Of Attorneys for Public Utility  
Commission of Oregon Staff

---

rate doctrine seems to be limited to potential relief based upon Oregon law, other than the Waiver Order. In the current posture of the case, Staff does not believe that the filed rate doctrine under Oregon law is ripe for extended discussion. If the filed rate doctrine under Oregon law becomes the issue, Staff would contemplate participating in that discussion.

**CERTIFICATE OF SERVICE**

I certify that on January, 25, 2005, I served the foregoing DR 26/UC 600 PUBLIC UTILITY COMMISSION OF OREGON STAFF'S REPLY TO QWEST'S CROSS MOTION FOR SUMMARY JUDGMENT upon the parties hereto by sending a true, exact and full copy by regular mail, postage prepaid to:

Lawrence Reichman  
Perkins Coie, LLP  
1120 N.W. Couch Street, 10<sup>th</sup> Floor  
Portland, OR 97209-4128

Brooks Harlow  
Miller Nash, LLP  
601 Union St STE 4400  
Seattle, WA 98101-2352

DATED this 25<sup>th</sup> day of January 2005.

Respectfully submitted,

HARDY MYERS  
Attorney General



---

Jason W. Jones, #00059  
Assistant Attorney General  
Of Attorneys for Public Utility  
Commission of Oregon Staff,  
State of Oregon, Defendant

0

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SUMMARY OF TARIFF FILING



NAME **QWEST CORPORATION**

FILE CODE: **U21T**

FILED **July 28, 2003**

NEED LSN?: **No**

ADVICE/TRANS. NO. **1946**

EFFECTIVE **August 28, 2003**

DOCKET NO.

PUBLIC MEETING: **N/A**

FILING HAS BEEN ACCEPTED \_\_\_\_\_

FILING HAS BEEN ALLOWED \_\_\_\_\_

FILING HAS BEEN ACKNOWLEDGED \_\_\_\_\_

FILING HAS BEEN REJECTED OR WITHDRAWN \_\_\_\_\_

**SUMMARY OF FILING: This filing makes changes to Public Access Line (PAL) Service offerings.**

REVIEWED BY: **Stanage (Pc), Ball, Nyegaard**

ACTION/DATE: \_\_\_\_\_

ACTION/DATE: \_\_\_\_\_

ACTION/DATE: \_\_\_\_\_

COMMENTS:





# Oregon

Theodore R. Kulongoski, Governor

*Kathy*

## Public Utility Commission

550 Capitol Street NE, Suite 215

Mailing Address: PO Box 2148

Salem, OR 97308-2148

Consumer Services

1-800-522-2404

Local: 503-378-6600

Administrative Services

503-373-7394

August 25, 2003

JUDITH A PEPLER  
VICE PRESIDENT - OREGON  
QWEST CORPORATION  
421 SW OAK ST - RM 870  
PORTLAND OR 97204

RE: Advice No. 1946

On July 28, 2003, Qwest Corporation filed revised sheets for inclusion in its tariff, PUC OR No. 29.

This filing makes changes to Public Access Line (PAL) Service offerings.

The sheets are acknowledged and will become effective with service rendered on and after August 28, 2003:

Section 5, 1<sup>st</sup> Revised Sheet 132  
Section 5, Original Sheet 132.1  
Section 5, 1<sup>st</sup> Revised Sheet 134  
Section 5, 1<sup>st</sup> Revised Sheet 135  
Section 5, 4<sup>th</sup> Revised Sheet 136  
Section 5, Original Sheet 137.1

One receipted copy of each sheet is returned for your files.

Phil Nyegaard  
Administrator  
Telecommunications Division  
(503) 378-6436  
Fax: (503) 373-7752

qwest1946

Enclosures

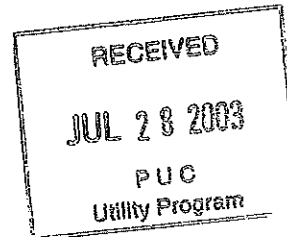


Qwest  
421 Southwest Oak Street  
Suite 870  
Portland, Oregon 97204  
Phone 503-242-5234  
FAX 503-242-5456

Judith A. Pepler  
President - Oregon



July 28, 2003



Advice No. 1946

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
P. O. Box 2148  
Salem, OR 97308-2148

ATTENTION: Vikie Bailey-Goggins, Administrator  
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

Qwest is forwarding for filing the sheets listed on Attachment A. This filing makes changes to Public Access Line (PAL) Service offerings in the Exchange and Network Services tariff. The effective date is August 28, 2003.

In compliance with FCC Order 02-025 Qwest is submitting the enclosed filing to introduce Public Access Line (PAL)-specific Fraud Protection Service offerings. Customers currently purchasing Qwest CUSTOMNET service offerings will be migrated to the appropriate new Fraud Protection service. Fraud Protection for Basic PAL Service offers three levels of protection: incoming, outgoing, and incoming & outgoing combination.

All Fraud Protection services will be billed at the recurring/monthly rate of \$0.11. The non-recurring charge of \$1.12 will apply when the Fraud Protection features are provided subsequent to the initial installation of the Basic PAL access line. These rates will be in effect across all Qwest Communications tariffs as they relate to Public Access Line Fraud Protection.

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
Advice No. 1946

Page 2

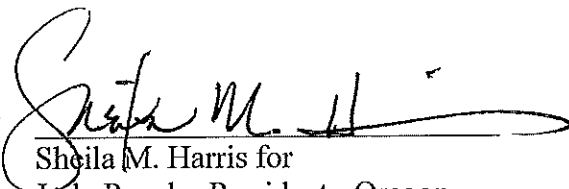
Because Qwest has decided to reduce its PAL rates, the rates have been recalculated in accordance with FCC Order No. 02-025. Qwest has reviewed the FCC order and is making this filing without prejudice to its pending appeal of the FCC order, and without prejudice to its position in the pending appeals of this Commission's orders in Dockets Nos. UT 125 and DR 26/UC 600.

The estimated annualized revenue impact of this filing can be found herein under confidential cover.

**Attachments B and C contain commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.**

If you have questions concerning this filing, please contact Sheila Harris on (503) 242-5950.

Yours very truly,

By   
Sheila M. Harris for  
Judy Pepler President - Oregon  
Qwest Communications, Inc.

Attachments

**EXCHANGE AND NETWORK SERVICES**  
**P.U.C. OREGON NO. 29**

<b><u>SECTION</u></b>	<b><u>SHEET</u></b>	<b><u>REVISION</u></b>
5	132	1
5	132.1	0
5	134	1
5	135	1
5	136	4
5	137.1	0

DATE: 7/29 COMPANY / ADVICE#: Quest/Adviso

1946

TO: LANCE BALL

FROM: VIKIE BAILEY-GOGGINS

NEW TARIFF FILING

Please check names of persons to whom we should provide a copy of the attached tariff filing. Please return the entire package to me within one (1) day. Please indicate "P" for principal staff.

- Ball - cover letter only
- Birko
- Carter
- Emmons
- Sloan
- Stanage - copy of entire filing
- Nyegaard (cover letter only)
- Other (Please name: \_\_\_\_\_)

Does Staff plan to take to public meeting? NO

Is Prehearing conference necessary? NO

Should an ALJ be assigned? NO

Public Meeting Caption: \_\_\_\_\_  
N/A

## **WILLIAMS Kathy**

---

**From:** BALL Lance  
**Sent:** Wednesday, August 20, 2003 1:52 PM  
**To:** WILLIAMS Kathy  
**Cc:** STANAGE Jim  
**Subject:** Qwest Advice 1946

Qwest filed Advice 1946 on July 28, 2003. The filing takes effect on August 28, 2003. The propose of the filing is to establish Public Access Line-specific Fraud Protection Service. The filing is intended to comply with FCC Order 02-025. The company has made similar filings elsewhere in its fourteen-state service area. Malheur Bell's Advice No. 2003-10-C, which will also go into effect August 28, 2003, proposes to create the same service.

Fraud Protection Service will have a nonrecurring charge of \$1.12 and a monthly recurring charge of \$0.11 per line. This contrasts with the rates for CUSTOMNET service, the service being substituted for Fraud Protection (for PAL subscribers only), which has a nonrecurring charge of \$24.00 and a monthly recurring charge of \$2.00 per line. Fraud Protection Service for PAL Service offers three levels of protection: incoming, outgoing, and incoming/outgoing calling.

Fraud Protection Service is subject to the availability of facilities. Operator assisted, collect, and/or third number billed calls originating from locations that do not have screening capabilities may not be capable of being intercepted and denied---e.g., International calls and calls that do not go through the Billing Validation Authority database.

The company submitted a financial analysis and cited a cost study that shows the proposed rates cover the service's imputed price floor (i.e., the cost of service). ORS 759.410 (4) requires that "retail telecommunications services" be priced at least as high as the imputed price floor of each respective non-basic service. The filed service is non-basic services under ORS 759.410---i.e., it is not a "basic services." Qwest estimates that the filing will reduce net annual revenue by approximately \$12,000.

The filing is in conformity with Oregon law and complies with FCC Order 02-025. The filing does not conflict with the public interest. Please prepare an acknowledgment letter for Phil Nyegaard's signature. Thank you Kathy.

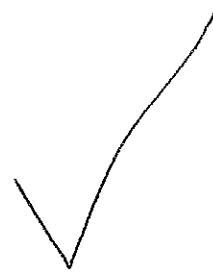
Lance L. Ball  
Program Manager of Rates and Service Quality  
Telecommunications Division  
Public Utility Commission of Oregon

2

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SUMMARY OF TARIFF FILING



NAME **QWEST CORPORATION**

FILE CODE: **U21T**

FILED **February 14, 2003**

NEED LSN?: **No**

ADVICE/TRANS. NO. **1935**

EFFECTIVE **March 17, 2003**

DOCKET NO.

PUBLIC MEETING: **N/A**

FILING HAS BEEN ACCEPTED \_\_\_\_\_

FILING HAS BEEN ALLOWED \_\_\_\_\_

FILING HAS BEEN ACKNOWLEDGED           X          

FILING HAS BEEN REJECTED OR WITHDRAWN \_\_\_\_\_

SUMMARY OF FILING: **This filing reduces rates to the following Public Access Line (PAL) elements: Basic PAL; Smart PAL; Basic PAL Measured; Message Line; Smart PAL Message Line; PAL Message Charge; and PAL Measured Per Minute Charge.**

REVIEWED BY: <sup>✓</sup>Stanage (Pc), <sup>✓</sup>Ball, <sup>✓</sup>Nyegaard

ACTION/DATE:

*2/28 - Co. filed reports - sent to staff*

ACTION/DATE: \_\_\_\_\_

ACTION/DATE: \_\_\_\_\_

COMMENTS:





# Oregon

Theodore R. Kulongoski, Governor

*Kathy*

## Public Utility Commission

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Mailing Address: PO Box 2148

Salem, OR 97308-2148

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Administrative Services

503-373-7394

March 19, 2003

JUDITH A PEPPLER  
VICE PRESIDENT - OREGON  
QWEST CORPORATION  
421 SW OAK ST - RM 870  
PORTLAND OR 97204

RE: Advice No. 1935

On February 14, 2003, Qwest Corporation filed revised sheets for inclusion in its tariff, PUC OR No. 29. On February 28, 2003, the company filed replacement sheets.

This filing reduces rates to the following Public Access Line (PAL) elements: Basic PAL; Smart PAL; Basic PAL Measured; Message Line; Smart PAL Message Line; PAL Message Charge; and PAL Measured Per Minute Charge.

The sheets are acknowledged and became effective with service rendered on and after March 17, 2003:

Section 5, 3<sup>rd</sup> Revised Sheet 136

Section 5, 3<sup>rd</sup> Revised Sheet 137

One receipted copy of each sheet is returned for your files.

Phil Nyegaard  
Administrator  
Telecommunications Division  
(503) 378-6436  
Fax: (503) 373-7752

qwest1935

Enclosures

Qwest  
421 Southwest Oak Street  
Suite 870  
Portland, Oregon 97204  
Phone 503-242-5234  
FAX 503-242-5456

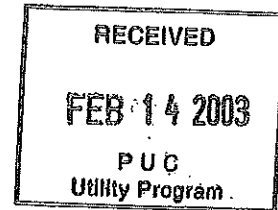
Judith A. Pepler  
President - Oregon



February 14, 2003

Advice No. 1935

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
P. O. Box 2148  
Salem, OR 97308-2148



ATTENTION: Vikie Bailey-Goggins, Administrator  
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

Qwest is forwarding for filing the sheets listed on Attachment A. This filing proposes revisions to the Exchange and Network Services tariff. The effective date is March, 17,2003.

The proposed revisions are rate reductions to the following Public Access Line (PAL) elements:

- Basic PAL
- Smart PAL
- Basic PAL Measured
- Message Line
- Smart PAL Message Line
- PAL Message Charge
- PAL Measured Per Minute Charge

The rate reductions have been calculated in accordance with FCC Order No. 02-025. Qwest has reviewed the FCC order and is making this filing without prejudice to its pending appeal of the FCC order, and without prejudice to its position in the pending appeals of this Commission's orders in Dockets Nos. UT 125 and DR 26/UC 600.

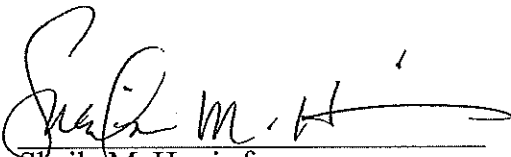
The estimated annualized revenue impact of this filing can be found herein under confidential cover.

Page 2

**Attachment B contains commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.**

If you have questions concerning this filing, please contact Sheila Harris on (503)242-5950.

Yours very truly,

By   
Sheila M. Harris for  
Judy Pepler President - Oregon  
Qwest Communications, Inc.

Attachments

**EXCHANGE AND NETWORK SERVICES**  
**P.U.C. OREGON NO. 29**

<b><u>SECTION</u></b>	<b><u>SHEET</u></b>	<b><u>REVISION</u></b>
5	136	3 <sup>rd</sup>
5	137	3 <sup>rd</sup>

421 Southwest Oak Street  
Suite 870  
Portland, Oregon 97204  
Phone 503-242-5234  
FAX 503-242-5456

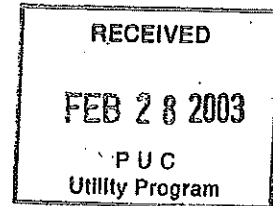
Judith A. Pepler  
President - Oregon



February 28, 2003

Advice No. 1935  
Supplement No. 1

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
P. O. Box 2148  
Salem, OR 97308-2148



ATTENTION: Vikie Bailey-Goggins, Administrator  
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

Qwest is forwarding for filing the sheets listed on Attachment A. This supplemental filing proposes further revisions to the Exchange and Network Services tariff. The effective date is March, 17, 2003.

The purpose of this supplemental filing is to reestablish a deaveraged rate structure for Qwest's Public Access Line Service Rates.

The original filing introduced rate reductions that were calculated in accordance with FCC Order No. 02-025. Qwest reviewed the FCC order and its filing without prejudice to its pending appeal of the FCC order, and without prejudice to its position in the pending appeals of this Commission's orders in Dockets Nos. UT 125 and DR 26/UC 600.

The estimated annualized revenue impact of this filing can be found herein under confidential cover.

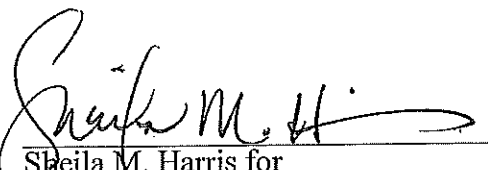
**Attachment B contains commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.**

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
Advice No. 1935

Page 2

If you have questions concerning this filing, please contact Sheila Harris on (503) 242-5950.

Yours very truly,

By   
Sheila M. Harris for  
Judy Pepler President - Oregon  
Qwest Communications, Inc.

Attachments

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	136	3 <sup>rd</sup>
5	137	3 <sup>rd</sup>

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
3rd Revised Sheet 136  
Cancels 2nd Revised Sheet 136**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS  
5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)**

RECEIVED
FEB 14 2003
PUC Utility Program

**C. Rates and Charges**

**1. Each Basic Public Access Line**

		NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP			
			1	2	3	
• Measured with two-way, per line[1]	17Q	[2]	\$ 7.98 (R)	\$ 7.98 (R)	\$ 7.98 (R)	
- Outgoing only, per line[1]	16Q	[2]	7.98	7.98	7.98	
• Measured with 300 Call Allowance						
- Two-way, per line[1,3]	15W	[2]	14.05	14.05	14.05	
• Message						
- Two-way, per line[1]	1MA	[2]	7.98	7.98	7.98	(T)
• Message with 300 Call Allowance						
- Two-way, per line[1,3]	1W3	[2]	15.21	15.21	15.21	(T)
• Flat						
- Two-way, per line[3]	1KY	[2]	8.88	8.88	8.88	
• Carrier Package[4]	1N8	[2]	10.88 (R)	10.88 (R)	10.88 (R)	(T)

- [1] Message usage charge specified, following, applies. (C)
- [2] The business access line nonrecurring charge specified in 5.2 applies. (D)
- [3] EAS rate increment also applies. See 5.1.1. (D)
- [4] Outgoing only service commonly used by Interexchange Carriers. Service includes CUSTOMNET Service and local call restrictions. (T)

Advice No. 1935  
Issued by U S WEST Communications, Inc.  
By J. A. Pepler  
OR2002-067

Effective: March 17, 2003  
Title President



**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

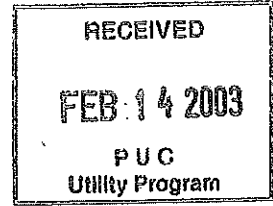
**SECTION 5  
3rd Revised Sheet 137  
Cancels 2nd Revised Sheet 137**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE**

**C. Rates and Charges (Cont'd)**



	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP		
			1	2	3
<b>2. Smart Public Access Line</b>					
- Outgoing only, per line[1]	5FO	[2]	\$9.50 (R)	\$9.50 (R)	\$9.50 (R)
- Two-way, per line[1]	5FP	[2]	9.50	9.50	9.50
• Message					
- Outgoing only, per line[3]	14C	[2]	8.61	8.61	8.61
- Two-way, per line[3]	1NH	[2]	8.61 (R)	8.61 (R)	8.61 (R)

**3. Message Usage Charges**

• Per message

MESSAGE RATE  
\$0.02 (R)

• Per Minute of Use  
Placed within the customer's local calling area

PER MINUTE RATE

\$0.01

(N)  
|  
(N)

[1] EAS rate increment also applies. See 5.1.1.

[2] The business access line nonrecurring charge from 5.2 applies.

[3] Message usage charges apply.

(T)

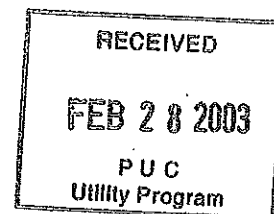
**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
3rd Revised Sheet 136  
Cancels 2nd Revised Sheet 136**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS  
5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)**



**C. Rates and Charges**

**1. Each Basic Public Access Line**

	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP			
			1	2	3	
• Measured						
- Two-way, per line[1]	17Q	[2]	\$ 7.98 (R)	\$ 7.98 (R)	\$ 7.98 (R)	
- Outgoing only, per line[1]	16Q	[2]	7.98	7.98	7.98	
• Measured with 300 Call Allowance						
- Two-way, per line[1,3]	15W	[2]	13.94	15.28	16.35	
• Message						
- Two-way, per line[1]	1MA	[2]	7.98	7.98	7.98	(T)
• Message with 300 Call Allowance						
- Two-way, per line[1,3]	1W3	[2]	15.19	16.65	17.82	(T)
• Flat						
- Two-way, per line[3]	1KY	[2]	8.78	9.62	10.30	
• Carrier Package[4]	1N8	[2]	10.88 (R)	11.85 (R)	12.63 (R)	(T)

- [1] Message usage charge specified, following, applies. (C)
- [2] The business access line nonrecurring charge specified in 5.2 applies. (C)
- [3] EAS rate increment also applies. See 5.1.1. (D)
- [4] Outgoing only service commonly used by Interexchange Carriers. Service includes CUSTOMNET Service and local call restrictions. (T)

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

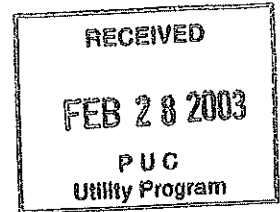
**SECTION 5  
3rd Revised Sheet 137  
Cancels 2nd Revised Sheet 137**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE**

**C. Rates and Charges (Cont'd)**



	USOC	NON- RECURRING CHARGE	MONTHLY RATE 1	PER RATE 2	GROUP 3
2. Smart Public Access Line, each					
• Flat					
- Outgoing only, per line[1]	5FO	[2]	\$8.45 (R)	\$9.05 (R)	\$9.50 (R)
- Two-way, per line[1]	5FP	[2]	9.50	10.17	10.68
• Message					
- Outgoing only, per line[3]	14C	[2]	8.61	8.61	8.61
- Two-way, per line[3]	1NH	[2]	8.61 (R)	8.61 (R)	8.61 (R)

3. Message Usage Charges

• Per message	<b>MESSAGE RATE</b>	\$0.02 (R)
• Per Minute of Use Placed within the customer's local calling area	<b>PER MINUTE RATE</b>	\$0.01

[1] EAS rate increment also applies. See 5.1.1.

[2] The business access line nonrecurring charge from 5.2 applies.

[3] Message usage charges apply.

Advice No. 1935  
Issued by U S WEST Communications, Inc.  
By J. A. Pepler  
OR2002-067 Supplement #1

Effective: March 17, 2003  
Title President

Qwest  
421 Southwest Oak Street  
Suite 870  
Portland, Oregon 97204  
Phone 503-242-5234  
FAX 503-242-5456

Judith A. Peppler  
President - Oregon



February 14, 2003

Advice No. 1935

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
P. O. Box 2148  
Salem, OR 97308-2148

ATTENTION: Vikie Bailey-Goggins, Administrator  
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

Qwest is forwarding for filing the sheets listed on Attachment A. This filing proposes revisions to the Exchange and Network Services tariff. The effective date is March, 17, 2003.

The proposed revisions are rate reductions to the following Public Access Line (PAL) elements:

- Basic PAL
- Smart PAL
- Basic PAL Measured
- Message Line
- Smart PAL Message Line
- PAL Message Charge
- PAL Measured Per Minute Charge

The rate reductions have been calculated in accordance with FCC Order No. 02-025. Qwest has reviewed the FCC order and is making this filing without prejudice to its pending appeal of the FCC order, and without prejudice to its position in the pending appeals of this Commission's orders in Dockets Nos. UT 125 and DR 26/UC 600.

The estimated annualized revenue impact of this filing can be found herein under confidential cover.

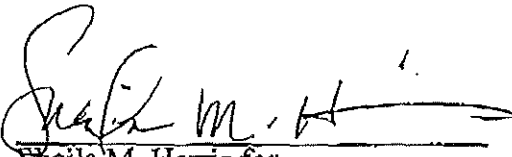
The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
Advice No. 1935

Page 2

**Attachment B contains commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.**

If you have questions concerning this filing, please contact Sheila Harris on (503)242-5950.

Yours very truly,

By   
Sheila M. Harris for  
Judy Pepler President - Oregon  
Qwest Communications, Inc.

Attachments

Attachment A  
Advice No. 1935

**EXCHANGE AND NETWORK SERVICES**  
**P.U.C. OREGON NO. 29**

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	136	3 <sup>rd</sup>
5	137	3 <sup>rd</sup>

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
3rd Revised Sheet 136  
Cancels 2nd Revised Sheet 136**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)**

**C. Rates and Charges**

**I. Each Basic Public Access Line**

	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP			
			1	2	3	
• Measured						
- Two-way, per line[1]	17Q	[2]	\$ 7.98 (R)	\$ 7.98 (R)	\$ 7.98 (R)	
- Outgoing only, per line[1]	16Q	[2]	7.98	7.98	7.98	
• Measured with 300 Call Allowance						
- Two-way, per line[1,3]	15W	[2]	14.05	14.05	14.05	
• Message						
- Two-way, per line[1]	1MA	[2]	7.98	7.98	7.98	(T)
• Message with 300 Call Allowance						
- Two-way, per line[1,3]	1W3	[2]	15.21	15.21	15.21	(T)
• Flat						
- Two-way, per line[3]	1KY	[2]	8.88	8.88	8.88	
• Carrier Package[4]	1N8	[2]	10.88 (R)	10.88 (R)	10.88 (R)	(T)

[1] Message usage charge specified, following, applies. (C)  
 [2] The business access line nonrecurring charge specified in 5.2 applies.  
 [3] EAS rate increment also applies. See 5.1.1. (D)  
 [4] Outgoing only service commonly used by Interexchange Carriers. Service includes CUSTOMNET Service and local call restrictions. (T)

Advice No. 1935  
 Issued by U S WEST Communications, Inc.  
 By J. A. Pepler  
 OR2002-067

Effective: March 17, 2003  
 Title President

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
3rd Revised Sheet 137  
Cancels 2nd Revised Sheet 137**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE**

**C. Rates and Charges (Cont'd)**

	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP		
			1	2	3
<b>2. Smart Public Access Line, each</b>					
• Flat					
- Outgoing only, per line[1]	5FO	[2]	\$9.50 (R)	\$9.50 (R)	\$9.50 (R)
- Two-way, per line[1]	5FP	[2]	9.50	9.50	9.50
• Message					
- Outgoing only, per line[3]	14C	[2]	8.61	8.61	8.61
- Two-way, per line[3]	1NH	[2]	8.61 (R)	8.61 (R)	8.61 (R)

**3. Message Usage Charges**

	<b>MESSAGE RATE</b>	
• Per message	\$0.02 (R)	
	<b>PER MINUTE RATE</b>	(N)
• Per Minute of Use Placed within the customer's local calling area	\$0.01	(N)

[1] EAS rate increment also applies. See 5.1.1.

[2] The business access line nonrecurring charge from 5.2 applies.

[3] Message usage charges apply.

Advice No. 1935  
Issued by U S WEST Communications, Inc.  
By J. A. Peppler  
OR2002-067

Effective: March 17, 2003  
Title President



# U S WEST COMMUNICATIONS, INC. WORKING PAPERS

P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
2nd 3rd Revised Sheet 136  
Cancels 1st 2nd Revised Sheet 136

## 5. EXCHANGE SERVICES

### 5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS 5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)

#### C. Rates and Charges

##### 1. Each Basic Public Access Line

	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP		
			1	2	3
• Measured					
- Two-way, per line[1]	17Q	[2]	\$18.00 \$7.98 (R)	\$18.00 \$7.98 (R)	\$18.00 \$7.98 (R)
- Outgoing only, per line[1]	16Q	[2]	18.00 7.98	18.00 7.98	18.00 7.98
• Measured with 300 Call Allowance					
- Two-way, per line[1,3]	15W	[2]	26.00 14.05	28.50 14.05	30.50 14.05
• Message					
- Two-way, per line[4]	1MA	[2]	18.00 7.98	18.00 7.98	18.00 7.98
• Message with 300 Call Allowance					
- Two-way, per line[3,4]	1W3	[2]	26.00 15.21	28.50 15.21	30.50 15.21
• Flat					
- Two-way, per line[3]	1KY	[2]	26.00 8.88	28.50 8.88	30.50 8.88
• Carrier Package[5]	1N8	[2]	28.00 10.88 (R)	30.50 10.88 (R)	32.50 10.88 (R)

[1] In addition, Business Measured Service usage rates from 5.2 apply. (C)  
 [1] Message usage charge specified, following, applies.  
 [2] The business access line nonrecurring charge specified in 5.2 applies.  
 [3] EAS rate increment also applies. See 5.1.1.  
 [4] Message usage charge specified, following, applies.  
 [5] Outgoing only service commonly used by Interexchange Carriers. Service includes CUSTOMNET Service and local call restrictions.

Advice No. 48491935  
 Issued by U S WEST Communications, Inc. Effective: January 1, 2002 March 17, 2003  
 By J. A. Pepler Title Vice President  
 OR2002-067

# U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
2nd 3rd Revised Sheet 137  
Cancels 1st 2nd Revised Sheet 137

## 5. EXCHANGE SERVICES

### 5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

#### 5.5.7 PUBLIC ACCESS LINE SERVICE

##### C. Rates and Charges (Cont'd)

	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP		
			1	2	3
2. Smart Public Access Line, each					
• Flat					
- Outgoing only, per line[1]	5FO	[2]	<del>\$27.62</del> \$9.50 (R)	<del>\$29.57</del> \$9.50 (R)	<del>\$31.05</del> \$9.50 (R)
- Two-way, per line[1]	5FP	[2]	<del>27.62</del> <u>9.50</u>	<del>29.57</del> <u>9.50</u>	<del>31.05</del> <u>9.50</u>
• Message					
- Outgoing only, per line[3]	14C	[2]	<del>19.24</del> <u>8.61</u>	<del>19.24</del> <u>8.61</u>	<del>19.24</del> <u>8.61</u>
- Two-way, per line[3]	1NH	[2]	<del>19.24</del> <u>8.61 (R)</u>	<del>19.24</del> <u>8.61 (R)</u>	<del>19.24</del> <u>8.61 (R)</u>

### 3. Message Usage Charges

• Per message	MESSAGE RATE \$0.07-0.02 (R)
• <u>Per Minute of Use</u> <u>Placed within the customer's local calling area</u>	<u>PER MINUTE RATE</u> \$0.01

(N)  
|  
(N)

- [1] EAS rate increment also applies. See 5.1.1.
- [2] The business access line nonrecurring charge from 5.2 applies.
- [3] Message usage charge specified, following, applies.

---

Advice No. ~~1849~~1935  
 Issued by U S WEST Communications, Inc. Effective: January 1, 2002 March 17, 2003  
 By J. A. Pepler Title Vice President  
 OR2002-067

# Facsimile transmittal

Qwest  
Sheila Harris  
Oregon Regulatory  
421 SW Oak Street  
Room 810  
Portland, Oregon 97204-1817  
Tel: 503-242-5950  
FAX: 503-242-7243  
Email: smbarr2@qwest.com

---

**To:** Vikie Bailey-Goggins      **Fax:** 503-373-7752

---

**From:** Sheila Harris      **Date:** 2-14-03  
Manager – Oregon Regulatory  
Affairs

---

**Re:** 1935      **Total Pages:** 10

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**CC:**

---

Urgent     For Review     Please Comment     Please Reply     Please Recycle

---

If you have any problems with this fax, please contact 503-242-8003. Thank you.

**Notes:** Attached please find a facsimile filing of Qwest's 1935. The original will be delivered on Tuesday, February 18, 2003 via UPS overnight mail.

Attachment B contains commercially valuable information and/or trade secrets and is submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.

Please feel free to call with any questions or concerns.

Sheila Harris  
Oregon Policy and Law  
Regulatory Manager  
503-242-5950

DATE: 2-14-03 COMPANY/ADVICE#: QWEST Cebu #1935

TO: LANCE BALL *Emmons*

FROM: VIKIE BAILEY-GOGGINS

NEW TARIFF FILING

Please check names of persons to whom we should provide a copy of the attached tariff filing. Please return the entire package to me within one (1) day. Please indicate "P" for principal staff.

- Ball
- Birko
- Carter
- Emmons
- Sloan
- Stange
- Nyegaard (cover letter only)
- Other (Please name: \_\_\_\_\_)

Does Staff plan to take to public meeting? *NO*

Is Prehearing conference necessary? *NO*

Should an ALJ be assigned? *NO*

Public Meeting Caption: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

**WILLIAMS Kathy**

---

**From:** BALL Lance  
**Sent:** Monday, March 17, 2003 4:16 PM  
**To:** WILLIAMS Kathy  
**Cc:** STANAGE Jim  
**Subject:** Qwest Advice 1935

Qwest filed Advice 1935 on February 14, 2003. A supplement was filed on February 28, 2003. The filing goes into effect today, March 17, 2003. Qwest proposes to reduce its rates for Public Access Line (PAL) Service. The filing is intended to meet requirements of the Federal Communications Commission's (FCC) Order No. 02-025 with reference to the "new services test." The company has stated that it has made similar filings in its other fourteen-state service areas. Malheur's Advice 2003-02-C, which will also go into effect March 17, 2003, proposes rates that are similar to or identical to the rates proposed here. Under the FCC order, former Bell operating companies are allowed to use any of three methods identified in the order to arrive at rates that comply with the so-called new services test.

Public Access Line (PAL) Service provides telephone service through a local access line to all Payphone Service Providers' (PSP) pay telephones with or without coin collecting devices. Basic PAL access to the network is provided on a flat, measured, measured with a 300-call allowance, message or message with a 300-call allowance, or Carrier Package (out only) basis. PAL access to the network is also provided through Smart PAL Service is a flat or message, two-way or outgoing only line which utilizes central office coin control features.

The proposed monthly rates are as follows:

Each Public Access Line	RATES		
	Proposed	Current	Reduction
Measured	\$7.98	\$18.00	\$10.02
Measured, out only	7.98	18.00	10.02
Measured, 300 Call Allow.	13.94	26.00	12.06
Carrier Package	10.88	28.00	17.12
Smart PAL, Flat	9.50	40.00	30.50
Smart PAL, Flat Out Only	8.45	27.62	19.17
Smart PAL, Measured*	8.61	19.24	10.63
Measured			
Usage Rate (per minute)	\$0.01	\$0.03	\$0.02
Message Rate (per call)	0.02	0.07	0.05

The monthly rate reduction for PAL subscribers would be approximately 70 percent. The measured usage rate for PAL customers is being reduced by 67 percent, from \$0.03 to \$0.01, and the message usage rate for PAL customers is being reduced by 71 percent, from \$0.07 to \$0.02. The filing will increase Qwest's revenues approximately \$730,000.

I note that even though a large reduction is proposed for PAL subscribers, a flow-through of rate reductions will not necessarily occur for end-users of PAL service. The reason is end-user rates are not regulated by the Oregon PUC and competitive market conditions will not necessarily come into play among competing PAL providers. PAL subscribers generally enjoy substantial market power and because of this, end-user prices tend to be much higher than cost without a commensurate increase in value to end-users. This filing will probably result in little more than increasing operating margins for PAL providers.

The company submitted a financial analysis and cited a cost study that shows the proposed rates cover the service's imputed price floor (i.e., the cost of service). Although ORS 759.410 does not require that "retail telecommunications services" be priced at least as high as the imputed price floor of each respective basic service, it has been the policy of Commission to set basic services rates to cover their price floors except for the rates in exchanges where the local access rate is subsidized through the Oregon Universal Services Fund. (The filed services are basic services under ORS 759.410.)

The filing is consistent with federal guidelines. The filing does not conflict with the public interest. Please prepare an acknowledgment letter for Phil Nyegaard's signature.  
Thank you Kathy.

Lance L. Ball  
Program Manager of Rates and Service Quality  
Telecommunications Division  
Public Utility Commission of Oregon

IN THE COURT OF APPEALS OF THE STATE OF OREGON

NORTHWEST PUBLIC  
COMMUNICATIONS COUNCIL,

Petitioner,

v.

QWEST CORPORATION, fka U.S. West  
Communications, Inc. and PUBLIC  
UTILITY COMMISSION OF OREGON,

Respondents.

TRANSMITTAL OF SHORTENED  
RECORD AND CERTIFICATE

Appellate Court No. CA No. A166810

Agency Case No. UT 125

VOLUME II

ITEM NOS. 13 - 16

FILED

COURT OF APPEALS

MAR 27 2018

STATE COURT ADMINISTRATOR

By AB Deputy

CASE NO.

A166810

2

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12



ORDER NO. 02-009

ENTERED JAN 08 2002

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 125/PHASE II  
RATE DESIGN

In the Matter of the Application of )  
QWEST CORPORATION for an ) ORDER  
Increase in Revenues. )

DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED

On November 13, 2001, the Northwest Payphone Association (NWP) filed an application for reconsideration of Order No. 01-810. On November 28, 2001, Qwest Corporation (Qwest) and Commission Staff responded in opposition to NWP's application. On December 12, 2001, NWP filed a reply to Qwest's and Staff's responses.

**NWP's Position.** NWP asserts that the Commission made two errors of law or fact in Order No. 01-810. First, NWP argues that the Commission erroneously assumed that Qwest's CustomNet service differs from the "Selective Class of Call Screening Service" discussed in a Federal Communications Commission (FCC) order that is directly on point. As a result, NWP maintains that the order fails to properly apply federal law.

Second, NWP argues that the Commission improperly disregarded the FCC's most recent explanation of the evidence required for and the standards to apply to the development of a cost based rate for public access line (PAL) services under the new services test (in the Wisconsin Order; see the discussion below).

1. *NWP's first argument is that the Commission should have concluded that the FCC's new services test applies to CustomNet.* The order, at 56, concludes that the new services test does not apply to CustomNet because CustomNet is available to any class of subscriber and is thus not a payphone service. NWP asserts that this conclusion is erroneous. NWP argues that CustomNet is the name Qwest gives to outgoing or originating line screening and is a service essential to prevent payphone fraud. Without it, a payphone user could simply dial "0" and ask the operator to place a long distance call and the operator would not know that the call originated at a payphone.

According to NWPA, the FCC has already determined that call screening services like CustomNet are payphone services. In the Memorandum Opinion and Order, *Local Exchange Carriers' Payphone Functions and Features I*, 12 FCC Rcd. 17,996 at ¶¶12, 15, n. 19 (1997) (Payphone Features Order), the FCC applied the new services test to Bell Atlantic's "incoming/outgoing call screening" and the GTE's "selective class of call screening service." NWPA asserts that CustomNet and selective class of call screening are functionally the same service, differing only in their proprietary names, and that the Commission therefore erred in concluding that the new services test did not apply to CustomNet.

NWPA argues that the Commission also made an error of law in its decision on page 56. The Commission decided that the Payphone Features Order did not apply because CustomNet is available to all subscribers and is therefore not exclusively a payphone feature. NWPA asserts that the new services test applies to "any unbundled features [ILECs] provide to their own payphone services." Order on Reconsideration, 11 FCC Rcd. 21,233 at ¶163 (1996) (Order on Reconsideration). NWPA notes that Qwest has admitted that it provides CustomNet to its own basic PAL lines ordered by its payphone division. Therefore, NWPA argues, the Commission should have decided that CustomNet is subject to the new services test.

The order also contends that CustomNet is not a payphone specific service because over 37 percent of the lines with CustomNet serve customers other than payphone service providers (PSPs). NWPA argues that a number of PSPs order CustomNet and that payphones account for (a confidential number) of CustomNet service. However, NWPA points out that usage data is ultimately irrelevant, because Qwest provides CustomNet to its own payphone operations and is therefore by definition subject to the new services test.

NWPA further argues that even if the Commission had determined that CustomNet is subject to the new services test, it could not have found that CustomNet passed that test on the record in this case. NWPA argues that Qwest failed to provide cost data and supporting analysis as required by the FCC. NWPA asserts that under the new services test, an ILEC must calculate the rates for all services subject to the test, including CustomNet and public access lines (PAL), by adding its direct costs to an appropriate level of overhead costs. Report and Order, *In the Matter of Amendments to Part 69 of the Commission's Rules*, 6 FCC Rcd. 4,524 at ¶44 (1991) (ONA Order).

NWPA asserts that Qwest never filed cost data for CustomNet and never set its CustomNet rates according to the new services test. According to NWPA, the FCC's Payphone Features Order provides clear guidance as to how the Commission should have evaluated Qwest's CustomNet rates, and the Commission did not comply with these guidelines.

2. *NWPA's second argument is that Qwest's PAL rates do not comply with the new services test.* NWPA argues that Qwest never filed sufficient evidence of its direct and overhead costs in support of its PAL rates. NWPA cites the ONA Order at ¶42 in support of its proposition that an ILEC must file engineering studies, time and wage

studies, or other cost accounting studies to establish its direct costs. NWPA also asserts that ILECs must prove their overhead costs by filing "cost data sufficient to establish that such charges will not recover more than a just and reasonable portion of the carrier's overhead cost." 47 C.F.R. §61.49(h). At a minimum, according to the ONA Order, an ILEC must demonstrate that rates are cost based and submit data sufficient to permit a state commission to "evaluate the reasonableness of the manner in which overhead costs are loaded onto the cost of the service, including review of the ratios of direct unit cost to unit investment and direct unit cost to unit price." ONA Order at ¶44.

NWPA faults the order, at 55, for stating that the FCC has not specified what kind of evidence is necessary to determine whether PAL rates satisfy the new services test. NWPA maintains that the FCC has provided specific guidance on this type of evidence in *The Matter of Wisconsin Public Service Commission Order Directing Filings*, 15 FCC Rcd. 9,978 (2000) (Wisconsin Order) at ¶¶7-13.

NWPA argues that the Commission erred in relying on Qwest's cost to price ratio to infer the overhead on payphone rates. NWPA argues that the FCC's Common Carrier Bureau directed Bell Atlantic "to explain in detail how its development of rates for these features complied with the new services test, Section 276, and the Payphone Orders." Payphone Features Order at ¶6.<sup>1</sup>

NWPA also argues that Qwest's overhead loading for PAL service is unreasonable, contrary to the order's finding at 56. Qwest's overhead loading, according to the order, ranges from 26 percent to 91 percent for different PAL services. NWPA argues that this much overhead is inexcusable. The Payphone Features Order found that a range of overhead loading up to 4.8 times direct costs is reasonable, as the order states at 55, but NWPA contends that the Payphone Features Order involved features with direct costs that were extremely low or zero and that were provided for free or for a monthly rate of \$0.015. The FCC stated in that order that "We do not find that our determination here concerning overhead loadings of Bell Atlantic's provision of payphone features and functions will necessarily be determinative in evaluating overhead loadings for other services." Payphone Features Order at ¶13.

NWPA further argues that Qwest failed to explain why its overhead loading has that range. According to the ONA Order, at ¶44, all ILECs must justify the overhead loading methodology they select as well as any deviations from methodologies they use for related services.

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<sup>1</sup> NWPA asserts that the order, at 56, determined that Qwest's PAL rates were calculated according to the new services test. The order makes no determination about how Qwest calculated its PAL rates; instead, it finds that the rates are consistent with the new services test. NWPA's argument on this point will not be addressed, because it is based on a false assertion.

NWPA also faults the order, at 56, for justifying Qwest's rates by stating that the FCC's requirement of cost based rates does not mean that rates must be set at costs. According to NWPA, that statement is incorrect. NWPA contends that Qwest must back up its PAL overhead costs with cost studies and other data, citing to the Wisconsin Order at ¶11 ("Given that the new services test is a cost-based test, overhead allocations must be based on cost, and therefore may not be set artificially high in order to subsidize or contribute to other LEC services.").

Finally, NWPA argues that the order, at 56, improperly declines to follow the Wisconsin Order because the Wisconsin Order applied to certain named ILECs and did not issue from the whole Commission. NWPA argues that the FCC would not apply a different standard to Qwest and that this Commission should grant deference to the interpretation of the FCC rules found in the Wisconsin Order until the FCC issues an order reversing its findings.

### OPINION

**Applicable Law.** OAR 860-014-0095(3) provides:

(3) The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is:

(a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;

(b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;

(c) An error of law or fact in the order which is essential to the decision; or

(d) Good cause for further examination of a matter essential to the decision.

**1. CustomNet and the new services test.** NWPA argues that CustomNet is subject to the new services test because Qwest provides CustomNet to its own payphone services and the FCC's Order on Reconsideration states that the new services test applies to "any unbundled features [ILECs] provide to their own payphone services." The order, at 54, however, states that CustomNet is a tariffed retail service and takes official notice of the tariff for that service on file with the Public Utility Commission. A tariffed retail service is not an unbundled feature, and the language from the Order on Reconsideration does not apply to CustomNet.

NWPA also argues that CustomNet is subject to the new services test because it is equivalent to GTE's selective class of call screening service. In the Payphone Features Order, the FCC found that GTE's screening service was subject to the new services test as a payphone specific service. NWPA contends that we asserted that the Payphone Features Order involved services that were different from CustomNet.

This is an incorrect statement. We stated (n. 27 at 56): "In the Payphone Features Order, the FCC determined that GTE's selective class of call screening service is subject to the new services test, describing it as a payphone specific feature. At ¶15." We then concluded, at 56, that CustomNet is not a payphone specific feature. We do not have a factual record on which to decide what kind of service GTE's call screening is. We did decide, order at 56, that CustomNet is not a payphone specific feature because 37 percent of its users are not PSPs. Therefore, we concluded and again conclude that the new services test does not apply to CustomNet.

Because we again decide that CustomNet is not subject to the new services test, it is not necessary to address NWPAs arguments about cost data and overhead for CustomNet.

**2. Qwest's PAL rates.** NWPAs asserts that Qwest's PAL rates do not comply with the new services test. This matter was discussed in the order on the basis of the same arguments presented here. *See* order at 50-52. We considered the arguments NWPAs presented, and presents here, and determined that Qwest's PAL rates satisfy the new services test. We found in the order and again find the cost data submitted in UM 773 was a sufficient basis for determining Qwest's direct costs, and that its overhead is reasonable.

We continue to view the test in a much less formalistic way than NWPAs does. Even the ONA Order, to which NWPAs repeatedly recurs, characterizes the new services test as a "flexible cost based approach to pricing new services." At ¶38; *see* order at 53.

Finally, NWPAs argues that the Wisconsin Order sets guidelines for the new services test. We gave reasons in Order No. 01-810, at 54, for not relying on that order. NWPAs has brought no new arguments to convince us that we should rely on it.

### CONCLUSION

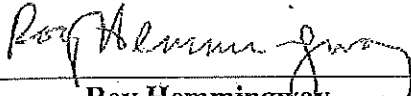
We conclude that NWPAs has not shown grounds for reconsideration of Order No. 01-810 and that its application should be denied.

**ORDER**

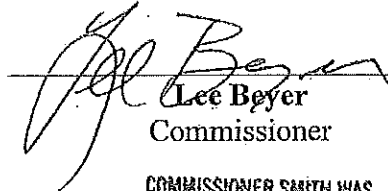
IT IS ORDERED that NWPA's application for reconsideration of Order No. 01-810 is denied.

JAN 08 2002

Made, entered, and effective \_\_\_\_\_



Roy Hemmingway  
Chairman



Lee Beyer  
Commissioner

COMMISSIONER SMITH WAS  
UNAVAILABLE FOR SIGNATURE

Joan H. Smith  
Commissioner



A party may appeal this order to a court pursuant to applicable law.

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ORDER NO. 01-810

ENTERED SEP 14 2001

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UT 125/PHASE II  
RATE DESIGN

In the Matter of the Application of )  
QWEST CORPORATION for an )  
Increase in Revenues. )

ORDER

DISPOSITION: RATES APPROVED





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ORDER NO. 01-810

ENTERED SEP 14 2001

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UT 125/PHASE II  
RATE DESIGN

In the Matter of the Application of )  
QWEST CORPORATION for an ) ORDER  
Increase in Revenues. )

DISPOSITION: RATES APPROVED

**INTRODUCTION**

**Procedural Background**

By Order No. 00-190, the Commission adopted a stipulation between Qwest Corporation (Qwest) and Commission Staff (Staff) in resolution of Phase I of this docket, the revenue requirement phase. In the stipulation, Qwest agreed to reduce its annual revenues by \$64.2 million, based on August 1997 billing units. See Appendix A to Order No. 00-190. Phase II of this docket establishes the rate design for the stipulated revenue requirement.

On November 15, 2000, Qwest filed Advice No. 1849, replacing in their entirety the earlier filed Advice No. 1806 and Transmittal No. 99-014-PL. On March 19, 2001, Qwest filed a modified portion of Attachment B, entitled "Revised UT 125 Rate Spread." These filings represent Qwest's rate design proposal to reduce annual revenues by \$64.2 million. Qwest's revised rate design proposal incorporates comprehensive deaveraging of retail rates, consistent with the parameters set in UT 148 (see below, Legislation and Commission Decisions Affecting This Docket).

In the rate design phase, as in the revenue requirement phase, Qwest has the burden to demonstrate that its rate design proposal creates rates that are "just and reasonable." ORS 756.040(1), 759.035, 759.180.

After settlement discussions, parties to the rate design phase of the docket identified 13 issues to be resolved in Phase II. Those issues are set out below.

On April 19, 2001, Staff filed its rate design proposal and supporting testimony in response to Qwest's filed rate design proposal. Staff's proposal would reduce Qwest revenues by \$64,232,454.

The following parties filed petitions to intervene in this phase of the docket. All petitions were granted.

- Advanced TelCom Group, Inc. (ATG)
- American Association of Retired Persons (AARP)
- AT&T Communications of the Pacific Northwest, Inc. (AT&T)
- Citizen's Utility Board of Oregon (CUB)
- Integra Telecom of Oregon, Inc.
- MCI WorldCom, Inc. (WorldCom)
- Northwest Payphone Association (NWPA)
- Rhythm Links, Inc.
- Telecommunications Ratepayers Association for Cost Based and Equitable Rates (TRACER)
- Unicom
- Verizon Northwest, Inc.

In addition to Staff and Qwest, the following parties filed direct and/or rebuttal testimony on April 10 and May 3, 2001:

- ATG
- AARP
- AT&T
- NWPA
- WorldCom

A hearing was held in this matter on May 29-June 1, 2001. The following attorneys entered appearances:

- For ATG and NWPA, Brooks Harlow
- For AARP, Robert Manifold
- For AT&T, Mark Trinchero
- For Qwest, Lawrence Reichman
- For Staff, Michael Weirich and Jason Jones
- For WorldCom, Ann Hopfenbeck and Lisa Rackner

The parties submitted two rounds of briefs after the hearing.

#### **Legislation and Commission Decisions Affecting This Docket**

The 1999 Oregon State Legislature passed Senate Bill 622 (SB 622), now codified as ORS 759.400 *et seq.* SB 622 introduced a permanent price cap regulation

option to replace rate of return regulation for telecommunications utilities that elect that option. Qwest elected the price cap regulation option on November 30, 1999, to be effective on December 30, 1999.

SB 622 authorizes the Commission to define and set rates for basic services for utilities electing price cap regulation. ORS 759.410 provides for maximum prices (price caps) and minimum prices (price floors) for nonbasic services. The current price caps are the rates in place when Qwest elected price cap regulation. However, ORS 759.415 allows the price caps for nonbasic services to be adjusted in a pending rate case. This is, therefore, the Commission's only opportunity to adjust Qwest's price caps. The price floors ensure that a utility's prices will not fall below the sum of the total service long run incremental cost (TSLRIC) of providing the service for the nonessential functions of the service and the price charged to other telecommunications carriers for the essential functions.

Commission Docket UM 731 involves the Oregon Universal Service Fund (OUSF). Qwest was required to make a revenue neutral filing in UM 731. The filing reduced Qwest's revenues by \$26.75 million, which amount was offset by OUSF funds. This includes a \$15.388 million reduction for basic business access lines and an \$11.365 million reduction for miscellaneous business rates. Staff used this revenue neutral filing as the starting point for the rate design proposal in this proceeding.

The Commission's decision in Docket UT 148 also affects this docket. UT 148 involved the deaveraging of wholesale unbundled network elements (UNEs). In order to foster local exchange competition, the Federal Communications Commission (FCC) requires states to establish different rates for UNEs in at least three defined geographic areas within the state to reflect geographic cost differences. FCC Rule 51.507(f). In Oregon, the only element with geographic variability sufficient to warrant deaveraging is the loop. Order No. 00-481 at 7.

The Commission chose to deaverage the loop by grouping wire centers by cost similarity into three zones and by establishing a weighted average loop rate for each zone. *Id.* at 9. The Commission established three zones because three zones adequately accounted for the cost difference between wire centers and three zones would be easier for both customers and telecommunications carriers' sales staff to use than an alternative five zone proposal. *Id.*

The Commission created three deaveraged rate zones. Since Order No. 00-481 issued, Qwest has made rate filings in UM 731 and UT 125. In both dockets, Qwest proposes retail rate deaveraging of certain services because of the wholesale deaveraging accomplished in Order No. 00-481. In these dockets, Qwest uses the term "rate group" synonymously with the Commission use of the term "rate zone" in Order No. 00-481. This order will use the term Rate Group with the same meaning as rate zone.

Staff's rate design proposal incorporates deaveraged network access channels (NACs) for private line service, Centrex services, and residential and business local exchange services consistent with the final order in UT 148, Order No. 00-481.



Finally, Dockets UM 351 and UM 844 set prices for unbundled building blocks and set imputation standards for pricing by telecommunications utilities.

### Issues

The overall issue in this proceeding is how to apportion the \$64.2 million reduction in revenues agreed to in the stipulation that the Commission adopted in Order No. 00-190. The issues are:

- Issue 1: Switched Access Rate Design
- Issue 2: Private Line Rate Design
- Issue 3: Message Toll Service
- Issue 4: Features (Residential and Business)
- Issue 5: Features (Nonrecurring Charges)
- Issue 6: Listings
- Issue 7: Centrex Plus
- Issue 8: Centrex 21
- Issue 9: Extended Area Service
- Issue 10: Advanced Services
- Issue 11: Business Local Exchange Services
- Issue 12: Residential Local Exchange Services
- Issue 13: Residential Nonrecurring Charges

### NONCONTROVERSIAL ISSUES

Several of these issues are not controversial. Staff has noted that it agrees with Qwest's proposal on these issues, and no other party has presented arguments about them. These issues include Issue 4, Issue 5, Issue 6, Issue 8, and Issue 10. AARP mounts only a cursory argument against Qwest's position on Issue 13, so Issue 13 will be included in this group as well. For each issue treated in this section, we find that Qwest has carried its burden to show that the rates it proposes are just and reasonable.

#### Issue 4: Features (Residential and Business)

**Residential Features.** Qwest proposes significant price reductions for various primary residential features, for an annual revenue reduction of \$5,587,158. Staff agrees with Qwest's proposal. Staff notes that its goal is to align prices for telecommunications services toward cost, as represented by the price floors for each service. Qwest's proposal leaves prices for residential features significantly above their price floors. However, Staff proposes no additional reductions in residential features because Staff is limited to total reductions of \$64.2 million. Staff believes that because Caller ID, Call Waiting, and Call Forwarding are popular features, it is reasonable to target them for price reductions, as Qwest has done. Reducing prices for the most popular features will benefit the greatest number of ratepayers.

Staff points out that Qwest's Transmittal No. 2000-005-PL, effective October 1, 2000, grandfathered customers subscribing to the obsolete CustomChoice and ValueChoice services as of September 30, 2000. Staff wishes to leave the grandfathered customers of these services at the total package prices they currently pay. CustomChoice customers currently pay \$29.95 for an initial line, plus \$26.95 for an additional line. ValueChoice customers pay \$23.95 including the line charge.

Staff proposes raising monthly flat rates for residential lines in Rate Group 2 by \$1.00 and in Rate Group 3 by \$2.00. See Issue 12 below. The Commission has adopted Staff's residential rate design proposal. Staff argues that we should allow Qwest to reduce prices for its grandfathered residential CustomChoice and ValueChoice customers in Rate Group 2 by \$1.00 and in Rate Group 3 by \$2.00, to keep their rates at the amounts given above.

**Resolution.** We agree with Staff and Qwest that it is reasonable to target the most popular telecommunications features for price reduction. The reductions proposed by Qwest are adopted. Qwest shall reduce prices for its grandfathered residential CustomChoice and ValueChoice customers in Rate Group 2 by \$1.00 and in Rate Group 3 by \$2.00.

**Business Features.** Qwest proposes to reduce prices for various business features by \$1,276,230. As with residential features, most business features will remain priced significantly above their price floors, because total reductions in this docket cannot exceed \$64.2 million. Qwest has targeted its most popular business features for reduction. Qwest proposes to eliminate 12 business feature packages identified by the following uniform service order codes: NLUB+, NLUY1, NLUY2, ESA, ESR, ET8, ETC, ESG, ESB, ET3, ES3, and ES5. Staff agrees that it is reasonable to allow elimination of these services, but imposes the following conditions. Qwest should be required to contact all affected customers to assist them in migrating to the a la carte purchase of the individual features in their packages or to an alternative feature package. Further, customers should not be required to pay nonrecurring charges because of this migration.

**Resolution.** Staff's conditions mean that no customer will be economically disadvantaged as a result of the elimination of these business features. We adopt both Qwest's proposal on this issue and Staff's conditions.

#### Issue 5: Features (Nonrecurring Charges)

Qwest proposes to eliminate nonrecurring charges for residential features, resulting in an annual revenue reduction of \$729,744. Staff believes that the differences between the price floor and the tariffed monthly recurring charge for individual residential features and their average product service life are sufficient to ensure that even if Qwest does not recover its costs of initiating service through a nonrecurring charge, it will not be selling these services below the price floor in violation of ORS 759.410.

**Resolution.** We adopt Qwest's rate design proposal on this issue.

**Issue 6: Listings**

Qwest proposes to decrease the monthly recurring rates for Nonlisted and Nonpublished Listing services, which decreases annual revenues by \$237,196. Qwest's proposal lowers Nonlisted service from \$0.50 to \$0.35 per month and Nonpublished service from \$0.75 to \$0.65 per month. Staff supports this proposal.

**Resolution.** Qwest's proposed rate design for this issue is adopted.

**Issue 8: Centrex 21**

Qwest proposes modest reductions and a specific rate design for Centrex 21 service. Qwest originally proposed to deaverage Centrex 21 prices for Rate Groups 1 and 2, but not for Rate Group 3. Qwest believes that the price floor requirements of ORS 759.410 would make a deaveraged rate for Rate Group 3 too high to be economically attractive.

Staff's proposal decreases Qwest's annual revenues from Centrex 21 service by \$12,411. Staff's proposal is consistent with Qwest's proposal to increase the monthly rates in Rate Groups 1 and 2 to \$46.95, which allows Qwest to maintain a proper pricing relationship with Qwest's Business CustomChoice service, grandfathered at a monthly price of \$49.95 including the line charge. The Business CustomChoice service includes more features than Centrex 21, so Staff believes that a \$3.00 per line price difference is reasonable. Staff's proposal also adopts Qwest's proposal to reduce rates for the 12 to 36 month and the 37 to 60 month rate stabilization contracts in Rate Groups 1 and 2.

Qwest has since agreed with Staff's proposal to establish rates for Centrex 21 service in Rate Group 3, consistent with the price floor requirements of ORS 759.410 and the deaveraging requirements of Order No. 00-481 (UT 148). Rate Group 3 rates will be set to recover annual revenues from the average Rate Group 3 Centrex 21 customers, based on subscription to the service from March 1997 to February 1998. However, Staff and Qwest agree that the new prices will not make economic sense for current Centrex 21 customers in Rate Group 3. Accordingly, Qwest has agreed to contact all Rate Group 3 Centrex 21 customers and migrate them to a less expensive alternative feature package. Eventually, Rate Group 3 will have no Centrex 21 customers. Staff recommends that Qwest not require Rate Group 3 customers to pay nonrecurring charges as a result of the migration to a different feature package.

**Resolution.** We adopt Qwest's proposal for Centrex 21 service pricing, as modified by Staff. Centrex 21 customers in Rate Group 3 shall not pay nonrecurring charges for their migration to a different feature package.

**Issue 10: Advanced Services**

Qwest proposes rate reductions for ISDN Basic Rate Service (ISDN-BRS), ISDN Primary Rate Service (ISDN-PRS), Digital Switched Services (DSS), and Direct Inward Dialing (DID).

After correcting the current rates contained in Qwest's initial proposal, Staff's reductions for ISDN-BRS slightly exceed Qwest's proposed reductions. Staff's proposal reduces Single Line ISDN-BRS rates by \$100,000 by reducing rates in Rate Group 1 by 6 percent, leaving the current rates for the various terms of service unchanged in Rate Group 2, and increasing rates in Rate Group 3 by approximately \$17.00. This increase in Rate Group 3 has no revenue effect, because there are no ISDN-BRS lines in that rate group. Staff's recommendations and corrections to Qwest's proposal are minor. The primary difference between the proposals is that Qwest wishes to raise rates for each term period in Rate Group 2 by approximately \$6.00, whereas Staff proposes that the current term period rates remain unchanged. Staff argues that it is inappropriate to raise the rates in Rate Group 2 because the rates are already well above their established price floor and the rates were lowered by approximately \$7.00 as recently as November 8, 2000. Qwest agrees with Staff's recommendation on this issue.

Staff agrees with Qwest's proposal to decrease certain ISDN-PRS rates, which results in an annual revenue reduction of \$30,000. The proposed reductions will make the relationships between the price floors and the proposed ISDN-PRS rates similar to those for local business access lines.

Finally, Staff agrees with Qwest's proposal to reduce certain DSS rates, resulting in an annual revenue reduction of \$200,000. Staff also agrees with Qwest's proposal to reduce rates for DID, resulting in an annual revenue reduction of \$300,000.

**Resolution.** We adopt Qwest's proposed rate reductions for advanced services, as modified by Staff.

**Issue 13: Residential Nonrecurring Charges**

Qwest proposes to raise the nonrecurring charge for residential service installation from \$12.00 to \$16.50 to bring the rate closer to the direct cost of the service. The resulting annual revenue increase is \$1.4 million. Even at that level, Qwest notes, the rate will still be significantly below cost. Staff recommends that the Commission adopt Qwest's proposal, because it moves rates closer to the established TSLRIC and still remains one of the lowest charges for this service applied by any former Bell Operating Company in the United States.

AARP disputes Qwest's proposal to raise the nonrecurring charge for residential service. AARP makes no specific argument opposing this increase. AARP's general argument is that there is no basis for an increase in basic local residential rates in the context of an overall revenue reduction.

**Resolution.** We adopt Qwest's proposal without modification on this issue. We note that in the overall rate design, many other rates benefiting residential customers are reduced, such as features, intraLATA toll, and EAS. We have a goal of moving rates toward cost. For below cost rates, such as the rate for residential service installation, this means increasing rates to move them closer to cost. AARP's counterargument is not convincing.

## CONTESTED ISSUES

### ISSUE 1: SWITCHED ACCESS RATE DESIGN

#### Background

Switched access is a service Qwest provides to interexchange carriers (IXCs) for the purpose of connecting the IXCs to their end user toll customers via the local switched network. Switched access service has three main parts: local transport, local switching, and the carrier common line charge (CCLC).

The CCLC recovers costs for the portion of the local loop assigned to the intrastate toll/access jurisdiction through the separations process. The CCLC is recognized as an implicit subsidy. In the 1996 Telecommunications Act (Act), Congress directed the Federal Communications Commission (FCC) and the states to eliminate implicit subsidies in rates and make them explicit. All parties testifying in this docket agree that the CCLC should be eliminated.

The Commission has broad discretion in the switched access rate design area. Switched access rate design is largely a matter of public policy.

#### Party Positions

Staff's proposal results in a \$21.8 million dollar annual reduction, lowering Qwest's intrastate switched access revenues by 71.32 percent. Staff's proposal eliminates the CCLC and decreases the average access charge rate per access minute from 2.8 cents to 0.8 cents.

Qwest proposes to reduce its intrastate switched access revenues by \$16 million, a 52 percent annual decrease. Qwest also proposes to eliminate the CCLC and reduce the average access charge rate from 2.8 cents per access minute to 1.3 cents.

AT&T/WorldCom propose to reduce Qwest's intrastate switched access revenues by \$25.3 million, an 82.7 percent reduction. They urge the Commission to lower Qwest's switched access rates to UM 844 prices, which would make them equivalent to UNE rates. AT&T/WorldCom also recommend eliminating the CCLC and reducing the composite access charge rate to 0.48 cents per access minute. AT&T/WorldCom argue that Qwest's position on Issue 3, Message Toll, must be considered together with its position here, because together a relatively high access rate and a relatively low toll rate reduce competitors' margins unacceptably.

Staff. Staff and Qwest share the overall rate design goal of moving Qwest's intrastate switched access rates closer to the company's lower interstate switched access rates. Staff argues that its own proposal consistently brings Qwest's intrastate and interstate rates closer while Qwest's proposal actually drives certain key interstate and intrastate rates further apart. Staff's proposal also removes the CCLC and aligns the switched access direct trunked transport rate and the private line transport rate.

To move Qwest's intrastate switched access rates closer to Qwest's interstate switched access rates, Staff proposes setting the local transport rates approximately equal to Qwest's current approved interstate access rates, where those rates are above the UM 844 and UT 148 prices. Staff follows the FCC's access charge reform rate design by decreasing the local switching rate by almost 27 percent and including the new access charge elements adopted by the FCC in its local transport rate design. Staff's local transport proposal increases Qwest's total local transport revenues by 10.77 percent. Qwest's proposal increases them by 64.31 percent.

Transport rates are variable by distance. Staff's local transport proposal generates 1.4 percent more intrastate revenue than Qwest's current interstate rates would generate within the UT 125 test period. This slight increase is mainly due to the inclusion of new access charge elements adopted by the FCC in its access charge reform docket, *Access Charge Reform*, CC Docket No. 96-262, FCC Order 97-158 (May 16, 1997), and Staff's desire not to decrease rates below the UM 844 and UT 148 prices. Staff follows the FCC's access charge reform rate design by decreasing the local switching rate by almost 27 percent and including the new access charge elements adopted by the FCC in its local transport rate design. The new elements are End Office Shared Port, Common Transport Multiplexing, Tandem Trunk Port, and End Office Dedicated Trunk Port. Staff proposes to mirror Qwest's interstate rates for these elements.

Staff notes that Qwest's proposal also adds the FCC's new access charge elements and adopts new price elements for them. Qwest previously included the costs for these same new access charge elements in its local switching rate element. Staff is concerned that Qwest's proposal may result in a double recovery for these new access charge elements.

Staff's proposal reduces Qwest's local switching rates by 27 percent, bringing them closer to Qwest's interstate switching rates. Under Staff's proposal, Qwest's local switching rates are approximately 1.95 times greater than Qwest's interstate switching rates. Qwest's proposal increases its local switching rates by almost 32 percent. The resulting local switching rates would be approximately 3.5 times greater than Qwest's interstate switching rates.

The major difference between Staff's proposal and AT&T/WorldCom's is that AT&T/WorldCom want to reduce all switched access rate elements to the UM 844 wholesale price levels. AT&T/WorldCom's proposal would encompass about \$25.3 million of the \$64.2 million reduction, compared to Staff's \$21.8 million reduction. Staff is unwilling to commit more of the \$64.2 million rate reduction to switched access

rates than it has proposed (about 33.9 percent of the total rate reduction). Other classes of customers should enjoy rate reductions as well, and Staff believes its allocation of the \$64.2 million is the fairest and most equitable for all customer groups.

Staff notes that moving Qwest's intrastate switched access rates closer to the company's lower interstate rates would help reduce arbitrage opportunities between the interstate and intrastate jurisdictions. Arbitrage is a potential problem, according to Staff, because IXCs purchase access services from Qwest to originate and terminate toll calls to Qwest end users. The IXCs self report to Qwest the jurisdiction of the traffic through the Percent Interstate Usage (PIU) mechanism. Qwest uses the PIU when billing its access charges and recording the revenues. The actual usage, however, is captured through Qwest's traffic studies. These studies identify the originating and terminating number so that the jurisdictional determination can be made. The IXC has incentive to report usage through the PIU in the jurisdiction with the most favorable rates. The result is a mismatch between usage and revenues. Actual usage may be intrastate but the revenues will be recorded as interstate.

Qwest's intrastate regulation is not based on earnings or rate of return. Thus, Staff believes that with Qwest under a price cap plan in the interstate jurisdiction and intrastate regulation under ORS 759.410, there is little incentive for Qwest to vigorously pursue misreporting problems. Other obligations, however, such as the Oregon Universal Service Fund and various regulatory fees, rely on accurate reporting by jurisdiction. Thus, Staff argues that it is important to decrease arbitrage incentives. Staff notes, however, that decreasing arbitrage opportunities is a secondary goal; its primary goal is to bring Qwest's interstate and intrastate switched access rates into closer alignment.

Staff also notes that its proposal is in line with expected future rate design events proposed by the FCC. The FCC states that it generally intends to move carriers' interstate switched access rates, including Qwest's, closer to cost. *In the Matter of Access Charge Reform*, CC Docket 96-262, FCC 00-193, ¶3 (May 31, 2000). The FCC desires to reduce the interstate switched access rates to levels even lower than today. It is important that the Commission take this chance to align Qwest's higher intrastate switched access rates with its lower interstate rates.

The FCC also declared in a recent Notice of Proposed Rulemaking that:

There are currently two general intercarrier compensation regimes: (1) access charges for long distance traffic; and (2) reciprocal compensation. We believe it is essential to reevaluate these existing intercarrier compensation regimes in light of increasing competition and new technologies, such as the Internet and Internet-based services, and commercial mobile radio services (CMRS). We are particularly interested in identifying a unified approach to intercarrier compensation -- one that would apply to interconnection arrangements between all types of carriers interconnecting with the local telephone network, and to all types

of traffic passing over the local telephone network. *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, FCC 01-132, ¶2 (April 27, 2001).

The FCC has thus declared its intent to remove implicit subsidies in access charges, move the access charges to cost based rates, and align all intercarrier compensation regimes. Staff's proposal moves Qwest's intrastate rates down toward the lower interstate switched access rates. Staff's proposal better aligns the two rate structures and is more consistent with expected FCC future adjustments to the interstate rate structure than Qwest's plan.

As a final matter, Staff observes that in Colorado, AT&T recently began charging its intrastate toll customers \$1.25 a month to cover some of AT&T's intrastate switched access costs. AT&T witness Arlene Starr explained that the Colorado monthly charge was implemented because of the high Colorado intrastate access rates as compared to the Colorado interstate access rates. Qwest worries that AT&T may impose a similar charge in Oregon. Staff observes that because its proposal reduces the switched access rates and moves them closer to Qwest's interstate rates, its proposal reduces the likelihood that AT&T may need to impose an intrastate switched access surcharge to cover switched access costs in Oregon.

**Qwest.** Qwest proposes a 52 percent overall reduction in switched access, including the complete elimination of the CCLC. Qwest's proposal accounts for about 25 percent of the total revenue reduction in this case. Qwest also proposes a restructuring of switched access rates, introducing new local transport rate elements.

Qwest opposes AT&T/WorldCom's request for UM 844 pricing for switched access service. All parties agree that Qwest is not required to unbundle switched access service under the Act or to set prices equivalent to comparable UNE rates. It makes no sense, according to Qwest, to set retail rates at the UM 844 prices, which are price floors.

Qwest's proposal increases local transport revenues by 64.31 percent. Qwest's increase in local transport revenues, much larger than Staff's, arises because Qwest significantly increases the tandem switching rate, a component of tandem switched transport (an element of local transport). As a result, tandem switched transport revenues increase 25.97 percent for Staff, compared to a 91.25 percent increase proposed by Qwest.

In response to AT&T/WorldCom's argument that Qwest's pricing proposal creates a price squeeze<sup>1</sup> or is anticompetitive, Qwest contends that

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<sup>1</sup> AT&T/WorldCom and Qwest argue about the definition of "price squeeze." Regardless of the term one applies, AT&T/WorldCom assert that the interplay of Qwest's proposed toll rates with its proposed switched access rates will narrow their gross margin and have anticompetitive effects.



AT&T/WorldCom will have sufficient margin even under its proposal to stay in the intrastate toll market.

Further, Qwest asserts that there is no basis for AT&T/WorldCom's position that toll rate reductions should not exceed switched access rate reductions on a cents per minute basis. This is the core of AT&T/WorldCom's argument. The argument assumes that AT&T/WorldCom will match Qwest's toll price reduction precisely and concludes that if their prices are lowered by an amount greater than the reduction in one item of their cost (switched access), their margin will be less than it currently is.

Qwest also notes that it will be lowering its revenue and thus its margin through the rates established in this proceeding; there is no reason that other IXCs should not do the same. (Qwest notes that the impact on their margins is not as straightforward as AT&T/WorldCom would have the Commission believe. The companies can recover switched access charges through monthly surcharges as well as through increased rates for customers served over switched access.)

Qwest also argues that its proposed switched access rates, even set above economic cost, do not give Qwest a competitive advantage of greater margins. AT&T/WorldCom have not demonstrated that their nonaccess costs are the same as Qwest's, and Qwest contends that the record indicates otherwise. Moreover, according to Qwest, the companies' argument ignores the opportunity cost of Qwest selling a minute of toll when the alternative is that Qwest would recover switched access charges if a competitor provided that toll service. The lost opportunity is a real economic cost to Qwest. Any opportunity for greater margins vanishes, Qwest argues, when one considers the opportunity cost to Qwest of selling toll and forgoing revenue from switched access service.

Qwest asserts, finally, that other IXCs in Oregon may offer both interLATA and intraLATA toll service, but Qwest at this time may not. Thus AT&T/WorldCom may spread their nonaccess costs over a far greater volume of traffic, which gives them a significant cost advantage over Qwest. Moreover, Oregon customers can reach far more telephone numbers through interLATA toll than through an intraLATA toll call. IXCs use their marketing and packaging of interLATA toll products to capture intraLATA toll customers. IXCs are not price regulated, so they can set their rates below cost if they want. They also can introduce rates that specifically recover intrastate switched access charges from their customers. They can impose surcharges, as AT&T did in Colorado. Qwest also contends that IXCs have alternatives to switched access, such as special or dedicated access.

Qwest contends that Staff's proposed decrease in switched access rates is too great. Qwest attacks Staff's rate design because it is based on the goal of avoiding arbitrage in PIU reporting, which Qwest contends is not a problem. Qwest notes that Staff is not aware of any misreporting instances in Oregon. Qwest has a financial incentive to pursue misreporting problems. Moreover, Qwest has available, through Signaling System 7, technology that can track the actual nature of traffic to detect and remedy any misreporting.

Qwest also contends that Staff's proposal to give approximately 32 percent of the revenue reduction to IXCs goes too far. Applying a portion of those revenue reductions to other end user services would result in greater overall consumer benefit.

Qwest responds to Staff's and AT&T/WorldCom's charge that Qwest's proposal may result in double recovery for the new access charge elements. The cost basis for these new rate elements is included in the tandem switching building block and the local switching building block from Qwest's previously approved cost studies. That does not mean double recovery for Qwest. Qwest notes that the building block cost studies were prepared and approved by the Commission before Qwest filed to separate these rate elements in this case. There is no double recovery, according to Qwest.

**AT&T/WorldCom.** AT&T/WorldCom assert that this issue must be considered together with Issue 3, toll rates. AT&T/WorldCom fear that Qwest's proposal will raise the price of switched access, a necessary input into providing toll service, and drop the price of toll. AT&T/WorldCom will then have to match Qwest's price decrease for toll while paying more for an input into the provision of toll service, switched access. AT&T/WorldCom argue that this proposal (and to a lesser degree, Staff's proposal as well) creates an anticompetitive situation.

AT&T/WorldCom argue that Qwest's proposal to implement larger per minute reductions in retail toll rates than in wholesale switched access rates creates a problem for Qwest's competitors. Qwest's access charges are costs to IXCs that must be recovered by a sufficient margin to offset the various other nonaccess retailing costs IXCs incur in providing retail toll services. To meet the Oregon Legislature's goal of promoting telecommunications competition, AT&T/WorldCom urge us to set rates for switched access services equal to forward looking economic cost, as determined in UM 844.

AT&T/WorldCom note that Qwest's proposal includes reducing the average intraLATA toll rate per minute by 8.41 cents (Issue 3) and the per minute switched access charge rate from 2.76 to 1.31 cents. For a two ended call, the total access charge would fall from 5.52 cents to 2.62 cents, a drop of 2.9 cents. Where Qwest's retail toll rate drops an average of 8.41 cents, its competitors' switched access rate will fall by only 2.9 cents, effectively collapsing the competitors' margin by 5.5 cents. AT&T/WorldCom argue that if Qwest's switched access rates were set at economic cost, the UM 844 prices, its proposal to implement larger per minute decreases in retail toll rates would not have an objectionable anticompetitive effect. Then other carriers would have the same input cost Qwest faces for a necessary element of toll service provision.<sup>2</sup> Unless all carriers face the same input costs, AT&T/WorldCom

<sup>2</sup> AT&T/WorldCom argue that Qwest has not entirely removed the CCLC from its rates. Qwest proposes a revenue reduction of \$16 million on Issue 1. The CCLC currently generates about \$20.4 million in revenues. AT&T/WorldCom argue that the difference, \$4 million, has merely been shifted to other access

contend that it will cost competitors more to serve retail toll customers than it costs Qwest to serve the same customers, and anticompetitive effects will occur.

Qwest criticizes the assumption that IXCs will pass through cost reductions. AT&T/WorldCom respond that market forces resulting from significant toll reductions proposed by Qwest, one of the largest intrastate toll carriers in Oregon, would likely force IXCs to lower their toll rates. Qwest also criticizes the assumption that nonswitched access costs will be equal for Qwest and competing IXCs. Evidence introduced by AT&T/WorldCom indicates that nonswitched access costs for IXCs in Oregon could be significantly greater than for incumbent local exchange carriers.

Qwest further argues that IXCs have alternatives to using switched access to carry toll calls for Qwest local service customers. According to AT&T/WorldCom, Qwest produced no evidence that switched access is not an essential function. AT&T/WorldCom concedes that in limited circumstances, alternatives exist. AT&T/WorldCom note that special access is rare, however, and is almost nonexistent for termination of traffic.

According to AT&T/WorldCom, setting switched access at price floors makes sense. The UM 844 rates represent price floors. SB 622 established a pricing range to allow telecommunications utilities to respond to market signals. This flexibility is not needed with regard to wholesale services that are essential components for the provision of competing retail services provided by Qwest's competitors. Qwest has no incentive to reduce the cost of switched access, a fundamental service that its competitors must purchase to compete, to price floors. If switched access services are not set at cost, Qwest will always have a self interested incentive to price such services higher than price floors. Pricing switched access services at cost will promote competition in the market, driving retail service prices toward the price floors. Consequently, AT&T/WorldCom contend, it makes good economic sense for the Commission to set switched access rates at price floors.

#### **Discussion and Resolution**

Switched access rate design is largely a matter of public policy. We have considerable discretion in adopting switched access rates.

We believe Staff's proposal is the best balanced and fairest of the three proposals. It brings Qwest's intrastate switched access rates closer to its currently lower interstate switched access rates. This is an equitable development with respect to consumers and serves the goal of moving rates closer to cost, while still keeping them above the price floors. This also addresses the potential problem of misreporting PIUs to the more favorable jurisdiction. Although Qwest assures us that it has every incentive to report correctly, Staff remains concerned about the problem. The rate structure Staff

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rate elements and is an implicit subsidy. Because we do not decide this issue in favor of Qwest, we do not address this argument further.

proposes reduces the potential for arbitrage. We note, however, that this is a minor consideration. Our overall consideration is to set price caps so that interstate and intrastate switched access rates are more congruent.

We find that Qwest's proposal moves the interstate and intrastate rates further apart rather than decreasing the difference between them. Qwest's proposal greatly increases the tandem switching rate and would result in an overall 64.31 percent increase in local transport revenues. Qwest's proposal increases its local switching rates by approximately 32 percent as well. We do not believe that this proposal can further competition in telecommunications, which is our goal as well as the goal Congress expressed in the 1996 Telecommunications Act.

AT&T/WorldCom's desire to see switched access rates set at forward looking economic cost is understandable, given the companies' position as Qwest's competitors for intrastate toll traffic. The UM 844 rates include contribution. Thus, adopting them here is not an unreasonable proposal. However, we are reluctant to commit more of the \$64.2 million reduction than Staff has proposed to this aspect of rate design.

Moreover, we believe that Staff's proposed rates adequately address AT&T/WorldCom's concerns about reduced margins. Staff's rates are considerably lower than Qwest's proposed rates, and Staff's proposed reductions on Issue 3, which we also adopt, are less than Qwest's. Therefore, the reduced margin that AT&T/WorldCom describes based on Qwest's proposals will be much less serious under Staff's plan.<sup>3</sup>

We note too that Qwest has introduced a number of considerations that make the IXCs' reduced margins both less straightforward and less anticompetitive than AT&T/WorldCom have argued.

Finally, we note that Staff's proposal on this issue better aligns interstate and intrastate access charges in view of anticipated FCC action in its access charge reform docket than Qwest's proposal does.

## ISSUE 2: PRIVATE LINE RATE DESIGN

### Background

Private line services are a collection of transport services that provide direct connections for customers between two or more locations. There are three basic types of private line service: analog, digital, and DS1. Further, there are four basic elements that comprise a two-point private line service: the network access channel (NAC), channel performance, transport mileage, and optional features and functions.

<sup>3</sup> We note also that the FCC is soliciting comments on the use of unbundled network elements to provide exchange access service. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Public Notice DA 01-169 (January 24, 2001). If the FCC approves such use, IXCs will be able to forgo purchase of switched access for the lower UNE rates.

Channel performance rates are the main point of difference between Qwest and Staff, the only parties addressing this issue. All private lines require some channel performance element, but channel performance is not an independent function.

### Party Positions

**Staff.** Staff proposes to change rates for various private line services, increasing Qwest's intrastate private line revenues by \$0.305 million. Staff's proposal sets rates to cover the UM 844 and UT 148 price floors, reduces channel performance and features and function rates to help offset the two wire and four wire NAC increases, and aligns the private line and switched access transport rates. The proposal offsets analog private line increases with digital decreases, raising the total private line revenues by only 1.63 percent. The offset of analog increase and digital services reduction makes sense, according to Staff, because Qwest customers use both services.

For channel performance, transport mileage, and optional features and functions, Staff recommends setting Qwest's private line rates at approximately 25 percent over the UM 844 UNE prices. Staff chose the 25 percent markup to ensure that when a competitive local exchange carrier (CLEC) orders a private line for resale, the discounted private line rate will be at least equal to the sum of the UNEs required for the equivalent bundled service. This prevents a CLEC from purchasing a private line for resale at a price below the floor set in ORS 759.410(4) (calculated after applying the wholesale discount to the private line rate). Twenty two percent is a common resale discount rate in Qwest's Oregon interconnection agreements.

For the NAC, Staff recommends deaveraging the two wire and four wire NAC termination rates using the deaveraged UT 148 prices, with a 13 to 18 percent markup. Staff chose the lower markup for NACs because the same NAC rates have been significantly increased through UT 148, particularly in Rate Groups 2 and 3. Staff also wishes to avoid rate shock. Staff opposes Qwest's proposal to phase in rates for the NAC in Rate Groups 2 and 3, because that would leave in place prices that are below the price floor for several years. Staff contends that this approach violates the price floor requirements of ORS 759.410.

For analog service, Staff's proposal would increase the two wire and four wire NACs to cover the UT 148 price floors; deaverage the NAC rates into three rate groups; align the transport rates with Qwest's switched access transport rates; and lower most of the channel performance and optional features and functions rates. Staff's proposal would increase Qwest's intrastate analog private line revenues by 12.52 percent. Qwest proposes to increase the rates for these services by 23 percent because of potential cost increases.

Staff notes that its recommended analog rates are based on current evidence of cost and satisfy the requirements of ORS 759.410(4).<sup>4</sup> Staff argues that Qwest's concern about potential cost increases is speculative.

For digital private line service, Staff proposes to increase the Digicom1 and Digital Data service two wire and four wire NAC rates to cover the UT 148 price floors; deaverage the NAC rates into three rate groups; decrease channel performance and features and functions rates for all digital private line services; and align the DS1 monthly transport rates with Qwest's switched access DS1 transport rates. This portion of Staff's proposal would decrease Qwest's total digital private line revenues by 25.46 percent. Finally, for DS1 private line service, Staff proposes a 24.78 percent decrease in DS1 revenues.

**Qwest.** Qwest argues that Staff's proposal prices the NAC and channel performance element below the price floor. Staff and Qwest agree that the discounted price of a retail service should not fall below the price floor, but only Qwest's proposal realizes this goal, in Qwest's view. Qwest contends that it is appropriate to consider an NAC and a channel performance rate element together in analyzing what the discounted price would be, because neither element purchased independently provides a telecommunications service. Channel performance is also generally increasing in cost. Therefore, Staff's low price level is inappropriate. It makes sense, Qwest argues, to build in a sufficient cushion above the price floor so Qwest will not need to ask the Commission to raise prices later to ensure that the price remains above the required floor (assuming the Commission has the authority to make such adjustments).

Qwest and Staff agree that it is necessary to ensure that the discounted resale price is not below the price floor. It would be inappropriate to require Qwest to resell a finished service at a price below the floor established by ORS 759.410(4). In the case of analog NACs, however, Staff proposes prices based on equivalent UNE prices plus a 13 to 18 percent markup. If a 22 percent discount is applied to this price, the NAC would be sold for resale below the price floor. Qwest proposes to avoid rate shock by phasing in the higher rates for two wire and four wire NAC rates, which are currently below the price floor.

According to Qwest, the price of a two wire NAC in Rate Group 1 plus a common channel performance element (Voice Grade 32 Loop Start Sig -- LS) under Staff's proposal would be \$24.75. Under Qwest's proposal the price would be \$25.40, the difference being due to Qwest's higher channel performance rate. The price floor for

<sup>4</sup> ORS 759.410(4) provides:

A telecommunications carrier that elects to be subject to this section and ORS 759.405 may adjust the price for a regulated retail telecommunications service between the maximum price established under this section and a price floor equal to the sum of the total service long run incremental cost of providing the service for the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions. Basic telephone service shall not be subject to a price floor.

these elements combined is \$20.96. Qwest's proposed rates are 21 percent above the floor, while Staff's are only 18 percent above. To avoid the situation of Qwest having to resell services at prices below the price floor, Qwest urges us to choose its higher channel performance rates.

Qwest proposes less reduction than Staff for digital private line services, but is willing to accept Staff's proposal.

### Discussion and Resolution

Staff and Qwest agree that the wholesale discounted price of a private line, when resold by Qwest to a CLEC, should not fall below the ORS 759.410(4) price floor. The parties do not contend that it is unlawful for a *discounted* NAC to fall below the price floor, but agree that this is a situation to be avoided if possible. Staff's proposal avoids this problem by setting private line rates at about 25 percent above the UM 844 UNE prices, except for certain NAC rates. For the NAC, Staff proposes deaveraged UT 148 prices with a 13 to 18 percent markup.

The NAC price Staff proposes is a problem only if Qwest retains the wholesale discount at 22 percent. However, in two dockets before the Commission, UM 962 and UM 973, Qwest has proposed a wholesale discount rate of 8.59 percent. We do not read ORS 759.410(4) to require that a discounted service be above the price floor. Therefore, we find Staff's proposed NAC prices legally acceptable.

Qwest addresses the NAC problem through two arguments. It proposes, first, to set NAC prices low and then phase in a higher rate over a several year time period. This proposal is not legal, because it would leave NAC rates in place that are below the price floor. It would therefore violate ORS 759.410(4). We reject this proposal.

Second, Qwest argues that the Commission should combine the NAC rates with high channel performance rates to ensure that the combined rate is sufficient (that is, above the price floor) when the elements are resold at a discount. Qwest believes that ORS 759.410(4), which sets the parameters for the price a telecommunications carrier may charge for a "regulated retail telecommunications service," addresses combinations of services as well as individually tariffed elements. Qwest argues that channel performance cannot be used alone, and that it therefore makes sense to combine it with the NAC and consider the two elements together as a telecommunications service. Combined, Qwest argues, the elements meet the price floor test.

We do not accept Qwest's reading of the statute. See our discussion of ORS 759.401(4) at Issue 3, Access Charge Imputation, below. The statute speaks of service in the singular. We read the statute to apply to individually tariffed elements, not to combinations of elements.

We note that even if we were to accept Qwest's combined rate theory, there are many combinations of NACs and channel performance. Qwest's combined rate

could still allow a combination of rates that is unlawfully priced below the floor. For example, Qwest proposes a price of \$17.00 for the low speed data NAC two wire per termination. The imputed price floor for the element is \$15.11. A potential Qwest customer could combine that NAC with the channel performance option LS2, priced at \$2.64, with an imputed price floor of \$5.39. The combination would result in a price (\$19.64) below the price floor for the combination of \$20.50. We find that each rate element must pass the price floor test under ORS 759.410(4).

Qwest also argues that analog private line rates are increasing and that the price should be set higher for that reason. Staff based its analog price proposal on current cost data. Anything else is speculative. The same argument holds for channel performance. Qwest's higher rates are based on what may happen, not on current costs.

Qwest has accepted Staff's digital private line rate design.

We adopt Staff's proposals on Issue 2.

### ISSUE 3: MESSAGE TOLL SERVICE RATE DESIGN

#### Background

Qwest proposed to reduce Message Toll Service (MTS) by \$32 million, almost half of the \$64.2 million in rate reductions available in this case. Staff recommends a lower amount, a reduction of \$23.4 million. The difference of \$8.6 million is due to MTS rate design differences (\$2.3 million) and to assumptions regarding MTS price elasticity (\$6.3 million).

There are two sets of issues regarding MTS rate design: MTS rates, including Staff's access imputation analysis, and price elasticity.

Generally, Qwest proposes to simplify its MTS pricing structure and reduce prices where appropriate. However, Staff identifies \$2.3 million in adjustments to Qwest's proposal.

Most of the MTS rate structure issues are straightforward. We discuss them immediately below. We then address access imputation and elasticity separately. Access imputation determines whether a service is priced above the ORS 759.410(4) price floors; Qwest disputes Staff's and AT&T/WorldCom's reading of the statute. The elasticity adjustment, or stimulation factor, is applied to take into account demand response to lowered prices. Qwest argues against applying the elasticity adjustment; Staff and AT&T/WorldCom are in favor of applying it.

#### MTS Rate Design

**Postalized Rates.** Current MTS rates are both distance and time of day sensitive, with different rates for the first minute and subsequent minutes. Qwest has proposed a "postalized" rate schedule that eliminates rate differences by distance band



and by initial and subsequent conversation minute. However, Qwest also proposed separate postalized rate schedules for residential, business, and miscellaneous calls. For residential customers, Qwest proposed postalized rates of 10 cents per minute for daytime calls and 6 cents for evening, night, and weekend calls (hereafter called peak and off peak rates). For business customers, Qwest proposed postalized rates of 12 cents for peak and 10 cents for off peak calls. For all other miscellaneous calls,<sup>5</sup> Qwest proposed postalized rates of 12 cents for peak and 6 cents for off peak calls.

Staff agrees with a postalized standard MTS rate structure but disagrees with the residential, business, and miscellaneous rate distinctions. Staff proposes a single standard postalized rate structure of 11 cents per minute for peak calls and 7 cents per minute for off peak calls. Staff makes this proposal because Qwest's customer class distinction has no relation to costs. Staff asserts that the underlying costs associated with a toll minute do not depend on the local service classification of the caller. Qwest defends its class distinctions based on usage patterns. That is, business calls are generally made during the day and are of short duration; residential calls tend to occur at night and last longer. Staff responds that the usage distinctions can be accommodated through off peak discounts.

**Discussion and Resolution.** We agree with the move toward postalized toll rates. Abolishing rate differences by distance band and by initial and subsequent conversation minutes is reasonable and serves consumers by simplifying the rate structure for intrastate toll. We will not adopt Qwest's customer class distinctions, however. We believe that Qwest's proposal of different rate structures for residential, business, and miscellaneous calls is overly complex and unrelated to cost. Staff's proposal to set two MTS rates, one for peak time and one for off peak hours, takes into account the different usage patterns of business and residential customers. Staff's proposal is simple and reasonable; we adopt the standard MTS rates of 11 cents per minute for peak calls and 7 cents per minute for off peak calls.

**Optional MTS Discount Calling Plans.** Qwest proposes to eliminate Toll-PAC; consolidate its discounted Calling Connection Plans from ten to six; eliminate WATSaver; retain and reduce 800 ServiceLine; retain Prime Saver; and extend the 50 percent discount for speech and hearing impaired customers to calling card and operator assisted calls. Staff agrees with these changes by and large but proposes modifications to specific rate plans as set out below. However, Staff and Qwest disagree on the Simple Value plan and the Super Savings plan.

Qwest and Staff agree on Qwest's Wide Area Telecommunications Service (WATS) proposals with the exception of Qwest's 800 Service proposal, which is discussed under the heading *Contested Proposals* below.

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<sup>5</sup> Miscellaneous MTS rates include calls requiring operator assistance, credit card billing, or calls for which billing capabilities cannot determine the customer's identification as residential or business.

Staff notes that it centers its proposals regarding MTS on creating a standard rate structure that will provide all customers a reasonably priced toll rate structure without contracts, minimum usage, or other rate or customer class conditions.

*Uncontested Proposals.* Qwest proposes, and Staff agrees, to eliminate its Business Daytime Connection plan and transfer its customers to the Business Daytime Connection Plus plan. These plans are nearly identical. Qwest proposes, and Staff agrees, to reduce the minimum monthly rate for the Connection Plus plan from \$9.00 to \$6.00 for the first 60 minutes and to continue rates at 10 cents a minute for every minute thereafter. This proposal gives Connection Plus customers a 33 percent reduction and a lower minimum rate.

Qwest's City Connection plan members are charged a monthly rate of \$1.00, which allows them to select the exchange they most frequently call. Calls to that exchange receive a 20 percent discount from standard MTS rates, and calls to other exchanges receive a 5 percent discount. Qwest proposes to retain the discount structure. Staff agrees. The discount rate, applied to Staff's proposed standard MTS rate design, reduces the average revenue per minute (ARPM) from 13.1 cents per minute to 7.4 cents per minute, an average rate reduction of 43 percent.

The rate structures for Qwest's Volume and Tenant Calling Connection are nearly identical except that the Volume Calling Connection plan has a monthly charge of \$5.00 for call detail reporting. Customers subscribing to these plans pay a postalized rate of 10 cents per minute plus a volume discount of 10 percent after \$50.00 per month and 20 percent after \$100 per month. Qwest proposed that the per minute rate be reduced to 7 cents per minute with no change in monthly charge or discount rates. Staff agrees with Qwest's proposal, because it appropriately targets high volume toll customers with progressive discount levels. Staff recommends, and Qwest agrees, that the Volume and Tenant Calling Connection plans should be combined, retaining the monthly charge for call detail reporting. This would reduce and simplify customer options.

The Oregon Value Calling Plan I allows subscribers to pay \$6.00 per month minimum for the first 60 minutes and 10 cents a minute thereafter. The rates apply only for off peak calls. For daytime calls, a 5 percent discount from standard MTS rates applies. Qwest proposes to discontinue this plan and transfer business customers to the Business Daytime Connection Plus plan. Qwest would transfer residential customers to standard MTS. Staff agrees that the plan should be discontinued. Staff would simply move all customers to standard MTS, where the off peak calling rate is only 7 cents per minute with no minimum usage. The Business Daytime Connection Plus rate has a \$6.00 monthly minimum and a 10 cent per minute off peak rate.

Oregon Volume Calling Plan II customers pay a \$14.40 per month minimum for the first 120 minutes and then a peak rate of 16 cents per minute and an off peak rate of 10 cents per minute. Qwest proposes to discontinue this plan and move residential and business customers to standard MTS. Staff agrees. The standard MTS rate schedule will offer reduced rates with no minimum usage. Under Staff's proposed

standard MTS rate schedule, the ARPM for Oregon Value Plan II drops from 13.5 cents per minute to 8.5 cents per minute, an average reduction of 37 percent.

Better Deal was a trial service offering during the test year. The service was discontinued on February 17, 1999. Better Deal offered customers a flat monthly rate for unlimited intrastate intraLATA toll calling. The business rate was \$149.00 per month; the residential rate was \$49.00 per month. The ARPM was 14.5 cents per minute. Staff agrees with Qwest's desire to discontinue this service.

WATS service is bulk toll service priced by the hour. There are two basic types of WATS: OutWATS and InWATS (i.e., 800 Service). WATS can be provisioned with dedicated access lines or over common lines. Dedicated WATS lines can access only the long distance network. They are not classed as basic telephone service and will be deaveraged based on the requirements of UT 148. Common lines are local exchange access lines on which WATS is simply an overlay service.

WATSaver is an OutWATS service using a common line. The hourly rate declines as usage increases; it ranges from \$10.50 per hour to \$8.25 per hour. The ARPM is 17.5 cents per minute. Qwest proposes to discontinue this service and transfer residential customers to the Super Savings plan, while business customers would migrate to standard MTS. Staff agrees that this service should be discontinued, but recommends that all customers be moved to standard MTS. Staff's proposal for standard MTS would provide a substantial reduction in all WATSaver bands.

*Resolution.* We adopt Qwest's proposals for the above plans. The proposals are reasonable and fair to customers. Qwest may eliminate Toll-PAC. All WATSaver customers as well as all customers from the Oregon Value Calling Plan I should be moved to standard MTS.

*Contested Proposals.* Simple Value was introduced on June 24, 1998. Customers subscribing to this plan are charged postalized rates for peak and off peak periods. For residential customers, current rates are 24 cents peak and 9 cents off peak per minute. For business customers, the current rates are 11 cents per minute peak and 8 cents per minute off peak.

Qwest proposes to eliminate the Simple Value plan for residential customers and transfer them to the standard MTS. Qwest also proposes to reduce rates for business customers to 9 cents peak and 6 cents off peak. Staff recommends that the Commission eliminate the entire Simple Value plan and transfer current subscribers to standard MTS. Staff's proposed standard of 11 cents peak and 7 cents off peak accomplishes the same goals as the Simple Value plan, and there is no reason for Qwest to have two nearly identical rate structures. This is particularly true in view of Qwest's stated desire to simplify or eliminate calling plans.

Qwest and Staff also disagree about Qwest's Super Savings calling plan. This plan was introduced on April 1, 1998. Like Simple Value customers, customers under Super Savings are charged a postalized rate but with no peak/off peak differential.

For residential customers, the rate is 10 cents per minute for all distance bands and all times of day. For business customers, the rate is 8 cents per minute all day.

Qwest proposes to reduce the rate for residential customers from 10 cents per minute to 8 cents per minute for calling at all times of day and for all distance bands. The rate for business customers would drop to 6 cents per minute for all times of day and all distance bands.

Staff agrees with Qwest's 8 cent proposal for residential customers but rejects Qwest's 6 cent rate for business customers. Staff proposes an 8 cent rate for both residential and business customers. Staff's recommendation reflects its concern that Qwest's 6 cent business rate, with no other charges or minimum usage requirements, would undermine its entire MTS rate structure. Qwest proposes a 7 cent rate for its Volume Calling Connection plan, 9 cents peak and 6 cents off peak for its Simple Value plan, and the standard MTS rate of 12 cents peak and 10 cents off peak. Staff believes that any rational customer would choose the Super Savings rate over these other options. Qwest plans to offer the Super Savings plan only to its best customers, but the rate is available to anyone who learns about it. Staff also argues that the Super Savings plan fails the imputation test and that the Commission should reject it for that reason as well.<sup>6</sup>

OutWATS uses a dedicated access line and a declining hourly rate based on usage. Before the UM 731 revenue neutral filing effective April 30, 2001, the rate per access line was \$25.00 per month. With the UM 731 filing, the access line charge was deaveraged into three rate groups of \$23.50, \$26.00, and \$28.50 per month. The hourly rate ranges from \$7.50 per hour to \$6.00 per hour (equivalent to 12.5 cents per minute to 10 cents per minute).

Qwest proposes to reduce the Rate Group 3 access line rate from \$28.50 to \$28.00 per month. It proposes no changes to the hourly toll rates and recommends that OutWATS be grandfathered to end 12 months from the effective date of the Commission's final order in this docket. Staff agrees with the grandfathering but disagrees with Qwest's proposed access line rates. The company's proposed Rate Group 2 and 3 rates are priced below the UNE prices set in UT 148, and thus fail to meet the imputation requirements of ORS 759.410(4). Staff recommends setting the access line rates for Rate Group 2 at \$27.50 and for Rate Group 3 at \$28.50.

800 Service is an InWATS service that uses a dedicated access line and a declining hourly rate based on usage volume. The called party pays for all incoming toll calls. Prior to the UM 731 revenue neutral filing, the access line rate was \$35.00 per month. With the UM 731 filing, the access line rate was deaveraged into three rate groups at \$33.50, \$36.00, and \$38.50 per month. The hourly rate ranges from \$10.35 to \$7.00 per hour (equivalent to 17.25 cents per minute to 11.67 cents per minute).

<sup>6</sup> The imputation argument is addressed below.

Qwest proposes to reduce access line rates in the three rate groups to \$33.10, \$35.60, and \$37.60 per month. Qwest proposes no changes to the current hourly toll rates and proposes to grandfather the service. Staff recommends grandfathering the service but disagrees with Qwest's proposed rates for Rate Group 3, because the rates are below the UNE prices set in UT 148. Staff proposes instead setting the rates at \$26.00, \$30.00, and \$61.00 per month, in order to meet imputation requirements.

800 ServiceLine is an InWATS service that uses a common line. The 800 telephone number overlays the regular telephone number. The service requires a flat monthly charge of \$3.00 per month and an hourly usage rate of \$7.20. Qwest proposes increasing the flat monthly charge to \$5.00 and reducing the hourly usage rate to \$6.00. Staff agrees with Qwest's proposal to reduce the hourly rate but disagrees with the proposed increase of the monthly charge. Qwest contends that the increase is comparable with competitors' recurring rates for 800 ServiceLine and is consistent with the other states in which Qwest operates. Staff notes, however, that the ARPM under Qwest's proposal is 21 cents when the per minute rate is combined with the monthly recurring rate. This ARPM is double that of any of the other MTS proposals except the OutWATS and 800 Service, which will be eliminated a year from the date this order issues. Because of the high ARPM and the fact that 800 ServiceLine will be the only InWATS service offered after the regular 800 Service tariff is eliminated, Staff continues to recommend no increase in Qwest's current monthly charge for 800 ServiceLine.

*Discussion and Resolution.* We agree with Staff that Qwest's proposed Simple Value plan should be eliminated. Given our adoption of standard MTS rates, the Simple Value plan has no discernible purpose. Eliminating the plan will help Qwest in its goal of streamlining rates.

We adopt Staff's recommendation that the Super Savings Plan should be offered at a flat 8 cents a minute to all customers. We base this decision on our belief that the Super Savings Plan offered at 6 cents a minute would undermine the rate structure for the remainder of MTS. We also find that the Super Savings Plan at 6 cents per minute fails the imputation test of ORS 759.410(4). See discussion following this section.

We agree with Staff's modification to Qwest's proposed pricing for the OutWATS access line rates, setting Rate Groups 2 and 3 at \$27.50 and \$58.50, respectively, to meet imputation requirements. For 800 Service, we also adopt Staff's access line rate proposal, setting prices at \$26.00, \$30.00, and \$61.00 per month for Rate Groups 1, 2, and 3, respectively. We adopt this pricing to lower Rate Group 1 and 2 rates toward cost and to raise Rate Group 3 to pass the imputation test. We deny Qwest's request to raise the monthly rate for 800 ServiceLine from \$3.00 to \$5.00, based on the high ARPM this service would generate under Qwest's proposal. For the rest we adopt Qwest's proposed pricing.

**Access Charge Imputation.** Imputation is a regulatory device that imposes a price floor on local exchange services supplied to other providers of telecommunications services. Imputation requires a local exchange carrier to charge

itself the same price that others must pay to purchase essential functions from the carrier. Imputation thus prevents a local exchange carrier from creating a competitive advantage for itself by manipulating the price of the components only that carrier can supply. It protects carriers who have no adequate alternatives in the market. Order No. 94-1851 at 3.

In conducting its imputation analysis, the Commission sets a price floor below which price may not fall, to prevent anticompetitive pricing. ORS 759.410(4) sets the price floor "equal to the sum of the total service long run incremental cost [TSLRIC] of providing the service for nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions."

In Dockets UM 351 and UM 773, the Commission calculated the TSLRIC for each building block service element. The prices for these service elements were then set in Docket UM 844. The Commission traditionally views all building blocks or elements established in these dockets as essential functions of the service. Order No. 96-188 at 53; Order No. 95-313 at 3, fn 3.

Access imputation, a consideration of the effect of access charges on competitors, arises out of Commission Order No. 89-221 in Docket UT 47. Staff performed an access imputation analysis for current and proposed access service charges, including originating and terminating access charges as well as billing and collection charges associated with Qwest's provision of intraLATA toll service. Staff also included an allowance for uncollectible toll revenue. Access charges are the prices IXCs pay to originate and terminate long distance toll calls on Qwest's local exchange network. Billing and collection charges are the prices that Qwest would charge in IXC for billing and collecting monies from end users on behalf of the carrier.

Staff's imputation analysis is presented at the aggregate ARPM for Qwest's intraLATA toll services, assuming two different methods of toll billing: full minute rounding and six second rounding. Although Staff's imputation analysis is summarized at the aggregate level, the imputed cost results can be compared against the ARPM for each Qwest toll service depending on how the toll conversation minute is measured for billing purposes (whether by the full minute or six second rounding). After making this comparison for each service, Staff concludes that Qwest's standard MTS and each of the discounted calling connection plans pass the imputation test based on Staff's proposed rates for toll and carrier access service.

Qwest performed an imputation test based on the UNE prices set in UM 844. Qwest then compared the ARPM for all toll services combined together to an imputation based price floor. Finally, while Qwest asserts that carrier access service is not an essential service, it specifically declined to pursue that issue in this case. The issue is whether a proper imputation analysis for switched access imputes the TSLRIC or the switched access rates (price) under ORS 759.410(4). Staff asserts that Qwest's tariff rate charged to other carriers for switched access is the proper input under the price floor test of ORS 759.410(4). For purposes of this case, the Commission agrees with Staff.

Staff illustrates the difference between the two approaches with the Super Savings issue. Staff and AT&T/WorldCom each performed imputation tests for Super Savings. Both Staff and AT&T/WorldCom concluded that Qwest's proposed 6 cent Super Savings rate for business customers fails the imputation test. That is, at 6 cents per minute, Super Savings is priced below the imputation price floor. Qwest concludes that Super Savings passes the imputation test if the ARPM for all of its calling plans considered together is above the imputed price floor for all services.

Staff argues that its and AT&T/WorldCom's approach is consistent with ORS 759.410(4), while Qwest's is not. The statute speaks of the sum of all relevant costs for *the* service at issue, not service categories in the aggregate. According to Staff, no reasonable interpretation of the statutory language accommodates Qwest's "average of all services" method.

Staff points out that customers purchasing Super Savings are not concerned about the average price for all of Qwest's calling plans. Customers are concerned only about the price of the particular service they are interested in. The same is true for competitors; they wish to compete in the market against particular calling plans, not the average of all plans. Finally, Staff maintains that Qwest's average of all services method would allow some services that are priced above the price floor to subsidize those priced below the floor. Such cross subsidies are impermissible, according to Staff and AT&T/WorldCom.

Qwest argues that the Super Savings plan passes the imputation test on its own. Qwest argues that an imputation calculation should consider the *cost* for billing and collection rather than the applicable *price*, because billing and collection is not an essential service. Staff and AT&T/WorldCom disagree. Order No. 89-221 treats billing and collection as an essential service. Staff and AT&T/WorldCom argue that billing and collection is to be considered an essential service until the Commission orders otherwise. *See also* Order No. 96-188 at 53.

Qwest disagrees, finally, with Staff's and AT&T/WorldCom's inclusion of access rates for calls originated by independent local exchange carriers (LECs) in their imputation analysis. Qwest argues that the Commission should include only the costs of traffic originated by Qwest.

Staff argues that Qwest must pay access charges and other reasonable compensation to the independent LECs to originate and terminate its toll calls on their local exchange networks. Qwest has no choice but to pay these access charges and other compensation. Qwest may not abandon those toll routes without explicit Commission authority.

**Discussion and Resolution.** Qwest maintains that the ORS 759.410(4) price floor test should be applied to a generalized group of services rather than to individual services actually offered to customers. Qwest argues on this basis that its ARPM for all toll services be used to determine whether its proposed toll rates are in compliance with ORS 759.410(4).

Qwest cites no legal precedent for applying the statutory imputation test in this manner, and we are aware of none. The language of the statute refers to "the service," as Staff points out; this argues in favor of the imputation test being applied to a single service, not a group of services.

Further, Qwest's proposed application of the imputation test to a group of services makes no economic sense. The Legislature intended the price floor imputation test to prevent unfair pricing that would undermine competition in the market. Customers decide to take service from a particular provider based on individual product rates. Qwest acknowledges that its toll pricing proposal contains numerous pricing plans. Qwest customers pay rates imposed under these individual plans, not an average rate per minute. These individual product rates provide the basis for competition.

We read ORS 759.410(4) to apply to individual services, not to a collection of services, as Qwest advocates.

In maintaining that its Super Savings plan passes the imputation test, Qwest states billing and collection is not an "essential function" of intraLATA service. The sequel to that position is that the cost of the service to Qwest is the imputation input for nonessential functions. The price charged to other carriers is the input for essential functions.

Staff has asserted that until the Commission states otherwise, billing and collection is an essential function. Order No. 89-221. We agree. However, in the case of billing and collection, this issue is moot. Qwest's cost for billing and collection is identified as the price it charges other carriers for the service. See Order No. 97-239, Appendix C, page 6, lines 9 and 10. Thus, cost and price for billing and collection are the same for imputation purposes, and they are both set at the price Qwest charges other carriers for billing and collection. As a consequence, Staff and AT&T/WorldCom are correct in stating that Super Savings does not pass the imputation test on its own.

Finally, as stated above, we agree with Staff that Qwest's tariff rate charged to other carriers for switched access is the proper imputation analysis input under the price floor test of ORS 759.410(4).

#### **Price Elasticity and Stimulation of Toll**

**Background.** Qwest's and Staff's MTS revenue proposals differ by \$6.3 million due to Staff's application of a price elasticity factor to toll rates. Qwest argues against applying an elasticity factor, while Staff and AT&T/WorldCom support the use of such a factor, although they support different factors. AARP supports Staff's elasticity factor and Staff's position on the test year and the elasticity adjustment.

The following definitions emerge from the record and will be helpful for the discussion of the elasticity adjustment. Price elasticity measures the change in consumer demand when prices change. As prices fall, consumers generally purchase more of a product; when prices increase, consumption tends to fall. The implication of



price elasticity for this docket is that when Qwest lowers its MTS rates, demand will increase. The revenue impact that must be calculated is therefore subject to adjustment to take increased demand into account. The price elasticity factor adjusts the revenue reduction to account for increased demand.

Market price elasticity refers to consumers' demand response to a change in the overall market price level (when most or all firms in a market adopt a new price level). A monopoly provider such as Qwest was in the late 1980s and early 1990s essentially constitutes the market itself.

Firm price elasticity refers to the demand response to a price change implemented by one firm, assuming all other firms in the same market hold their prices constant. Firm price elasticity will always be equal to or greater than the market price elasticity.

Demand response refers to the responsiveness of consumer demand to changes in price alone. Demand response is shown as movement along a constant demand curve. Demand shift refers to the response in consumer demand to changes other than in price. These events cause the entire demand curve to shift left/down or right/up and may affect the slope of the curve itself.

Mathematically, price elasticity is measured as the ratio of the percentage change in quantity divided by the percentage change in price. Because this is an inverse relationship (when prices rise, quantity consumed falls and vice versa), price elasticity is expressed with a minus sign. For instance, price elasticity of  $-0.4$  means that for each one percent drop in price, quantity would be expected to increase by 0.40 percent, all else being equal.

In the present case, Staff concluded that a conservative price elasticity for a 40 percent MTS price reduction for Qwest would be  $-0.3632$ . Staff calculated that Qwest's MTS toll usage would be stimulated by 14.5 percent. The formula to calculate stimulation of consumer demand is: (price elasticity) x (percentage price change); that is,  $-0.3632 \times -40\% = 14.5\%$ . Staff stimulated each MTS service individually based on its proposed price change as expressed in ARPM.

The price elasticity dispute involves several areas. One underlying area of contention is Qwest's desire to use events that happened after the test year and that are not price events, such as increased competition, to modify Staff's and AT&T/WorldCom's elasticity factors. The other areas are whether an elasticity adjustment is appropriate and, if so, which elasticity factor to use.

**Post Test Year Issues.** Staff objects to use of post test year information. The parties stipulated to the 1997 test year and the Commission adopted the stipulation in Order No. 00-190. In the stipulation, the parties agreed that Qwest would reduce its Oregon intrastate revenue by \$63 million from current rates "based on August 1997 billing units for local services and the minutes of use for the five months preceding and

six months following August 1997, for switched access services." Order No. 00-190 at 10. See also Order No. 00-190, Appendix A at 5, 14.

Qwest argues for consideration of events that occurred after the test year that caused a demand shift for MTS. These events include increased competition resulting from the introduction of mandatory "1+" dialing parity; new toll calling alternatives arising from new technology (e.g., the Internet; cellular phones); and new extended area service routes. Qwest argues that it is unfair to stimulate the toll test year revenue when its toll revenues are much lower today because of the post test year events.<sup>7</sup>

Staff takes the position that all post test year demand shift events that are not price-events (such as the implementation of 1+ dialing parity) are not relevant because they are outside the test year. Staff contends that Qwest wants to have it both ways. With regard to the elasticity adjustment, Qwest argues that its toll volumes and revenues have fallen since the test year. With respect to spreading the \$64.2 million reduction, however, Qwest argues that the Commission should ignore the fact that its toll volume is slightly more than half what it was in 1997. Staff argues that if current toll service volumes were used as Qwest demands in its price elasticity argument, Qwest's \$32 million toll rate reduction would be cut to only about \$16 million. As a consequence, Qwest would need to reduce its rates by another \$16 million.

AT&T's Witness Dr. Selwyn also argues that Qwest's lowered toll revenues today are no reason to ignore price elasticity and stimulation. Dr. Selwyn notes that it would be more accurate to substitute current service volumes for the test period quantities for purposes of the revenue impact analysis. This should occur for all of Qwest's services, according to Dr. Selwyn, not just for toll.

But for Qwest's and Staff's agreement on a test year, Staff is not opposed to recognizing that Qwest's toll revenues are much lower today than they were in 1997. However, Staff argues that the Commission should not allow Qwest to identify its toll call service volume declines as a reason to eliminate Staff's price elasticity adjustment. Such events are outside the test year, according to Staff and AT&T/WorldCom, and are not relevant or appropriate for consideration.

***Discussion and Resolution.*** We conclude that events beyond the test year should not be considered in determining whether to apply the elasticity adjustment to the MTS pricing proposal. If, for the sake of argument, we were to move the test period into the current year, we would have to shift the entire base on which the proposed toll

<sup>7</sup> Qwest also makes a subargument that if Staff is going to forecast the revenue effect of price changes through the stimulation factor, Staff should also consider making the forecast as accurate as possible by considering post test year events. Reduction to Qwest's toll rates will occur "within the test year." That is, the toll rate reduction is a "test year event"; it is known and it will happen within the test year. There is no prediction or forecast involved. The elasticity principle measures consumer response to the known price change. The elasticity adjustment is a rate design adjustment that is applied to the proposed rate change to reasonably ensure that the revenue consequences of that change match the revenue requirement determined in the revenue requirement phase of a rate case. We reject Qwest's argument about forecasting.

revenue reduction is calculated. We would also have to substitute current service volumes for all intrastate services for the test period quantities. Changing the test year would mean beginning a new rate case. We reject this outcome as unfeasible and in violation of Qwest's agreement to a 1997 test year. We note that while Qwest may appear to lose as a result of this decision, Qwest wins in not having to spread an additional \$16 million of reductions over its toll or other services, as Staff points out.

**Use of an Elasticity Adjustment.** Qwest disagrees with Staff and AT&T/WorldCom about whether an elasticity adjustment should be applied at all. Staff argues that it always adjusts toll revenues for price elasticity when a major rate change is proposed in a rate case. Here, Staff's proposal reduces Qwest's rates by 40 percent, a major reduction under any interpretation. Staff contends that the elasticity adjustment is a pro forma adjustment that is routine and straightforward.

Qwest argues that toll service volumes are set for the period of March 1997 through February 1998. Qwest claims that applying price elasticity to the toll revenues violates the order and stipulation setting the test year in this proceeding.<sup>8</sup> According to Qwest, application of a stimulation factor conflicts with the requirements of the stipulation that the rate design shall be based on March 1997 to February 1998 billing units. Qwest does not argue that intraLATA long distance service is price inelastic and admits that some customers will place more long distance calls when prices are lowered.

Qwest also argues that it is inappropriate for Staff to make pro forma adjustments during the rate design phase of a case. According to Qwest, pro forma adjustments are made in determining revenue requirement. Adjustments were made in the first phase of the case and cannot be made again. Rate spread should be a relatively straightforward distribution of the revenue reduction among different service groups or customer classes; it is not an opportunity to compound decisions made in the revenue requirement phase.

Staff responds that it did not view the stipulation as changing how parties traditionally perform their rate design work. Elasticity is a measure of consumer response to a price change, and Staff did not view the stipulation's discussion of 1997 billing units as removing its right to perform the required elasticity adjustment to toll. Staff notes that as even Qwest recognizes, the stipulation was not intended to change the basic way Staff conducts the rate design portion of a rate case. In its opening brief, Qwest explains that the stipulation is subject to one clarification: the phrase "August 1997 billing units" does not remove the parties' ability to adjust the toll data for "seasonality." Staff takes this to mean that Qwest recognizes that the stipulation's use

<sup>8</sup> Qwest initially seemed to argue that August 1997 billing units, rather than the March 1997 to February 1998 billing units, were the appropriate volume for toll service. The stipulation and the Order both set the test year as March 1997 to February 1998 for switched access services. Order No. 00-190 at 10; Appendix A at 5 and 14. Both Qwest and Staff extend this provision to toll. In its reply brief, Qwest notes that it does not oppose using the full year's data but does oppose forecasting billing units beyond the test year, that is, adjusting them for elasticity.

of 1997 billing units was not intended to change how the parties traditionally perform their rate design work for toll MOUs. Staff argues that its adjustment for elasticity for the reduced toll rates is consistent with the stipulation.

Staff further maintains that it did not previously perform an elasticity adjustment for toll minutes of use in Phase I of UT 125, contrary to Qwest's assertion. Qwest presents no evidence in support of its assertion. Qwest merely takes out of context Staff's comment that this is one of the pro forma adjustments usually made in a rate case. Staff notes that it always performs its toll stimulation in the rate design portion of a rate case. Staff cannot perform an elasticity adjustment in the revenue requirement portion of a case, because the proposed new rates have not yet been determined. Elasticity measures consumer response to a price change, and that price change is not determined until the revenue requirement phase of a rate case is concluded.

Finally, Qwest suggests that because UT 125 was bifurcated, Staff has somehow stimulated toll twice. Staff contends that bifurcation has nothing to do with how a rate case is constructed. The UT 85 rate case was bifurcated and Staff performed its toll stimulation adjustment in the rate design phase of that case as always. See Order No. 89-1807 (UT 85 revenue requirement) and Order No. 90-920 (UT 85 rate design).

AT&T/WorldCom agree that the language of the stipulation and of Order No. 00-190 do not preclude an elasticity adjustment to the billing units. AT&T/WorldCom also agree with Staff that it is appropriate to perform the elasticity adjustment in the rate design phase of the case.

*Discussion and Resolution.* We agree with Staff and AT&T/WorldCom that the language of the stipulation and of Order No. 00-190 does not preclude an elasticity adjustment. The language "based on August 1997 billing units" implies an ability to modify the billing units, using those units as a starting point, as Qwest notes in its modification of those units for seasonality. No other language in the order or stipulation precludes use of an elasticity adjustment to toll revenue.

The rate design phase of the case is the proper phase for performance of an elasticity adjustment. Demand stimulation cannot be determined until a rate is initially assigned, since the amount of stimulation caused by a rate change depends on the specific rate change. Staff did not stimulate toll revenue twice. Simply because Staff calls this a pro forma adjustment does not mean it necessarily belongs to the revenue requirement phase of the case, and it does not.

Finally, we agree with Staff and AT&T/WorldCom that it is appropriate to perform an elasticity adjustment to Staff's proposed toll rates. Elasticity in this case simply measures consumer response to reduced prices. Elasticity adjustments to toll revenues are a normal part of cases involving major price changes, such as this case. We note that even Qwest does not argue that toll services are price inelastic. We accept the contention of Staff and AT&T/WorldCom that the test year toll customers would have responded to the significant price reductions Staff proposes.

**Which Elasticity Factor Should the Commission Use?** Having determined that it is appropriate to apply an elasticity adjustment to toll revenue in this case, and that it is appropriate to apply the adjustment in this phase of the case, the question remains which elasticity factor to choose.

Staff proposes a factor of  $-0.3632$ . Staff began with Qwest's latest price elasticity study, from 1990, developed for UT 102. Staff characterizes its figure from the study,  $-0.3632$ , as conservative (that is, it favors Qwest). Qwest has not updated the study except to check its validity in response to a Colorado EAS expansion. Staff did not conduct its own elasticity study for this case because such studies require large amounts of data that Staff does not possess. Staff did draw on its experience in other cases and performed additional research to conclude that its proposed stimulation factor is reasonable.

Staff reviewed its work in Docket CP 317, the Sprint/United Telephone Company of the Northwest, Inc., primary toll carrier filing that became effective in July 1997 and found that an elasticity factor of  $-0.364$  applied there. Staff also reviewed its work in Docket UT 141, a GTE Northwest, Inc. (now Verizon Northwest, Inc.), rate case. Verizon's 1995 price elasticity study, submitted in UT 141, showed that overall price elasticity for various Verizon states was  $-0.38$  and  $-0.14$  for residential and business toll, respectively. Staff's experience with EAS conversions showed that consumers respond to price reductions when toll rates are replaced by lower EAS rates. In such conversion cases the toll minutes converted to EAS minutes double due to the lower EAS prices.

Staff reviewed price elasticity work performed by the FCC and in other states. Staff reviewed the FCC's analysis of the CALLS Plan, where FCC analysts concluded that the elasticity effect for a change in the average interstate and international toll charge per minute for both business and residential customers was  $-0.8$ . This figure is based on an average revenue per minute of 13.5 cents, less than the 14.39 cents per minute for Qwest MTS service today. This elasticity figure is considerably larger than Staff's number.

Staff further reviewed a number of journal articles focusing on intrastate, intraLATA toll. The studies<sup>9</sup> produced elasticity factors ranging from  $-0.38$  to  $-0.44$ . Staff concluded, based on its review and research, that an elasticity factor of  $-0.3632$  is in the reasonable range and recommends that it be adopted here. Staff posed an interrogatory to Qwest inviting the company to produce a more current study, but Qwest did not do so.

<sup>9</sup> Weingarten and Stuck, *Business Communications Review* 32-34, January 2001 (national study 1983-92), elasticity factor  $-0.4$ ; Duncan and Perry, *Information Economics and Policy* 6, 163-178, 1994 (California study 1986-1990), elasticity factor  $-0.38$ ; Train, *Telecommunications Policy* 708-713 (Delaware residential study 1985), elasticity factor  $-0.39$ ; Rappoport and Taylor, *Information Economics and Policy* 9, 51-70, 1997 (national residential study 1994), elasticity factor  $-0.44$ . The authors of the last article note that the conventional view of the intraLATA price elasticity factor is in the  $-0.3$  to  $-0.4$  range.

Staff believes that its use of Qwest's 1990 elasticity study is conservative because the figure Staff proposes is lower than the figures the experts suggest and much lower than the FCC's figure. Staff notes also that the 1990 study is drawn from data collected during the 1980s, when Qwest was essentially a monopoly provider of intraLATA toll. Qwest's firm price elasticity was also the market price elasticity for all practical purposes during the study's time period. Firm price elasticity is always equal to or greater than market price elasticity. By 1997, the test year, the intraLATA market was expanding and becoming more competitive. The  $-0.3632$  figure, a market price elasticity number, is therefore likely to be conservative when compared to the 1997 test year period and Qwest's firm price elasticity. AT&T/WorldCom agree with this analysis. AT&T's expert, Dr. Selwyn, noted that the most conservative approach to an elasticity adjustment is to assume that market elasticity is controlling and not to look at firm elasticity.

AT&T/WorldCom and AARP argue that Staff's elasticity figure is overly conservative in Qwest's favor but is reasonable. AT&T/WorldCom propose a higher price elasticity factor of  $-0.50$  for toll calling volumes, based on a 1995 decision in California.

Qwest presents no price elasticity factor of its own. Qwest opposes imposition of any elasticity factor but argues that should one be applied, the figure should be supported by credible evidence. According to Qwest, parties advocating the stimulation factor rely on studies performed in other eras and for other jurisdictions that are inapplicable to the current Oregon market.

Qwest asserts Staff's position is inconceivable. Staff's argument is that firm and market elasticities were the same in 1990. Now, under competition, firm elasticity is likely to be higher than market elasticity. Therefore, Staff argues, it is conservative to use the market elasticity figure from 1990. Missing from Staff's analysis is any information about market elasticity in 2001 or even 1997. Qwest argues that it is likely that market elasticity in these later years is much lower than it was in 1990 and that firm elasticity today is probably also lower than market elasticity used to be.

Qwest also notes that in 1998, Verizon's elasticity study for UT 141 concluded that an appropriate factor for intraLATA toll stimulation was  $-0.19$ . Staff does not explain why the Commission should not use that figure or another lower figure, such as it applied more recently to Verizon ( $-0.277$ ).

Qwest asserts that Staff's reliance on the FCC analysis of the CALLS Plan is also misplaced. The elasticity figure Staff reports,  $-0.8$ , is for interstate and international toll, not intraLATA toll. These are radically different markets, according to Qwest.

AT&T/WorldCom advocate for the stimulation factor the California Public Utilities Commission (CPUC) used in 1994,  $-0.50$ . Qwest notes that the CPUC used a stimulation factor of  $-0.20$  in 1998. Qwest maintains that the competitive conditions in California in 1994 were radically different from the conditions in the Oregon market today. Further, the CPUC's decision to adjust the stimulation factor in

1998 "reflected recent market changes." AT&T/WorldCom also assert that the difference between the -0.50 and the -0.20 figures adopted by the CPUC in 1994 and 1998 is due to the "fact that the percentage rate decrease adopted in the 1998 case was much lower than in the 1994 decision." Qwest contends that a rate decrease is not the sole factor that drives price elasticity.

Qwest notes that the FCC and state commissions have determined that in order to be valid an elasticity study must account for cross elastic effects. In *In the Matter of AT&T Communications Tariff No. FCC No. 1; PRO American Optional Calling Plan*, 103 FCC2d 134 (FCC 1985), the FCC rejected AT&T's elasticity study because it failed to account for demand shift from a competitive response.<sup>10</sup>

**Discussion and Resolution.** We find Staff's elasticity factor reasonable. It is based on study and knowledge of the Oregon telecommunications market and on examination of FCC work and expert research on the subject. We decline to adopt an elasticity factor from California, whether the -0.50 or the -0.20 factor, when we know too little about the background of either of those factors to be convinced they are reasonable and when we have reason to adopt the figure proposed by Staff.

Qwest argues that the elasticity study with which Staff begins is not credible. Staff has argued convincingly that it checked its conclusions from that study against other, more recent work and its results are consistent with the conclusions of experts in the field. We find the evidence credible.

Qwest mounts attacks on each piece of evidence that Staff relies on to fortify its position. However, Staff has supported its position with a number of studies and cases, which have a cumulative effect. Qwest attacks the FCC CALLS Plan study. The FCC CALLS Plan study is not directly relevant to intrastate, intraLATA toll calls, but does provide a parameter by which to judge the reasonableness of Staff's proposed elasticity factor. Qwest questions why the Commission did not use the Verizon proposed or actually employed figure in this case. The Verizon rate case, UT 141, has a different record than this case. We conclude that Staff has convincingly supported its elasticity factor. Finally, Qwest argues that an elasticity study must take cross elastic effects into account. We have rejected this argument above, under Post Test Year Issues.

Qwest could have submitted a new elasticity study and chose not to do so. We adopt Staff's elasticity factor of -0.3632.

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<sup>10</sup> AT&T/WorldCom and Qwest engage in a discussion of whether Qwest is asking to be made whole for competitive losses in asserting that the Commission should take cross elastic effects into account. Because we do not take these effects into account, we do not describe this argument.

**ISSUE 7: CENTREX PLUS****Background**

Centrex was designed to compete with private branch exchange (PBX) service. Rather than having an individual PBX at each customer location, Qwest has programmed a portion of its switching system to mimic a PBX. The Centrex service has three essential components: (1) the network access channel (NAC), a telephone line that connects the customer to the local exchange carrier; (2) the network access register (NAR), a switching function that provides dial tone, connects the customer's lines to phones outside the customer's Centrex system, and can limit the number of lines that have access to the telephone number at any one time; and (3) the switching function that provides system features like speed dialing and call waiting.

For Centrex Plus in Oregon, the three components are bundled as a single service. Line charges are set according to the number of station lines per location. Qwest offers discounts based on the number of lines at a single location. This is a form of volume discount.

Qwest filed its original rate design proposal as Advice No. 1849. Qwest modified the Centrex portion of that proposal in the March 19, 2001, modified portion of Attachment B to that Advice, entitled "Revised UT 125 Rate Spread." Staff did not agree with all of Qwest's modifications of March 19. However, in its opening brief, Qwest states that Staff and Qwest agree on Qwest's proposal for Centrex Plus rates. Although there are two Qwest proposals at issue (Advice No. 1849 and the March 19 modification), we take Qwest's statement to mean that it accepts Staff's selection of Qwest's proposals. ATG is the only other party to address this issue. ATG contests the location pricing aspect of Qwest's volume discount pricing.

**Centrex Plus Rates**

Because Staff adopts Qwest's originally filed proposal in some instances and the March 19 modification in others, we refer in the following to Staff's proposal. Staff's proposal decreases Qwest's composite annual revenues for Centrex Plus service by \$726,284. The components of this reduction are a composite decrease of \$459,024 from the Centrex Plus line charge, \$209,323 from the Centrex Plus usage charge, and \$57,937 from the Centrex Plus Network Access Facility (NAF) charge.

**Line Charge.** Staff agrees with Qwest's proposal for a composite decrease of \$459,024 for Centrex Plus line charges. A customer's Centrex Plus line charge is determined by a price matrix based on three criteria.

First, Qwest assesses the number of lines at one location. The lines are divided into six size categories, also called cohorts: 1-20 lines, 21-50 lines, 51-100 lines, 101-300 lines, 301-500 lines, and over 500 lines. Second, the line charge is based on the geographically deaveraged rate group where the customer's Centrex Plus system is located. Staff used the three Rate Groups established in Order No. 00-481 to apply this



criterion to the Centrex Plus pricing matrix. The third criterion for the price matrix is the duration of the contract. Qwest gives pricing discounts for contracts of 12 to 35 months, 36 to 59 months, and 60 months.

Staff supports Qwest's proposal for changes to Centrex Plus line charges and the pricing matrix because the proposal is consistent with Commission rules and orders and with Oregon statutes. Centrex Plus is not a basic service. ORS 759.400; OAR 860-032-0260. As a nonbasic service, Qwest's proposal must meet the price floor requirements of ORS 759.410(4). Staff tested Qwest's proposal to ensure that it did meet the price floor, using the rate groups and NAC price floors approved in Order No. 00-481, and then Qwest's current unbundled network element prices for switching, transport, and other elements of Centrex Plus service besides the NAC. Staff concluded that Qwest's Centrex Plus line charge pricing proposal is consistent with ORS 759.410.

**Resolution.** We adopt Qwest's and Staff's proposal for a composite decrease of \$459,024 for the Centrex Plus line charge.

**Usage Charge.** Staff's proposal decreases composite annual revenues for Centrex Plus usage charges by \$209,323. The Centrex Plus usage charge is a monthly recurring charge per station for Centrex Plus systems that are not blocked. The current tariffed Centrex Plus usage charge is \$14.90 per line for the 1 to 20 line cohort, \$14.90 per line for the 21 to 50 line cohort, and \$3.00 for all cohorts in excess of 50 lines. Staff's proposal replaces this matrix with a standard flat rate Centrex Usage Charge of \$4.04 per line, regardless of the Centrex Plus system size.

Staff's proposal is consistent with Qwest's original Centrex Plus usage charges proposal. Qwest's modified proposal increases the Centrex Plus usage charge in order to offset Qwest's proposal to further decrease the Centrex Plus line charge. Staff adopted the March 19 proposal for additional decreases in the Centrex Plus line charge, but Staff proposes to offset the additional Centrex Plus line charge revenue decrease with adjustment to prices for services other than Centrex. Therefore, Staff opposes Qwest's revenue offsets filed on March 19.

**Resolution.** We adopt Staff's proposal on the usage charge issue. All lines, regardless of the Centrex Plus system size, shall be charged a standard flat usage charge of \$4.04. Offsets for this reduction shall be made against services other than Centrex.

**NAF Charge.** Staff's proposal decreases Qwest's annual composite revenues for Centrex Plus NAF charges by \$57,937. Staff's proposed NAF charge is set at Staff's proposed price for a Digital Switched Service trunk (\$17.00). For Two Way and In Only service, a price element of \$1.36 is added for the Hunting feature inherent in those services. Staff's proposal for monthly Two Way, In Only, and Out Only NAF charges is \$18.36, \$18.36, and \$17.00, respectively.

Staff's proposal is consistent with Qwest's original proposed decreases in NAF charges. In Qwest's March 19 modification, Qwest proposed to increase the NAF

charge from its original proposal in Advice No. 1849. This adjustment was made as one of Qwest's proposed pricing elements to offset its proposed additional decrease in the Centrex Plus line charge. Staff has not adopted Qwest's adjustments to the NAF charge that were presented in the March 19 modification.

**Resolution.** Staff's proposal for Centrex Plus NAF charges is adopted.

**Centrex Plus Nonrecurring Charges.** In its Advice No. 1849, Qwest did not propose a price for the line identification database (LIDB) charge or the charge for chip in of additional numbers. Staff proposes that there be no tariffed LIDB charge for an initial installation and a \$3.50 nonrecurring charge for subsequent changes.<sup>11</sup>

Staff proposes that the \$4.25 nonrecurring per line charge for chip in, currently listed in Qwest's tariff but not applied, should be changed to reflect a zero nonrecurring charge for Centrex Plus resellers.

In Order No. 97-480, the Commission ordered that the charge for chip in be an issue in the rate design phase of UT 125. The Commission later stated that it "agrees with the joint petitioners and Staff that the proposed chip in charge contravenes the existing stipulation adopted by Order No. 93-746 and that the stipulation should remain in effect pending a complete investigation of the costs associated with the chip in service." Order No. 98-079 at 3.

Qwest appears to agree with Staff that the current nonrecurring chip in charge should be eliminated. However, Qwest conditions its proposal to eliminate that charge on the Commission's acceptance of Qwest's overall price proposal for Centrex Plus. Qwest asserts that if its proposal is not accepted, Centrex Plus margins may be insufficient to provide cost recovery for the chip in charge, and the assessment of the charge will have to be revisited. Qwest offers no evidence to suggest that cost recovery would be insufficient if the chip in charge is eliminated. Since the Commission ordered that the chip in charge be an issue in this proceeding and Qwest has offered no additional cost information concerning chip in service, Staff recommends that the nonrecurring chip in charge be eliminated whether Qwest's overall Centrex Plus proposal is accepted or not.

**Resolution.** Staff's proposed rates for the Centrex Plus nonrecurring charges are adopted. Qwest did not provide cost data to support its contention that eliminating the chip in charge would cause its Centrex Plus margins to be insufficient unless the rest of its proposal was accepted. Qwest did not contest eliminating the chip in charge in its briefs. We conclude that it is appropriate to eliminate the chip in charge.

The LIDB charge shall be set at no charge for the initial installation and a \$3.50 recurring charge for all subsequent changes. There shall be no chip in charge.

<sup>11</sup> In Order No. 97-441, the Commission ordered that "the proposed LIDB rate from Transmittal No. 97-037-PL supplemental will go into effect, effective December 5, 1997, subject to refund." The proposed rate from Transmittal No. 97-037-PL supplemental was a nonrecurring charge of \$3.50 per line for subsequent changes only. Staff's proposal, which we adopt, makes this rate permanent.

### Per Location Pricing

The remaining Centrex Plus issue is whether to change Qwest's volume discounts for a certain number of lines per location (street address). A reseller is permitted to aggregate customers as long as they are at one address. Currently, Qwest offers a discount to a customer at a given location with 50 or more access lines.

**Party Positions.** Qwest and Staff<sup>12</sup> agree that the current per location pricing scheme should be left in place; ATG argues that Qwest should instead offer volume discounts based on a customer's total lines in service at a Qwest wire center.

Qwest believes that its per location volume discount pricing approach is appropriate because Qwest's costs of serving a customer are reduced as the customer has more lines at a specific location. Qwest argues that its pricing approach for Centrex Plus must also be evaluated in the context in which it was developed, as a competitive alternative to customer owned PBX based systems. Qwest reminds the Commission that that Centrex Plus is a retail product that Qwest markets to retail customers.

**ATG's Arguments.** ATG does not object to Qwest's volume discounts per se, but only to the location restriction. ATG argues that Qwest's per location pricing scheme was designed to restrict resale and is not justified by cost. According to ATG, the volume discount price break points make sense only when viewed in light of the goal of restricting resale.

According to ATG, discounts should be based on a customer's total lines in service in a Qwest wire center, treating a reseller as one customer, rather than be based on end user volumes at a single location. ATG argues that its recommendation is consistent with Qwest's cost data, will conform tariffs to current laws regarding unreasonable discrimination against resale, and can be accomplished with a revenue neutral restructuring of Centrex rates.

**History of Per Location Pricing.** ATG maintains that Qwest originally offered volume discounts based on the number of station lines as a way to compete with PBX service, without a per location restriction. When resellers started obtaining volume discounts through aggregating smaller customers at multiple locations, Qwest decided to add the per location pricing requirement because it would thwart resale at the same time it permitted Qwest to continue giving substantial discounts to its largest customers with a large number of station lines at a single location. According to ATG, the record shows that per location pricing was instituted to restrict resellers from obtaining the volume discounts that Qwest already offered to its large customers to compete with PBX.<sup>13</sup>

<sup>12</sup> Staff supports Qwest's proposal to price lines by location because it is consistent with prior approved tariff terms and conditions and Commission orders. See Qwest Tariff, PUC Oregon No. 29 ¶9.1.16.C.2; see also Order No. 99-438 at 7.

<sup>13</sup> ATG refers to some confidential exhibits it claims are evidence that per location pricing was intended to restrict resale of Centrex Plus service. Those documents discuss proposals from 1993, well before the Telecommunications Act of 1996, and are not relevant to Qwest's compliance with its resale obligations.

In the early 1990s, when per location pricing was instituted in Oregon, the policy of the Commission was to discourage resale in local exchange markets, including Centrex resale. Thus, ATG contends, the Commission took no action against per location pricing when it was first introduced. In the meantime, however, the federal Telecommunications Act of 1996 has set the goal of opening telecommunications markets to competition. ATG alleges that despite this change, Qwest has failed to address a Centrex rate design here that it knew was meant to restrict resale.

*Legal Considerations.* ATG argues that the FCC has found restrictions on resale to be presumptively unreasonable. *In the Matter of Local Competition Provisions in the Telecommunications Act of 1996*, CC Dockets No. 96-98 and 95-185, *First Report and Order*, 11 FCCR 15499 (1996) (Local Competition Order). There, at 15,971, the FCC stated that:

It is presumptively unreasonable for incumbent LECs to require individual reseller end users to comply with incumbent LEC high volume discount minimum usage requirements, as long as the reseller, in aggregate, under the relevant tariff, meets the minimal level of demand. The Commission traditionally has not permitted such restrictions on the resale of volume discount offers. We believe restrictions on resale of volume discounts will frequently produce anticompetitive results without sufficient justification. We, therefore, conclude that such restrictions should be considered presumptively unreasonable.

Prohibited restrictions on resale include restrictions on volume discounts, according to ATG. *In the Matter of the Public Utility Commission of Texas, Memorandum Opinion and Order*, 13 FCCR 3460 at ¶220-223 (location restriction on Centrex that prevented resellers from aggregating customers determined to be unreasonable); Local Competition Order at 15,971. As an incumbent local exchange carrier, Qwest has the burden to show that its per location pricing is reasonable. 47 CFR §51.613(b); Local Competition Order at 15,966. State law also prohibits unreasonable restrictions on resale. ORS 759.455(i); (g).

ATG argues that Qwest's per location pricing scheme is a restriction on resale. According to ATG, the per location pricing plan precludes aggregation of multiple end users by resellers to achieve volume discounts comparable to those Qwest offers to its large retail customers. Centrex resellers' customer base consists primarily of small and medium sized businesses. The per location requirement of the retail tariff precludes aggregation of these customers unless they are at a single location. Tying volume discounts to a single location restricts resellers from obtaining volume discounts.

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under the Act. The one document from 1997 relates to Centrex Prime, not an issue here, and the arbitrage referred to is with other Qwest retail services, not competition with resellers.

*Cost Justification for Per Location Pricing.* ATG believes there is nothing wrong with the pricing structure Qwest has developed, even if it does not align with underlying costs; the problem is the restriction on resale of the discounts. ATG argues that there is no rational basis for Qwest's disparate treatment of costs of serving small and large customers other than to justify a scheme that discriminates against resellers. ATG calls Qwest disingenuous in saying that costs for smaller customers are linked to individual loops since that is how they are actually served. Qwest's witness admitted that smaller customers in multi tenant buildings are served by T-1s in several instances, and admitted that this is the efficient way to serve such a customer on a forward looking basis.<sup>14</sup>

ATG contends that Qwest cannot meet its burden of showing that per location pricing is reasonable and nondiscriminatory. Qwest's witness was unable to justify the price break at 101 lines in terms of efficiencies and economies. ATG argues that the line volumes used in per location pricing bear no relationship to the line volumes for T-1 service.<sup>15</sup> ATG also argues that the cost drivers for the lines between a customer's location and the central office are the density of the plant serving the neighborhood and the length of the plant. Therefore, a line serving a small volume user located in a large office building costs Qwest the same amount on a monthly basis as each Centrex line serving a single customer in the same building. Offering a discount to some customers who take more lines is not cost based and is hence discriminatory.

ATG also argues that lines serving each of the customers in different buildings in a commercial neighborhood are likely to be relatively low in cost and roughly equal in cost because of economies of density.

Qwest uses competition with PBX to justify per location pricing. However, according to ATG, Qwest admits that per location pricing has a negative impact on its competition with PBX. Thus, ATG contends that Qwest does not need to offer per location volume discounts to compete with PBX.

<sup>14</sup> ATG argues that serving a particular number of lines at a single location cannot justify the volume discounts offered by Qwest. Qwest's own cost studies show that there is a small per line difference between serving 50 or fewer lines by copper loops and 51 and over by T-1s. Yet, ATG argues, Qwest's rate design proposes a discount at a multiple of actual savings.

<sup>15</sup> ATG notes that each T-1 carries 24 voice grade circuits, but Qwest does not offer per location discounts based at 24 line intervals. Technically, a location with fewer than 24 lines can use a T-1 just as efficiently as a location with greater than 50 lines. ATG contends that a 51 line system would be inefficient, since it would use two T-1s with 48 lines and a third T-1 with only 3 lines. Further, Qwest's volume discounts assume 100 percent fill factors in the prices whether or not applied to a multiple of 24. Under the 51 line scenario a customer would receive the benefit of a larger volume discount by using only 70 percent of the total capacity of the three T-1s, while a 48 line customer would get a much lower discount using 100 percent of two T-1s. The unused portion of the T-1 in the 51 line scenario has not been factored into the price floor. ATG contends that there are no additional cost savings for customers subscribing to over 100 lines, assuming a T-1 technology. Since other Centrex price components are related to switching and are not sensitive to volume and location, ATG concludes that the large discount cannot be justified by other cost savings.

The Centrex Plus features, according to ATG, are provided through software in the central office switch; thus the costs are not tied to the customer's location. Any location based savings would be a saving in transaction costs, which are normally recovered in nonrecurring charges.

ATG also argues that small customers provide a cross subsidy for large customers under the Centrex Plus per location pricing plan, since large customers provide Qwest less net revenue than the same quantity of service provided to small customers.

*Effect on Competition.* ATG argues that Qwest's market power allows it to impose higher prices on smaller volume users. Smaller customers depend on resellers for competitive alternatives to Qwest. Smaller customers lack the volume to justify the T-1 facilities that make it economical for competitive carriers to serve customers. Because Qwest has market power for Centrex services with respect to small volume users, this price discrimination has an anticompetitive effect. According to ATG, this is an abuse of market power. The volume discount exceeds the level of discounts that would be provided in an effectively competitive market, where discounts are limited to the amounts of cost saved.

ATG also argues that competitors have made limited inroads in Oregon. Resale of all types of lines, including unbundled network platforms, appears to account for fewer than 65,000 lines out of more than a million access lines Qwest has in Oregon. Through its UM 731 revenue neutral filing, Qwest has recently reduced the price of basic business lines. One effect of the reduction is to make it harder for facilities based competitors to enter the market and provide alternatives to Qwest access lines. Another effect is to reduce the potential margins for Centrex resellers, because basic business lines compete with resold Centrex Plus lines. ATG argues that it is important for Centrex Plus lines to be priced appropriately to ensure that all businesses in Oregon have a competitive alternative to Qwest. ATG is aware that Qwest cites figures for growth of resale but argues that those figures would be higher without the per location discount restriction. ATG also argues that the current telecommunications market is much less favorable to competitors than the market in the years Qwest cites.

ATG argues that Qwest's per location scheme is designed to protect Qwest's large customer base through volume discounts and to make resale of Centrex Plus difficult. ATG believes that Qwest continues to pursue strategies to restrict Centrex resale. First, Qwest has proposed in this docket to increase rates for lower Centrex volumes, in order to curtail resale. At the same time, Qwest proposes an even greater discount at 100 and 300 lines to protect its large customer base. Continued use of per location pricing, according to ATG, restricts the ability of resale to constrain Qwest's anticompetitive pricing.<sup>16</sup>

<sup>16</sup> ATG notes that the Washington Utilities and Transportation Commission (WUTC), which investigated per location pricing, found that a similar location pricing structure for Centrex Plus, which bundled lines and features, discriminated against resellers and was an impermissible restriction on resale. We decline to base any portion of our decision on an assertedly "similar" pricing structure.

ATG urges the Commission to order Qwest to make revenue neutral revisions to its Centrex Plus pricing using volume discounts based on the number of lines in a particular wire center rather than at a customer location.

*Qwest's Response.* Qwest contends that ATG's argument is based on the incorrect assumption that its tariff imposes impermissible restrictions on resale.

*History of Per Location Pricing.* Qwest denies that it added the per location pricing feature to its Centrex Plus pricing when resellers started obtaining volume discounts through aggregation of smaller customers at multiple locations. On the contrary, Centrex Plus was designed with per location pricing all across Qwest's territory. Per location pricing was not added to thwart resale.

*Legal Considerations.* Qwest asserts that its pricing structure for Centrex Plus imposes no conditions or additional terms whatsoever on the resale of the product. Any CLEC can purchase Centrex Plus service for resale on the same terms and conditions that Qwest offers the product for sale to its retail customers, except that the CLEC could qualify for an additional discount under 47 USC §251(c)(4). If a CLEC has a customer that qualifies for the per location volume discount, the CLEC would receive that pricing structure and could compete for the customer. The per location volume discount is also available to CLECs that can aggregate smaller customers at one location.

ATG cites the FCC's Local Competition Order for the proposition that certain restrictions on resale are presumptively unreasonable. Qwest counters that the sorts of restrictions that the FCC considered in that order were situations in which a service offered for sale to retail customers would not be made available to resellers on the same terms and conditions.

The FCC stated that it is "presumptively unreasonable for incumbent LECs to require individual reseller end users to comply with incumbent LEC high volume discount minimum usage requirements, so long as the reseller, in aggregate, under the relevant tariff, meets the minimal demand." Local Competition Order at 15,971. Earlier in the same order, the FCC stated that incumbent local exchange carriers "also seek to limit reseller end user eligibility to purchase resold incumbent LEC high volume offerings to those eligible to receive such offerings directly from the incumbent LEC." *Id.* at 15,966. Applied to Centrex Plus service, the FCC would consider it unreasonable for Qwest to extend per location discounts to a reseller only if a reseller's individual end user also qualified for the discount. Qwest's tariff imposes no such restrictions, or any other restriction relating to Centrex Plus resale.

The FCC also addressed volume discounts in the Texas order. It is clear from the discussion in the order that the FCC was addressing a type of resale restriction not found in the Centrex Plus pricing structure (refusal to allow aggregation of end users) and that the FCC did not invalidate as an unreasonable restriction on resale the sort of per location pricing that Qwest offers.

*Cost Justification for Per Location Pricing.* ATG's challenge to per location pricing rests on the assertion by its expert, Dr. Nina Cornell, that Qwest's proposed volume discounts are not based on costs saved by serving a given customer location in volume. ATG is wrong, according to Qwest. Qwest can use alternative loop technologies to serve customers with 50 or more lines, such as T-1 or higher capacity service instead of copper loops, realizing cost savings through such economies of scale.

Dr. Cornell asserts that Qwest's costs are based on the density of a vicinity or neighborhood, not the number of customers at a given location. This assertion, according to Qwest, is mistaken. Qwest's overall costs of service may be higher in a sparsely populated area than in a densely populated one. However, the cost to serve an access line at a particular customer location may still change depending on the number of lines that a customer subscribes to at the location. The forward looking cost of serving a customer with one or two telephone lines will be based on the cost of individual loops, since that is how such customers are actually served. On the other hand, the forward looking cost of serving a customer with 50 to 300 lines at one location will be based on the most efficient technology, which may be a large copper cable with many pairs, a T-1 circuit delivered over two copper pairs, or a T-1 or a DS-3 circuit delivered over a fiber optic loop. The per line cost of serving such customers is much lower than over an individual copper loop.

Qwest's cost of serving multiple lines at a single location is lower than serving customers at multiple locations. ATG claims that Qwest's witness testified that the most efficient way to serve a specific large customer could be through a T-1, a concentrator system, or a large copper cable; ATG takes this statement as contrary to Qwest's cost study, which assumed use of a T-1 to serve Centrex Plus customers with more than 50 lines at one location. Qwest's cost study is based on the least cost forward looking technology that would serve that customer. Qwest contends that it is not contrary to that study to suggest that in the field there may be more than one efficient way to serve a customer.

ATG's examples of price breaks not divisible by 24 show that some specific service configurations may be more efficient than others, if customers do not later add lines at a location. They do not disprove the general principle that the forward looking cost of service per line decreases with the number of lines at a single location.

ATG also mischaracterizes the testimony in stating that Qwest's witness David Teitzel, "admitted that it was technically feasible and could be efficient to serve a small customer in a dense neighborhood by demuxing a T-1, taking it out of a building on copper loops to a nearby manhole, and splicing it into smaller premise next door." Qwest's witness actually said it was technically possible but not the norm. The witness also noted that he is not an engineer. This testimony does not support ATG's testimony that T-1s can be used economically to serve small customers in dense neighborhoods.

Qwest notes that the Commission is setting rates for Qwest's retail services in this proceeding, so it is appropriate to compare the rates for different retail services, since that is what Qwest's retail customers do. Centrex Plus was developed as a



competitive alternative to customer owned PBX systems. Centrex Plus provides features similar to a PBX system, such as intercom dialing and a variety of features, but as a central office based system. A customer considering purchasing a PBX system has a relatively large number of access lines at a given location. Such a customer will compare the cost of a PBX system to Centrex Plus service. PBX systems are cost effective only where there are a large number of access lines at one location. Centrex Plus also offers per location volume discounts as a competitive alternative to PBX systems. Elimination of the per location requirement to obtain the volume discount would distort the pricing relationship of Centrex Plus to its competitive retail alternative. Eliminating the requirement would also destroy the relationship between Qwest's cost of providing the service and the price.

Qwest asserts that there is nothing anticompetitive about its per location discount pricing. Qwest notes that Centrex resellers such as ATG compete with Qwest for the sale of basic business lines with feature packages. Such retail services are priced above the prices that Centrex resellers are able to charge based on the current pricing of Centrex Plus.

Qwest maintains that the per location volume discount does not impede Centrex resale. Centrex resellers compete for small customers with whom they have a significant pricing advantage. If a customer wanted to obtain a comparable level of service from Qwest as from a Centrex reseller, the customer would likely purchase either a basic business line with separate features or with a feature package. The CustomChoice package for business customers includes a line and approximately 20 features for about \$55. Centrex customers, including resellers, pay less per line than do basic business service customers with a comparable level of features. Centrex resellers are also able to offer customers both interLATA and intraLATA toll service. Centrex resellers have a significant pricing advantage over Qwest in competing for the small and medium sized business customers. Qwest contends that Centrex resellers such as ATG have been able to leverage their pricing advantage to capture a significant amount of the market for smaller business customers in Oregon.

Qwest cites the following figures as proof that Centrex resellers, including ATG, have successfully captured business customers in Oregon. In December 1995, 16,192 Centrex lines were resold; in December 1996, the number of resold Centrex lines was 25,489; in December 1997, the number was 38,304, and in April 1998, the number rose to 41,138. Qwest asserts that this is a significant level of competition for business customers. Currently, there are approximately 20,000 resold basic lines, excluding Centrex, in Oregon, and competitors have purchased another 50,000 unbundled loops in Oregon.

Qwest urges the Commission to evaluate the significance of the issues ATG raises in Qwest's overall rate design, since no other Centrex reseller has appeared and since ATG itself has expressed to the Commission its intention of converting its resold Centrex lines to ATG facilities rather than pursuing a resale strategy. This growth in Centrex resale occurred under per location pricing. During the time period in question, the Commission ordered Qwest to impose a surcharge of \$5.40 per month on each resold

Centrex line. Order No. 98-372. Despite these conditions, Qwest argues that Centrex resale flourished. Qwest contends that there is no basis to assert that per location pricing is anticompetitive.

Qwest believes that CLECs currently do not have the 65,000 lines or fewer that ATG asserts but approximately 120,000 access lines to business customers, representing over 23 percent of the business access lines.

**Discussion and Resolution. *History of Per Location Pricing.***

Although ATG has tried to show that Qwest's introduction of per location pricing had an anticompetitive motive, we consider this issue irrelevant for purposes of the rate case. Here we are deciding whether Qwest's rates are just and reasonable as proposed. Corporate thinking from before the Telecommunications Act does not weigh in that decision, nor does discussion about Centrex Prime, a different service from Centrex Plus.

**Legal Considerations.** ATG contends that Qwest's per location volume discounts restrict resale in violation of the Telecommunications Act. ATG is mistaken. As Qwest has argued, nothing in its tariff restricts resale of Centrex Plus service. Resellers purchase Centrex Plus service on exactly the same footing as any other purchaser. Again, as Qwest has noted, the passage from the Local Competition Order that ATG cites prohibits refusal to allow resellers to aggregate customers for volume discounts. Qwest does not refuse to allow aggregation of customers. The Texas order also speaks to a prohibition on aggregating customers, which is not the case here. We conclude that Qwest's per location volume discount pricing scheme is not in violation of the Act or FCC orders.

Nor is Qwest's scheme in violation of state law. ORS 759.455(g) prohibits a telecommunications utility from discriminating in favor of itself or an affiliate in the provision and pricing of, or extension of credit for, any telephone service. As noted, Qwest's tariff allows anyone to purchase Centrex Plus service under the same terms and conditions. This is not a provision that discriminates in favor of Qwest or an affiliate. ORS 759.455(i) prohibits the imposition of unreasonable or discriminatory restrictions on network elements or the resale of a telecommunications utility's service. Again, Qwest's tariff contains no such restrictions.

Absent a showing that Qwest's per location volume discount pricing scheme violates the Act, the presumption that Qwest's pricing scheme is unreasonable disappears. ATG mounts a disparate impact argument about the effect of Qwest's pricing scheme, but the scheme is in violation of no law or order.

**Cost Justification.** As to the impact of the scheme, ATG makes two types of argument. First, ATG contends that the scheme is not cost based. ATG's point is to show that the per location volume discount pricing structure keeps resellers from enjoying the large discounts associated with having 100 customers or more. ATG makes assumptions about Qwest's cost structure that Qwest successfully refutes. ATG goes into considerable detail to attack Qwest's forward looking T-1 based technology for larger users and use of embedded or existing technology for smaller users. We agree with

Qwest that there is nothing amiss about using a mix of actual and forward looking technologies to determine a rate design for a service. Moreover, we note that for larger volume customers Qwest mentions other service delivery options than the T-1 (DS-3, for instance) that may have different divisibility properties; ATG has not addressed this possibility but limits its attack to the T-1 properties. ATG has not shown that line volume at a single location is unrelated to cost.

*Effect on Competition.* ATG also argues that Qwest's per location volume discount disadvantages resellers. ATG does this by attacking Qwest's figures on competition and resale, but does not show specifically how resellers are disadvantaged by the per location pricing. Qwest's figures show that the market for resale of telecommunications services is far from moribund.<sup>17</sup> ATG has not shown that resellers are actually disadvantaged by per location volume discount pricing.

In terms of its marketing strategy, Qwest has shown that its per location volume discount pricing structure allows it to compete with PBX service. The context for this pricing structure shows it to be a reasonable competitive response on Qwest's part.

We conclude that Qwest's per location volume discount does not violate either federal or state law. It has not been shown to have a deleterious impact on Centrex Plus resellers. The per location volume discounts should be left in place.

#### ISSUE 9: EXTENDED AREA SERVICE.

##### Background

Extended Area Service (EAS) allows Qwest telephone customers to call nearby telephone exchanges for a monthly flat fee rather than incurring long distance charges per call. Exchanges that have EAS capability are grouped by rate band. Charges vary by rate band and are lowest in the most populous bands. There are currently five rate bands.

EAS service is approved by the Commission after a town has shown that a community of interest exists between it and another town. Qwest offers EAS service on a flat or measured basis. EAS is essentially a replacement for toll service. Once EAS routes are in place, customers have no practical alternative to using EAS service, either measured or flat rated, for their calling.

<sup>17</sup> Qwest proposes a figure of 120,000 for CLEC lines in Oregon. We cannot determine whether these are resold lines or not; hence, we do not know whether this figure directly refutes ATG's assertion of 65,000 resold lines. For our disposition of this issue, this matter is not critical.

### Party Positions

Only Staff and Qwest addressed this issue. Qwest proposes a reduction in EAS measured service for residential and business service customers to 3 cents per minute from 5 cents per minute, because the current price is well above cost, as represented by a UM 844 price floor. Staff agrees with this proposal.

Qwest proposes to simplify the EAS pricing structure, reducing the current five price bands to three. Staff also proposes to reduce the number of price bands from five to three, but structures its bands differently. Qwest agrees to Staff's rate band structure. Staff combined Bands A and B into one rate, Bands C and D into one rate, and left Band E at one rate.

Qwest's proposal for reducing EAS rates results in a revenue reduction of \$22.718 million.<sup>18</sup> Staff's proposal reduces EAS rates by \$11.321 million, approximately half the level proposed by Qwest. Qwest proposes a 57.4 percent reduction for EAS rates; Staff proposes a reduction of 28 percent. The differences between Qwest's and Staff's proposals are a function of the difference between their proposals for residential basic service rates (*see* Issue 12 below). Staff's proposal raises residential rates \$10.371 million less than Qwest's and lowers EAS rates \$10.442 million less than Qwest's. Staff makes no further argument in support of its position on EAS rate design.

Qwest argues that a significant price decrease for EAS rates is appropriate at this time. Qwest points out that the percentage reduction in EAS service should be comparable to the level of reduction in toll rates, since EAS replaces toll service. Qwest's proposed toll rate reduction is 42.3 percent.

Qwest also argues that in this docket, the Commission has a unique opportunity to rationalize EAS pricing and bring it closer to cost. EAS calling replaces what would otherwise be intraLATA toll calls. The conversion of network facilities to accommodate a new EAS route also imposes costs on carriers like Qwest. Accordingly, the Commission has traditionally viewed EAS rates as a mechanism to keep an incumbent local exchange carrier indifferent, from a revenue perspective, to the conversion. EAS rates have thus been determined based on the net toll revenue that an incumbent local exchange carrier would forgo as a result of the conversion as well as the costs of the conversion. The revenue neutral conversion process has been based on intraLATA toll prices that have been substantially higher than current prices or the toll prices proposed in this case.

Qwest also urges the Commission to use this opportunity of Qwest's last general rate case in Oregon to establish EAS rates that make sense from customers'

<sup>18</sup> Staff notes that Qwest's rate design presented incorrect current EAS flat rates, which resulted in an understatement of Qwest's revenue reduction for EAS of \$954,731 and an overstatement of its ISDN-BRS reduction by \$176,646. Qwest notes that it does not dispute the Staff calculation, which is hereby accepted. Thus, Qwest's proposed EAS rate reduction is actually \$22.718 million, not the \$21.8 million figure Qwest used in its briefs.

perspectives and in light of Qwest's entire rate structure. According to Qwest, the Commission need not be concerned with the size of the reduction from previous EAS rates that were established to keep Qwest revenue neutral in an EAS conversion. Implementation of an overall revenue reduction will ensure that Qwest's revenue requirement is met. Adopting Qwest's proposed EAS rates will reduce local service rates for all Oregon customers. Qwest argues that the Commission should adopt its proposal for EAS rates, as amended by Staff's proposed rate band structure, along with Qwest's proposed residential basic service rates.

### Discussion and Resolution

Our choice in this issue is whether to raise residential rates by \$1.00 in Rate Group 1, \$2.00 in Rate Group 2, and \$3.00 in Rate Group 3 and lower EAS rates by \$22.7 million (Qwest's proposal); or raise residential rates not at all in Rate Group 1, by \$1.00 in Rate Group 2, and \$2.00 in Rate Group 3, and lower EAS rates by \$11.3 million (Staff's proposal). Because we have chosen Staff's proposal for Residential Local Exchange Service, Issue 12, and the issues are linked, we choose Staff's proposal, including Staff's proposed rate band structure, here as well.

### ISSUE 11: LOCAL BUSINESS ACCESS SERVICES

#### Party Positions

In connection with its UM 731 (Universal Service) compliance filing pursuant to Order No. 00-312, effective April 30, 2001, Qwest proposed significant reductions to basic business rates and deaveraging of those rates into rate groups, matching the deaveraging structure that the Commission had ordered for UNE loop rates. Advice No. 1844, acknowledged March 12, 2001.<sup>19</sup> Qwest's proposal here maintains the deaveraged rate structure and introduces a number of other changes in business local exchange service rates, including a further small decrease in those rates. Staff generally agrees with all of Qwest's proposed changes except that Staff proposes that rates for business basic service in Rate Groups 2 and 3 should be the same.

Staff's proposal decreases Qwest's annual revenues for local business access services by \$1.3 million. Qwest's proposal decreases them by \$1.2 million. Staff agrees with Qwest's original proposal to reduce annual revenues from Public Access Line

<sup>19</sup> In UM 731, Qwest filed reductions in business rates that decrease annual revenues by \$15.4 million. In its compliance filing, the company proposed a one party flat simple business (1FB) access line rate of \$26.40 per month in Rate Group 1. In effect, Qwest proposed to reduce the simple business access line rate by an average of \$4.47 (14 percent) from the current \$30.87 rate. Qwest proposes to remove the current distinction between simple and complex business lines by treating them all as 1FB lines. Qwest also proposed to continue to charge a higher rate for PBX lines than for 1FB lines. This reduces the complex line rate to the same level proposed for simple lines, \$26.40, a reduction of \$8.37 (24 percent) from the current \$34.77 rate. Most PBX trunk rates are reduced to \$28.40, effectively reducing the rate by \$6.37 (18 percent) from the current rate of \$34.77.

(PAL) services by \$13,000.<sup>20</sup> Staff's proposal eliminates the PAL flat rate with measured usage after 300 calls and reduces PAL rates to equal the Staff proposed one party flat business rates for all three rate groups.

NWPA also joined this issue, arguing that Qwest's, and by implication Staff's, public access line (PAL) rates are inconsistent with the FCC Payphone Orders. NWPA contends that PAL rates are subject to the "new services test," requiring that rates be cost based with a reasonable contribution to overhead.<sup>21</sup>

**Staff.** Staff's proposal reduces monthly rates for local business access service customers by approximately 2 percent. Business one party flat (1FB) rates for both Rate Groups 1 and 2 drop by 40 cents, and Rate Group 3 rates drop by \$2.35, or 8 percent. This reduction makes rates in Rate Group 2 and 3 equal. The total annual revenue effect of these reductions is \$1.4 million. Staff proposes to reduce business access line rates because they are too far above the universal service benchmark.

Staff's proposal also reduces monthly recurring rates for flat rate PAL service in all three rate groups by 8 to 20 percent. This proposal makes flat PAL rates equal to the proposed 1FB rates for all three rate groups. Staff also proposes to eliminate the PAL Flat Rate with Measured Usage after 300 calls. The total annual revenue effect of these rate reductions is about \$13,000.

**Qwest.** Qwest and Staff generally agree on Qwest's proposed changes except that Staff proposes that rates for business basic service in Rate Groups 2 and 3 should be the same. Qwest believes that the Commission should not retreat from the extent of deaveraging that it has already approved and should maintain a deaveraging of retail rates that matches the deaveraging of loop rates. The deaveraging of loop rates reflects actual cost differences in the three rate groups. Qwest argues that retaining cost based distinctions among the three rate groups will aid the development of facilities based competition in those areas.

Qwest has proposed a change in the price for PAL service, making the rates for PAL access line service consistent with business line rates. Qwest argues that PAL service is provided to business customers (Payphone Service Providers, PSPs) and is the functional equivalent of business line service.<sup>22</sup> Staff and Qwest agree on Qwest's rate design for PAL services except that Staff proposes the same rates for Rate Groups 2 and 3.

<sup>20</sup> Qwest filed a revised UT 125 rate spread on March 19, 2001, that differs slightly from its original proposal.

<sup>21</sup> Qwest's Advice No. 1844 reduces PAL rates by \$0.3 million, or 14 percent. However, the flat PAL rate is reduced to the same level as 1FB lines, \$26.40, a reduction of \$8.37 or 24 percent from the current \$34.77 rate. This is the service to which PAL subscribers are likely to migrate.

<sup>22</sup> Qwest notes that in Order No. 90-920, Docket UT 85, the Commission found that measured PAL access lines are identical to measured business service lines and should be priced the same.

NWPA. NWPA argues that Qwest's proposed rates for pay telephone access service impermissibly exceed the rates allowable under Section 276 of the Telecommunications Act of 1996.

*Payphone Rates and the New Services Test.* The FCC issued the Payphone Orders in 1996 and 1997,<sup>23</sup> determining that incumbent local exchange carriers (ILECs) must set their rates for pay telephone access services so as to be cost based, consistent with the requirements of Section 276, nondiscriminatory, and consistent with Computer III guidelines.<sup>24</sup> The Computer III tariffing guidelines incorporate the "new services test." Order on Reconsideration at 163. "The new services test is a cost based test that establishes the direct cost of providing the new service as a price floor. LECs then add a reasonable level of overhead costs to derive the overall price of the new service." *In the Matter of Local Exchange Carriers Payphone Functions and Features*, Mem. Op. & Order, CC Docket No. 97-140, 12 FCC Rcd. 17,996 (1997), ¶ 2 (FCC 97-392, rel. Oct. 29, 1997) (Payphone Features Order). The FCC required ILECs to file studies supporting these costs with state commissions in 1997. Bureau Waiver Order at ¶19.

According to NWPA, Qwest had two duties regarding its PAL rates under the new services test: to file studies showing direct and overhead costs for PAL with the Oregon Commission, and to set PAL rates based on these costs. Qwest did neither and has never, according to NWPA, set its Oregon PAL rates according to the new services test. NWPA believes that Qwest's failure to produce and file cost support data is in itself sufficient for this Commission to reject Qwest's proposed PAL rates.

Qwest has also failed to meet its second duty under the new services test, according to NWPA, which is to calculate its rates based on the appropriate cost data. Instead, NWPA argues that Qwest has set PAL rates according to different criteria and methodologies that have nothing to do with the new services test. For instance, Qwest adds contribution and market driven return costs to its PAL rates. Further, NWPA contends that Qwest sets its PAL rates based on the rates for business local exchange service, whereas there are substantial differences between PAL and business local exchange service and their rates are set by different mechanisms. NWPA would like the Commission to require engineering studies, time and wage studies, and other cost accounting studies from Qwest to comply with the new services test.<sup>25</sup>

*CustomNet and the New Services Test.* The above arguments apply to access service rates. With respect to payphone features, NWPA argues that these rates

<sup>23</sup> Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd. 20,541 (1996) (Report and Order); Order on Reconsideration, 11 FCC Rcd. 21,233 (1996); Order, 12 FCC Rcd. 20,997 (1997) (Bureau Waiver Order); Order, 12 FCC Rcd. 21,370 (1997) (second Bureau Waiver Order).

<sup>24</sup> These four characteristics of rates are what NWPA refers to as the FCC's four part test.

<sup>25</sup> NWPA also argues that it is impermissible to set PAL rates based on business line rates because that would discourage widespread deployment of payphones. NWPA further argues that setting PAL rates at business rates ignores the new services test methodology required by law. We disagree with these contentions; see Resolution, below.

should also be set according to the new services test. NWPA focuses its argument on CustomNet, a kind of call screening. Qwest has denied that CustomNet is subject to the new services test, has refused to provide relevant cost data, and, according to NWPA, has set rates for this service according to prohibited criteria.

NWPA argues that the new services test applies to any unbundled features ILECs provide to their own payphone services. Order on Reconsideration at ¶163. Qwest provides CustomNet to its own Basic PAL lines ordered by its payphone division; NWPA concludes that CustomNet is therefore subject to the new services test.

NWPA also argues that usage patterns establish CustomNet as a payphone feature, based on confidential numbers. CustomNet places restrictions on a line to prevent someone charging a long distance call to the payphone number. PSPs order CustomNet because that feature is essential to avoid fraudulent charges, as Qwest's network is currently configured.

NWPA asserts that Qwest has failed to file cost data for CustomNet, although it is a payphone feature. Qwest maintains that it has not prepared cost data because it has not proposed price changes for CustomNet. NWPA argues that this does not excuse Qwest from compliance with the requirements of the Payphone Orders. NWPA argues that the limited cost information available shows that Qwest imposes an enormous overhead loading on CustomNet service.

***Discriminatory Rates.*** Further, NWPA contends that Qwest's pay telephone access service rates are discriminatory. First, NWPA asserts that the rates recover certain interstate costs twice. For each PAL line sold Qwest receives a subscriber line charge (SLC, also called a customer access line charge (CALC) and an end user common line (EUCL)) and a primary interexchange carrier charge (PICC). Qwest has not lowered its proposed PAL rates to reflect that these charges recover nontraffic sensitive interstate costs of PAL service, giving Qwest a double recovery of these costs.

NWPA argues that the FCC has already recognized that ILECs must reduce PAL rates to account for these charges so that ILECs do not recover their costs twice. *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, 15 FCC Rcd. 9,978 (2000) (Wisconsin Order), the FCC directed certain ILECs to demonstrate that in setting their PAL rates they have taken into account other sources of revenue (SLC, PICC, and carrier common line (CCL) charges) that are used to recover the cost of the facilities involved to avoid double recovery. Wisconsin Order at ¶12.

Second, NWPA contends that the nature of these federal charges show that they create double recovery for Qwest. They recover the interstate costs of the local loop that are not traffic sensitive. Qwest's PAL costs are not separated by jurisdiction in this proceeding, so they include both interstate and intrastate local loop costs. By collecting the federal charges plus the PAL rate, Qwest recovers the interstate loop costs twice. The fact that Qwest applies these federal charges equally to local exchange services and PAL is irrelevant, according to NWPA.



NWPA contends that Qwest discriminates against its competitors by collecting interstate costs twice. Thus, it can offer higher payphone commission payments than its competitors. As a result, competing payphone providers are subsidizing Qwest's payphone operations. NWPA urges the Commission to require Qwest to adjust its PAL rates to eliminate this double recovery.

NWPA also argues that Qwest's rates and practices regarding CustomNet are discriminatory, including Qwest's markup and its refusal to disclose cost data. NWPA asserts that these practices discriminate against competitive payphone providers and erode their ability to provide viable competition with Qwest's payphone service.

**Public Policy.** In addition to the assertion that Qwest's payphone service rates fail to comply with the new services test, NWPA alleges that Qwest's rates are inconsistent with Section 276 of the Act, which states the objectives of increasing competition and widespread deployment of payphones. NWPA contends that Qwest's high CustomNet rates hurt independent payphone providers and undercut these objectives. Further, NWPA asserts that Qwest's rates are not cost based, because they are market driven and contain too much overhead loading.

NWPA concludes that the Commission should reject Qwest's payphone access line and features rates because they do not meet each element of the FCC's four part test. NWPA then proposes two approaches according to which the Commission can set Qwest's payphone access and features rates on the evidence available. We do not discuss these proposals here because we decide this issue against NWPA, but note that one of them suggests using UNEs as a basis for setting payphone service rates.

**Qwest's Response to NWPA. Payphone Rates and the New Services Test.** In response to NWPA's arguments, Qwest contends that its payphone rates are cost based and provide a reasonable level of contribution to overhead costs and therefore comply with all federal requirements. Therefore, according to Qwest, the Commission should reject NWPA's arguments that PAL rates should be set equivalent to UNE rates.

PAL, according to Qwest, is a retail service, not a wholesale service. UNE pricing principles therefore do not apply to PAL. However, if a PSP is also a competitive local exchange carrier (CLEC), that provider may obtain the UNEs necessary to provide payphone service at the UM 844 UNE rates, or it may obtain a PAL for resale at prices that reflect a wholesale discount. A provider can also obtain UNE or wholesale rates through another CLEC. It is therefore not necessary, according to Qwest, for the Commission to set the retail price for PAL equal to the UNE price for payphone providers to obtain that level of pricing.

Qwest also maintains that the proposed PAL rates satisfy the new services test. The FCC requires rates for payphone services to be cost based and to comply with the new services test. The new services test establishes the direct cost of providing the new service as a price floor. LECs may then add a reasonable level of overhead costs to derive the price of the service.

NWPA argues that Qwest's level of overhead costs are unknown and that Qwest's proposed PAL rates cannot, for that reason, meet the new services test. Qwest notes that the FCC has relied on cost to price ratios to establish the amount of overhead in rates. See Payphone Features Order at ¶6. Qwest states that its proposed rates for flat PAL, PAL message line, and PAL measured services range from 26 percent to 91 percent above their direct costs, as approved by the Commission in UM 773. UM 773 costs are a reasonable approximation of direct costs as that term is used in the new services test, Qwest contends.

As to the level of overhead loading of which NWPA complains, Qwest points out that in the Payphone Features Order, the FCC required an explanation of Bell Atlantic's overhead loadings because it determined that, based on cost/price ratios, the overhead loadings did not appear to be reasonable. The FCC and state commissions have determined that a wide range of overhead loading is reasonable, including overhead loading that results in rates 4.8 times direct costs and 30 percent above direct costs. Payphone Features Order at ¶11 n 39, 13; Petition Filed by the Independent Payphone Ass'n of New York, Inc., Case 99-C-1684, 2000 NY PUC LEXIS 832 (NYPSC Oct. 12, 2000) at 8-9.

Qwest maintains that the studies NWPA asks for are unnecessary burdens. None of the things NWPA lists are necessary to ensure that proposed PAL rates are consistent with the new services test, which requires only a showing that the rates for a service include direct costs plus reasonable overhead. Qwest asserts that neither the FCC nor the state commissions prescribe the type of evidence necessary to determine whether PAL rates satisfy the new services test. Qwest notes that the FCC allowed state commissions to determine whether state tariffs comply with FCC guidelines. *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, CC Docket No. 96-238, 11 FCC Rcd. 21,233 (FCC 96-439 rel. Nov. 8, 1996), ¶163. Qwest argues that the evidence it submitted demonstrates that its proposed PAL rates are consistent with the new services test.

NWPA charges that Qwest includes impermissible elements in its PAL rates, including market driven return and contribution. NWPA asserts that these elements are inappropriate because PAL rates should be cost based. Qwest contends that cost based does not mean limited to costs. For instance, UNE rates are required to be "based on the cost" of providing the UNE and "may include a reasonable profit." 47 USC §252(d)(1). NWPA's reasoning would price retail PAL service below wholesale UNEs.

According to Qwest, NWPA's interpretation of the law ignores the purpose behind the new services test. *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Order on Further Reconsideration, CC Docket No. 89-79, 6 FCC Rcd. 4,524 (FCC 91-186 rel. July 11, 1991) (ONA Order), the FCC described the new services test as a "flexible cost based approach to pricing new services." ONA Order at ¶38. The

purpose of the new services test is to ensure that "initial prices for 'new' services [are] not unreasonably high." *Id.* at ¶39. The FCC continued:

Because we believe that the public interest will be served by providing LECs with an adequate incentive to innovate, we conclude that a flexible cost based approach is the best way of controlling both excessive pricing and discrimination. As NYNEX recognizes, a cost based upper bound can preserve carriers' incentives to innovate, if it permits them to earn a return on their total new investment commensurate with the risk they assume. *Id.* at ¶41.

On the basis of the ONA Order, Qwest argues that the Commission has leeway to determine whether Qwest's proposed rates are reasonable under the new services test, including consideration of an appropriate level of contribution or return.

**CustomNet and the New Services Test.** Qwest next argues that the new services test does not apply to CustomNet, contrary to NWPA's position. Qwest argues that CustomNet is an individual retail tariffed service described in Section 10 of PUC Oregon No. 29, Exchange and Network Services.<sup>26</sup> CustomNet is available to any customer that subscribes to an individual line under a single uniform service order code (USOC); it is not provided exclusively to PSPs. Over 37 percent of the lines with CustomNet serve customers other than PSPs. To price CustomNet in accordance with the new services test for PSPs, Qwest might be required to separate a service that is provided under a single USOC into at least two categories, CustomNet for PSPs and CustomNet for all other customers. This solution would be impractical and is not required under the new services test, which only governs lines and features provided exclusively to PSPs. In the Payphone Features Order at ¶15, the FCC expressly referred to GTE's call screening service as an "unbundled, payphone specific feature." Qwest argues that CustomNet is not payphone specific. It is instead an independent product available to any class of subscriber. Accordingly, the new services test does not apply to CustomNet, according to Qwest. Moreover, Qwest argues that NWPA has failed to provide evidence that any payphone service price is inconsistent with the new services test. Finally, with respect to CustomNet, Qwest states that it provided no cost data for CustomNet in this proceeding because no change is proposed for CustomNet rates.

**Discriminatory Rates.** Qwest also maintains that NWPA's reliance on the Wisconsin Order is misplaced. That order did not issue from the full FCC, it applies only to the specific LECs in Wisconsin that are named in the order, and a stay of the order has been requested.

Additionally, Qwest argues that its proposed PAL rates are not discriminatory. NWPA claims that collection of federal line charges such as SLC

<sup>26</sup> Qwest requests that we take official notice of this tariff. We do so in accordance with OAR 860-014-0050.

on public access lines is discriminatory because Qwest can use the proceeds from its double recovery to offer higher payphone commission payments than its competitors. The only support for this position, according to Qwest, is NWPA's speculation that Qwest would gain a financial advantage through the ability to offer lower rates and/or higher commission payments than NWPA members. Qwest urges us to disregard this assertion as mere speculation. Qwest notes that it is required to assess the federal charges. Qwest imposes them on all access lines, including lines it provides to its own payphone division. Accordingly, these charges are not discriminatory. Qwest also responds that the application of SLC is exactly the same for local exchange services as it is for PAL services.

### Discussion and Resolution

For business access services other than payphone rates, Qwest and Staff propose nearly identical rates and no other party addresses the issues. Staff wishes, however, to set rates in Rate Groups 2 and 3 equal to each other, whereas Qwest wishes to retain three rate groups. Qwest argues that retaining cost based distinctions among the three rate groups will aid the development of facilities based competition in those areas. We agree with Qwest on this issue and adopt Qwest's proposed rates.

**Payphone Rates and New Services Test.** For payphone service rates, we first address NWPA's arguments that Qwest must set rates consistent with the new services test and the FCC's four part test. We note that the FCC's test requires that payphone rates be cost based, consistent with Section 276 (that is, must encourage deployment of payphones), nondiscriminatory, and consistent with Computer III guidelines (that is, must pass the new services test). The new services test requires that rates be cost based with reasonable overhead. Therefore, the test really states that rates be cost based, nondiscriminatory, and consistent with increasing competition for payphones.

NWPA asserts that in order to comply with the new services test, Qwest must submit studies and cost data. We disagree. We find NWPA's reading of FCC requirements to be overly formal. The FCC requires only that rates be cost based and in compliance with the new services test. The new services test requires a showing that rates for a service include direct costs and reasonable overhead. Beyond that, the FCC has not specified what kind of evidence is necessary to determine whether PAL rates satisfy the new services test.

We conclude that UM 773 costs are a reasonable approximation of direct costs. Qwest has used the UM 773 costs to figure its direct costs. Qwest's rates for payphone services range from 26 percent to 91 percent above direct costs. Like the FCC, we find that the cost to price ratio is sufficient to allow us to infer the overhead on payphone rates. Payphone Features Order at ¶6. Further, we find that this overhead is reasonable. As Qwest has pointed out, the FCC and state commissions have determined that a range of overhead loading up to 4.8 times direct costs is reasonable.

We agree with Qwest's arguments about the meaning of cost based rates. This phrase does not mean that rates must be set at cost. This conclusion renders moot NWPAs arguments about the inclusion of contribution and market driven return. We conclude that Qwest's PAL rates satisfy the new services test. We address the rest of the FCC test below.

**CustomNet and the New Services Test.** We next address the argument about whether CustomNet is subject to the new services test. We conclude that it is not. CustomNet is a service available to any class of subscriber, as Qwest has pointed out. It is a retail tariffed service that may be purchased by any customer with an individual line under a single USOC. Over 37 percent of the lines with CustomNet serve customers other than PSPs. The new services test applies to payphone specific features;<sup>27</sup> CustomNet is not payphone specific. This conclusion makes it unnecessary to address NWPAs arguments about cost data and overhead for CustomNet.

**Discriminatory Rates.** We agree with Qwest that we should not rely on the Wisconsin Order, which applied to specifically named ILECs and not to Qwest. Moreover, a stay has been requested on that order. We conclude that the Wisconsin Order is not binding on us.

We reject the remainder of NWPAs argument on the issue of discriminatory rates. Qwest assesses the federal charges on all access lines, including the lines it provides to its own payphone division. This is not discriminatory behavior. NWPAs has not provided evidence that Qwest uses the proceeds from its recovery of the federal charges to gain a competitive advantage over NWPAs members.

**Public Policy.** Finally, NWPAs argues that Qwest's proposed PAL rates are inconsistent with Section 276 of the Act because they do not increase competition and serve the widespread deployment of payphones. NWPAs has not shown that the rates as proposed, which represent an overall reduction of current rates, hinder competition. In fact, evidence in the case shows that the number of payphones operated by NWPAs members in Oregon increased approximately 24 percent from 1997 to 2000, when NWPAs provided its data request response. The number of payphones operated by NWPAs members in 1997 is within 3 percent of the total number of PAL lines recorded in the test year. We reject this argument.

For payphone rates, we adopt Qwest's proposal.

<sup>27</sup> In the Payphone Features Order, the FCC determined that GTE's selective class of call screening service is subject to the new services test, describing it as a payphone specific feature. At ¶15.

## ISSUE 12: RESIDENTIAL LOCAL EXCHANGE SERVICE

## Party Positions

AARP, Qwest, and Staff took positions on this issue. Qwest proposes to deaverage residential local exchange rates into three Rate Groups on the same basis that the Commission used to deaverage the loop UNE. Qwest proposes an increase in basic residential rates (currently \$12.80) of \$1.00 in Rate Group 1, \$2.00 in Rate Group 2, and \$3.00 in Rate Group 3. Qwest proposes to price the second residential line \$1.00 below the price of the initial residential line. Qwest also proposes to increase one party measured residential (1MR) access line recurring rates by \$2.2 million (from the current \$6.37 per month to \$9.50 in Rate Group 1, \$10.50 in Rate Group 2, and \$11.50 in Rate Group 3). Qwest's proposal on this issue would increase annual revenues by \$11.49 million.

Staff proposes deaveraging on the same basis as Qwest. Staff also proposes no rate increase for Rate Group 1 or 1MR, an increase of \$1.00 for Rate Group 2, and an increase of \$2.00 for Rate Group 3, for an overall revenue increase of \$1.12 million.

AARP opposes any increase in basic residential rates.

**AARP.** AARP argues that no rate increase is appropriate for residential local exchange service in the context of this case. According to AARP, Qwest bases its pricing proposal on the \$21.00 benchmark for local service that resulted from Docket UM 731. Staff bases its increase in the UM 844 price floors in combination with consideration of the \$21.00 benchmark. AARP contends that both approaches erroneously use the output of cost proxy models that were designed for other purposes, and both associate the outcome of these cost modeling processes with the underlying cost of basic residential service and therefore with the rates charged for basic residential service. AARP argues that neither the \$21.00 benchmark nor the UM 844 price floors are appropriate costing mechanisms for ratemaking purposes.

AARP argues that there is no cost basis for an increase in basic local service rates in the face of a \$91 million rate decrease.<sup>28</sup> AARP maintains that neither Staff nor Qwest has shown that residential rates, separately or combined, do not cover their costs. Without such a showing, AARP argues, there is no justification for increasing residential basic exchange rates.

AARP argues that the UM 844 price floor is not equivalent to the cost of underlying residential basic exchange rates, because the price floor includes 100 percent of the loop cost. Residential basic service is only one service that Qwest offers, and AARP contends that it is not appropriate to assign all of the loop cost to a single rate

<sup>28</sup> AARP derives this figure by adding the \$64.2 million decrease from the stipulation adopted in Order No. 00-190 to the \$26.7 million business service rate decrease in UM 731.

element such as the residential basic rate. The costs should be spread across all the services that use the loop.

AARP also contends that that the \$21.00 benchmark does not justify raising basic residential rates because it does not measure the cost of a single rate element or service. The benchmark is the output of the FCC Synthesis Model, and Commission Staff adjusted the model only for usage or traffic sensitive costs (local and interstate access). The entire cost of the loop, which includes the fixed or shared costs associated with other services offered by Qwest, is still in the model. AARP contends that the \$21.00 benchmark is based on an aggregate that should be allocated among the services carried across the loop, including switched access, vertical services (such as Caller ID), and intraLATA or interstate toll services. The cost results of the benchmark study therefore, according to AARP, do not equate with the price of just one service, residential basic service.

AARP refers to several orders from other state commissions that conclude that loop cost should not be allocated entirely to residential rates.<sup>29</sup> Moreover, according to AARP, the rate should not be measured against the benchmark. The Commission uses the benchmark to determine when specific support for the provision of basic service pursuant to the universal service goals of SB 622 is necessary. It is not a rate setting mechanism.

AARP additionally maintains that there is no legal mandate to raise residential rates to the \$21.00 benchmark. The purpose of the universal service fund was to provide explicit support for provision of basic service where the cost of providing basic service exceeds a Commission established benchmark (Order No. 00-265 at 2). SB 622, according to AARP, was also designed to move the telecommunications sectors in the direction of reduced regulation by providing for an alternative form of regulation. The regulatory purpose of the benchmark is not for use in setting rates but instead to determine the amount of explicit support necessary to bridge the gap between price and cost in high cost areas. Even if SB 622 implied that a rate element below \$21.00 should be increased, which AARP believes is not the case, the Commission should recognize that the cost model used to arrive at the \$21.00 benchmark was not appropriate for ratemaking and that there is no mandate to raise any rate immediately.

The benchmark, according to AARP, is a guideline rather than a mandated target. Using the benchmark to set rates contradicts the universal service and affordability goals of the Act and of UM 731. The goals of the Act include making telecommunications rates affordable and service widespread and promoting or advancing consumer subscribership to telecommunications services. AARP argues that an increase

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<sup>29</sup> See *In the Matter of the Identification of All Subsidies in the Existing Rates of Qwest Corporation*, New Mexico Public Regulation Commission, Utility Case No. 3325 (2000); *U S WEST Communications, Inc., v. Washington Utilities and Transportation Commission, Fifteenth Supplemental Order, Commission Decision and Order Rejecting Tariff Revisions; Requiring Refiling*, Docket No. UT 905200, at 95 (1996), aff'd 949 P2d 1337 (1998); 4 Code of Colorado Regulations 723-30-4.2(a)(iv); FCC 96-98, Docket No. 96-45.

in residential rates, given any income elasticity or price elasticity, will decrease the number of customers subscribing to basic service. Further, AARP contends that the universal service fund does not subsidize residential rates and that there is therefore no reason to raise basic rates to compensate for the loss of a subsidy.

AARP argues that the proposal Staff and Qwest offer results in a net decrease or no increase to the residential class because rate increases for certain services are offset by the elimination of or decrease in rates of other services. However, AARP contends that some customers will experience an increase because they do not purchase the offsetting features or Qwest toll service. The better proposal, in AARP's view, is to ensure a rate decrease, or at least no rate increase, for all customers and not just those that purchase the correct bundle of features and services.

Finally, AARP argues that rates need not be increased to encourage competition for residential customers. According to AARP, there is no competition for residential customers. When competition develops, increasing rates could encourage competition. But at present, competition for residential rates is unlikely in the foreseeable future. Moreover, according to AARP, there is no mandate to deaverage retail rates. In fact, long distance and wireless plans are moving toward flat rates, not deaveraged rates.

**Qwest.** Qwest contends that its proposed increases in local service rates are mandated by ORS 759.425 and would bring the company into compliance with Section 254 of the Act. Section 254 requires states to use mechanisms that specifically and predictably advance universal service. This has generally been understood to require that subsidies be explicit rather than implicit. ORS 759.425 requires the Commission to establish and implement a universal service fund. ORS 759.425(3)(a) requires that the universal service fund provide "explicit support to an eligible telecommunications carrier that is equal to the difference between the cost of providing basic telephone service and the benchmark."

ORS 759.425(3)(c) provides that "the commission shall seek to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark." In UM 731, Order No. 00-312, at 22, the Commission set the benchmark at \$21.00. Qwest lowered its rates for basic business service in a revenue neutral filing in April 2001, and this case presents the first chance for the Commission to implement ORS 759.425(3)(c) with respect to residential service. Qwest urges the Commission to make a modest increase in the rate for residential basic service to start moving that price toward the universal service benchmark. Qwest argues that only its proposal meets the legislative mandate of moving prices for basic service toward the benchmark.

According to Qwest, Staff has failed to examine the relationship between the price for residential basic service and the universal service benchmark. Qwest also believes that Staff's proposals are inconsistent. On the one hand, Staff proposes to reduce rates for business basic service by 40 cents in Rate Groups 1 and 2 and by \$2.35 in Rate Group 3, because business basic rates too far exceed the universal service benchmark. Staff also justifies its proposed increase in residential rates for Rate



Groups 2 and 3 because the increase would bring those rates closer to the universal service benchmark. But Staff proposes no increase for residential basic service rates in Rate Group 1, although that group includes over 90 percent of Qwest's residential customers. Instead of examining the relationship between the residential basic service rates and the benchmark in Rate Group 1, however, Qwest argues that Staff focused on the relationship between the current rate and the price floors in ORS 759.410. This focus is in error, according to Qwest, because the price floors do not apply to basic service.

Qwest asserts that AARP performed an incorrect analysis comparing the price for residential basic service to the universal service benchmark. AARP compares not the flat residential basic service rate of \$12.80 but rather the sum of all revenues supported by the loop: basic services, EAS, features, access, intrastate toll, and the revenue from the CCL and federal support amounts. Performing that comparison, AARP concludes that the Commission need not adjust the price of residential basic service because it nearly equals the benchmark.

Qwest argues that AARP's analysis is based on an incorrect reading of the statute. ORS 759.425(3)(c) requires the Commission to compare "the price a telecommunications utility may charge for basic telephone service" with the benchmark. As required by ORS 759.425(2)(a), the Commission has defined "basic telephone service" by rule, OAR 860-032-0190. That definition specifically excludes EAS, intrastate toll, and custom calling features, but AARP includes revenue from these nonbasic services in the price for basic service, in comparing the price for basic service with the universal service benchmark.

In response to AARP's contention that there is no competition in the residential local exchange service market, Qwest notes that competitive local exchange carriers serve over 10,000 residential customers in Oregon. Furthermore, Qwest argues that developing competitive alternatives for residential customers is an express goal of the Act. Qwest points out that AARP's expert witness agreed that a higher price for residential service gives competitors a better likelihood of achieving a higher margin, which is important to a competitor entering a market.

**Staff.** Staff argues for an increase in basic local service rates in Rate Groups 2 and 3 because these rates are below the UM 844 price floor and an increase will move them closer to the benchmark. Staff argues that the Commission should not increase rates in Rate Group 1, nor should it increase 1MR rates, because the present rates exceed the price floor.<sup>30</sup> Staff argues that we should increase the nonrecurring residential line charge because that would move the rate closer to the TSLRIC. Staff

<sup>30</sup> The Commission has not established price floors for retail services such as 1MR, but Qwest presented a proposed price floor of \$16.62 for this service. Staff calculated, using Qwest data, total revenue of \$17.44, which includes the \$6.37 monthly fixed charge, the \$4.35 subscriber line charge (which increased to \$5.00 on July 1, 2001), plus \$6.72 of monthly usage revenue calculated based in Qwest's exhibit. The average monthly usage revenue is calculated by 224 minutes times 3 cents per minute. This calculation uses the same methodology Qwest has used throughout the case.

acknowledges that the Commission is not required to price basic service above a price floor, according to ORS 759.420(4).

Staff argues that the UM 731 benchmark is only a guideline and that no party suggests that rates should be raised to \$21.00 in this proceeding. Staff asserts that its proposal does seek to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark, as ORS 759.425(3)(c) mandates. Staff characterizes the differences among the parties as a disagreement on the appropriate increase in this proceeding. According to Staff, the Commission has discretion to adopt any of the three residential basic rate proposals. The parties simply have different opinions on whether and how far rates should move and in which rate group or groups. Staff urges the Commission to adopt Staff's proposal, because it most appropriately balances the interest of customers with Commission policies and goals.

### Discussion and Resolution

ORS 759.425(3)(c) provides that "the commission shall seek to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark." OAR 860-032-0190(2) defines basic telephone service:

"Basic telephone service" means retail telecommunications service that is single party, has voice grade or equivalent transmission parameters and tone-dialing capability, provides local exchange calling, and gives customers access to but does not include:

- (a) Extended area service (EAS);
- (b) Long distance service;
- (c) Relay service for the hearing and speech impaired;
- (d) Operator service such as call completion assistance, special billing arrangements, service and trouble assistance, and billing inquiry;
- (e) Directory assistance; and
- (f) Emergency 9-1-1 service, including E-9-1-1 where available.

It is clear from the above statute and rule that AARP's arguments about the benchmark are misplaced. First, it is irrelevant how the benchmark is calculated. ORS 759.425 requires us to seek to limit the difference between the price of basic service and the benchmark. Thus, the benchmark is a given and not subject to scrutiny in this proceeding. AARP's comparison of other than basic service elements with the benchmark is also misplaced; the rule above excludes from basic service elements AARP would include in comparing price to benchmark.

AARP's remaining arguments have to do with policy. There is nothing to prevent this Commission from raising residential rates in the context of an overall rate decrease (which, for purposes of this docket, amounts to a revenue reduction of \$64.2 million, not \$91 million). Since the advent of competitors with the Bell Operating Companies, public utility commissions have had to balance the tasks of promoting competition and keeping residential service rates affordable. These tasks may well involve raising some rates to encourage competition (or to meet a statutory guideline, as in this docket) and lowering others to keep the competitive field level.

AARP has not shown that the rates proposed either by Qwest or by Staff are unaffordable. We note that from January 1984 until March 1993, rates for residential basic service exceeded \$12.80, climbing as high as \$16.05 in the 1986-87 period. Rates for residential service have not increased since 1993. What Qwest now proposes is an increase of 8 percent in Rate Group 1, 16 percent in Rate Group 2, and 23 percent in Rate Group 3. Staff proposes an increase of 8 percent in Rate Group 2 and 16 percent in Rate Group 3. We do not believe that these increases, the first in nine years, render basic telephone service unaffordable. For those customers to whom the increase presents a hardship, there are options. There are sources of public support, such as the Oregon Telephone Assistance Program, and there is the option of the 1MR rate at \$6.37. Moreover, we find that the reductions in EAS prices and vertical services will benefit most ratepayers, such that their overall bill will increase little if at all.

As to AARP's policy argument that there is no competition for residential basic service in Oregon, the record shows that local service competition is beginning here and we wish to encourage it. Raising prices to improve the margin for potential competitors is one way to do so. AARP has not convinced us that we may not raise residential rates in this proceeding.

The next issue confronting us is whether to do so. ORS 759.425(3)(c) directs us to "seek to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark." We considered the meaning of this phrase in Order No. 00-312 (UM 731). In that order, at 22, we stated:

Use of the phrase "seek to limit," rather than "shall eliminate," is an indication that the legislature understood the flexibility we need, in both time and method, to replace implicit supports with explicit supports as the industry embraces competition. We intend to rebalance telephone rates after this order issues. We will address issues about how rates should be structured in those proceedings. We will seek to minimize the difference between the price for basic telephone service and the benchmark. However, we must keep in mind other considerations, such as the affordability of basic telephone rates - ORS 759.425 (SB 622) also directs us to ensure that basic telephone service is available at a reasonable and affordable rate.

The language of ORS 759.425 is a guideline for our rate setting and leaves us flexibility to meet our goal of affordable basic service as well. For this reason, we elect Staff's proposal, which raises rates in two rate groups and leaves them unchanged in Rate Group 1, the group containing about 90 percent of Qwest's ratepayers. We find that Staff's proposal is well balanced and takes into consideration costs as well as movement toward the benchmark. Thus, we seek to limit the difference between basic service rates and the benchmark by modest increases in less urban rate groups. We note again that ratepayers will benefit in this case from reductions in many other categories. We adopt Staff's local exchange rate proposal in its entirety.

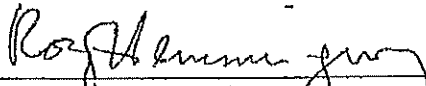
ORDER

IT IS ORDERED that:

1. Advice No. 1849, filed by Qwest on November 15, 2000, including Attachment B and Transmittal No. 2000-007-PL, Revisions to the Access Service Tariff, Private Line Transport Services Tariff, and the Exchange and Network Service Tariff and Price List; and the modified portion of Attachment B filed on March 19, 2001, are permanently suspended.
2. Qwest shall file by October 12, 2001, revised rate schedules consistent with the findings of fact and conclusions of law in this order, to be effective no later than January 1, 2002.

SEP 14 2001

Made, entered, and effective \_\_\_\_\_

  
 \_\_\_\_\_  
 Roy Hemmingway  
 Chairman

  
 \_\_\_\_\_  
 Lee Beyer  
 Commissioner

  
 \_\_\_\_\_  
 Joan H. Smith  
 Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.



SUMMARY OF TARIFF FILING

NAME **QWEST CORPORATION**

FILE CODE: **U21T**

FILED **October 12, 2001**

NEED LSN?: **No**

ADVICE/TRANS. NO. **1849 S1/2000-07-PL-A**

EFFECTIVE **January 1, 2002**

DOCKET NO. **UT 125**

FILING HAS BEEN ACCEPTED \_\_\_\_\_

FILING HAS BEEN ALLOWED \_\_\_\_\_

FILING HAS BEEN ACKNOWLEDGED           X          

FILING HAS BEEN REJECTED OR WITHDRAWN \_\_\_\_\_

SUMMARY OF FILING: **This filing represents the compliant rate design, which reduces revenues by \$63.9 million.**

REVIEWED BY: **Sloan (Pc), Van Landuyt (Pc), Stanage (Pc), Ball, Nyegaard, Turner/c)**

ACTION/DATE:

*10/16 - Co filed add'l mat. - dest to staff*

ACTION/DATE:

*11/16 - Co filed rep sheets - dest to staff*

ACTION/DATE:

*12/15 - Co w/d request - dest to staff*  
*12/28 - Co filed reports - dest to staff*

COMMENTS:



# Oregon

John A. Kitzhaber, M.D., Governor

*Kathy*

## Public Utility Commission

550 Capitol Street NE, Suite 215

Salem, OR 97301-2551

Consumer Services

1-800-522-2404

Local: (503) 378-6600

Administrative Services

(503) 373-7394

August 23, 2002

JUDITH A PEPPLER  
VICE PRESIDENT - OREGON  
QWEST CORPORATION  
421 SW OAK ST - RM 870  
PORTLAND OR 97204

RE: Advice No. 1849 S1/Transmittal No. 2000-007-PL-A

On October 12, 2001, Qwest Corporation filed revised sheets for inclusion in its tariffs, PUC OR No. 24, PUC OR No. 28, and PUC OR No. 29; and pricing schedule, Exchange and Network Services. On November 16 and December 28, 2001, the company filed replacement sheets.

This filing represents the compliant rate design, which reduces revenues by \$63.9 million.

The sheets are acknowledged and became effective with service rendered on and after January 1, 2002.

One receipted copy of each sheet is returned for your files.

John Savage  
Director  
Utility Program  
503-378-6025  
Fax: 503-373-7752

qwest1849 s-1-2000-007-pl

Enclosures



Qwest  
421 Southwest Oak Street Suite 8 South 3  
Portland, Oregon 97204  
Phone 503-242-5234  
FAX 503-242-5456

Judith A. Pepler  
Vice President - Oregon



October 12, 2001

Advice No. 1849  
Supplement No. 1

Transmittal No. 2000-007-PL  
Supplement No. 1

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
550 Capitol Street NE  
Suite 215  
Salem, Oregon 97310-2551

ATTENTION: Janice Fulker, Administrator  
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

Qwest is forwarding for filing the sheets listed on Attachment A. These are revisions to the Access Service Tariff, Private Line Transport Services Tariff, and the Exchange and Network Services Tariff and Price List. The effective date is January 1, 2002.

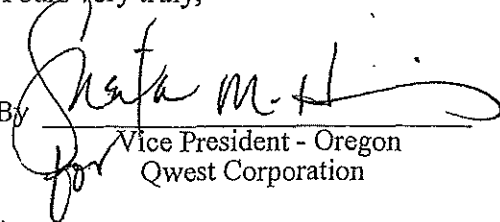
In accordance with Oregon Public Utility Commission Order No. 01-810, issued September 14, 2001, in Docket UT 125, this supplemental filing represents Qwest's compliant rate design, which reduces revenues by \$63.9 million.

A confidential revenue impact analysis is attached.

Attachment B contains commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.

If you have questions concerning this filing, please contact Sheila Harris on (503) 242-5950.

Yours very truly,

By   
Vice President - Oregon  
Qwest Corporation

Attachments

ACCESS SERVICE  
P.U.C. OREGON NO. 24

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
1	4	3
1	5	2
1	6	1
1	13	2
1	15	4
1	18	3
1	20	2
1	24	4
1	25	4
1	26	3
1	27	2
1	30	1
2	Index 2	3
2	2	2
2	5	2
2	6	2
2	18.1	1
2	18.2	1
2	18.3	1
2	18.4	0
2	18.5	0
2	20	3
2	26	3
2	27	3
2	33	1
2	34	2
2	35	1
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2	40	2
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2	43	3
2	44	2
2	45	2
2	46	2
2	49	2
2	50	1
2	52	1
2	54	3
2	56	2
2	57	1
2	58	3
2	60	3
2	61	1
2	64	2

ACCESS SERVICE  
P.U.C. OREGON NO. 24

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
2	66	2
2	68	2
2	69	3
2	70	1
2	74	2
2	75	1
2	77	1
2	78	1
2	79	1
2	80	1
3	Index 2	1
3	4	2
3	11	12
5	Index 1	1
5	1	3
5	3	4
5	3.1	1
5	3.2	1
5	4	2
5	5	2
5	6	3
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6	7	3
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6	7.2	1
6	7.3	1
6	7.4	1
6	7.5	1
6	7.6	1
6	7.7	1

ACCESS SERVICE  
P.U.C. OREGON NO. 24

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
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6	89	3
6	90	2

ACCESS SERVICE  
P.U.C. OREGON NO. 24

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
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6	163.2	1

ACCESS SERVICE  
P.U.C. OREGON NO. 24

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
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6	178	2
6	179	2
6	180	3
6	181	6
15	3	2
15	7	3
15	8	2

CANCELED SHEETS

ACCESS SERVICE  
P.U.C. OREGON NO. 24

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
6	7.8	0
6	133.1	0
6	133.2	0
6	159.1	0

EXCHANGE AND NETWORK SERVICES  
OREGON PRICELIST

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
1	Index 1	1
1	2	5
1	3	9
1	4	3
1	8	1
5	Index 1	8
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5	2	2
5	3	1
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105	3	1
105	4	1
105	5	1
105	6	1
105	8	1
105	10	1

CANCELED SHEETS

EXCHANGE AND NETWORK SERVICES  
OREGON PRICELIST

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	13	4
5	14	4
5	14.1	5
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5	19	0
5	20	0

PRIVATE LINE TRANSPORT SERVICES  
P.U.C. OREGON NO. 28

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
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PRIVATE LINE TRANSPORT SERVICES  
P.U.C. OREGON NO. 28

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
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5	169	1

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
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1	21	5
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2	64	1
4	6	2
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5	19.2	1

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
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5	120	2
5	122	1

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	136	2
5	137	2
5	157	1
5	171	2
105	Index 1	3
105	8.1	0
105	8.2	0
105	8.3	0
6	Index 1	3
6	6	1
6	10	1
6	11	1
6	12	1
6	13	2
6	30	2
6	31	1
6	37	1
6	43	1
6	46	1
6	49	2
6	50	3
6	51	1
6	52	3
7	Index 1	1
7	1	1
7	2	1
7	3	1
7	4	1
7	5	1
7	6	1
7	7	1
7	8	1
7	9	1
7	10	1
7	11	1
7	12	1
107	Index 1	0
107	1	0
107	2	0

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
107	3	0
107	4	0
107	5	0
107	6	0
107	7	0
107	8	0
107	9	0
107	10	0
107	11	0
107	12	0
107	13	0
107	14	0
107	15	0
107	16	0
107	17	0
107	18	0
107	19	0
107	20	0
107	21	0
107	22	0
107	23	0
107	24	0
107	25	0
9	1	1
9	12	1
9	30	1
9	33	1
9	78	1
9	86	1
9	87	1
9	98	1
9	109	1
9	112	1
9	113	2
9	114	1
9	115	1
9	116	2
9	117	1
9	118	1
9	119	2
9	163	1
9	174	4

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
9	253	1
109	Index 1	2
109	1	1
109	3	1
109	5	1
109	6	1
109	9	1
109	11	1
109	12	1
109	28	1
109	58.1	1
109	58.2	0
109	58.3	0
109	58.4	0
109	58.5	0
109	58.6	0
109	58.7	0
10	5	1
10	7	2
10	11	1
10	13	1
12	21	1
12	74	1
12	91	1
12	92	1
12	94	1
12	95	1
12	96	1
12	97	1
12	98	1
12	99	1
12	100	1
12	101	1
12	102	1
12	103	1
14	23	2
14	33	3
14	34	3
14	36	3

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
14	38	3
15	6	2
15	7	2
15	8	2
15	11	4
15	12.1	1
15	13	5
15	14	2
15	15	2
15	16	2
15	18	1
15	21	2

CANCELED SHEETS

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
2	65	0
5	39	0
5	4	0
5	42	0
5	43	0
5	46	0
5	47	1
6	30.1	0
6	32	0
6	33	0
6	34	0
6	35	0
6	36	0
6	44	0
6	53	5

CANCELED SHEETS

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
7	13	0
7	14	0
7	15	0
7	16	0
7	17	0
7	18	0
7	19	0
7	20	0
7	21	0
7	22	0
7	23	0
7	24	0
7	25	0
7	26	0



Qwest  
421 Southwest Oak Street  
Suite 870  
Portland, Oregon 97204  
Phone 503-242-5234  
FAX 503-242-5456

Judith A. Pepler  
Vice President - Oregon



October 16, 2001

Advice No. 1849 S-1  
Transmittal No. 2000-007-PL-A

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
550 Capitol Street NE  
Suite 215  
Salem, Oregon 97310-2551

ATTENTION: Janice Fulker, Administrator  
Tariffs and Data Analysis

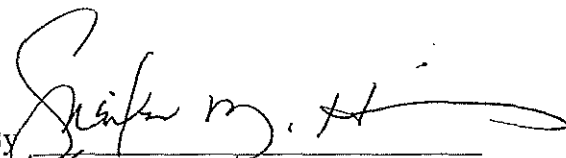
Dear Commissioner Hemmingway:

Enclosed is a replacement of Attachment B of Advice No. 1849 S-1 and Transmittal No. 2000-007-PL-A filed October 12, 2001, Qwest's compliance filing in Docket UT 125. Upon further review of Attachment B, Qwest determined that the version which was filed did not reflect the rate contained in the above tariff filing for a Custom Calling feature, Call Rejection. The correction results in a slight change in the revenue impact as originally filed.

Attachment B contains commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.

If you have questions concerning this filing, please contact Sheila Harris on (503) 242-5950.

Yours very truly,

By   
Vice President - Oregon  
Qwest Communications, Inc.

Attachments

Qwest  
421 Southwest Oak Street  
Suite 870  
Portland, Oregon 97204  
Phone 503-242-5234  
FAX 503-242-5456

Judith A. Pepler  
Vice President - Oregon



November 16, 2001

Advice No. 1849 S-2  
Transmittal No. 2000-007-PL-B

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
550 Capitol Street NE  
Suite 215  
Salem, Oregon 97310-2551



ATTENTION: Janice Fulker, Administrator  
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

Qwest is forwarding for filing the sheets listed on Attachment A. These are revisions to the Access Service Tariff and the Exchange and Network Services Tariff and Price List. The effective date is January 1, 2002.

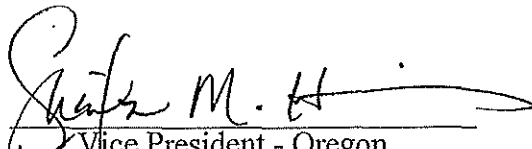
The attached supplemental filing is made pursuant to an agreement between Qwest and Staff which is memorialized in a Memorandum of Understanding ("MOU"). Concurrently with this filing, the company is filing the MOU for approval by the Commission.

A confidential revenue impact analysis ("Attachment B") is attached.

**Attachment B contains commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.**

If you have questions concerning this filing, please contact Sheila Harris on (503) 242-5950.

Yours very truly,

By   
Vice President - Oregon  
Qwest Communications, Inc.

Attachments

ACCESS SERVICE  
P.U.C. OREGON NO. 24

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
1	18	4 <sup>th</sup>
2	5	2 <sup>nd</sup>
2	61	1 <sup>st</sup>
6	139.2	2 <sup>nd</sup>
6	143.1	0
6	155	1 <sup>st</sup>

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	38	1
5	53	2
5	62	2
5	62.1	1
5	96	4
5	136	2
5	137	2
6	30	2
6	43	1
6	50	3
6	52	3
9	33	1
9	174	4
109	58.7	0
14	34	3
14	38	3
15	7	2
15	8	2
15	12.1	1
15	13	5
15	14	2
15	15	2
15	16	2
15	21	2

CANCELED SHEETS

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

5	39	0
5	40	1
6	44	0
6	45	0
6	51	0
6	53	5

EXCHANGE AND NETWORK SERVICES  
OREGON PRICELIST

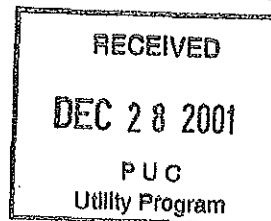
<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	8	3 <sup>rd</sup>
105	13	2 <sup>nd</sup>

Qwest  
421 Southwest Oak Street  
Suite 870  
Portland, Oregon 97204  
Phone 503-242-5234  
FAX 503-242-5456

Judith A. Pepler  
Vice President - Oregon



December 28, 2001



Advice No. 1849 S-1  
Supplement No. 2

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
550 Capitol Street NE  
Suite 215  
Salem, Oregon 97310-2551

ATTENTION: Janice Fulker, Administrator  
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

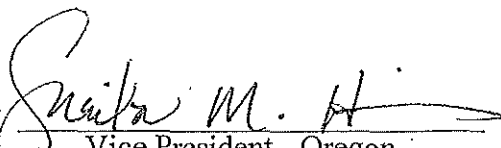
Qwest Corporation ("Qwest") is forwarding for filing the sheets listed on Attachment A. These are revisions to the Exchange and Network Services Tariff. The effective date is January 1, 2002.

The attached supplemental filing is the Second Supplement to Advice No. 1849-S1, in compliance with Oregon Public Utility Commission ("Commission") Order No. 01-1098, in Docket Number UT 125/Phase II—Rate Design, issued December 21, 2001, and its Attachment A (Memorandum of Understanding ("MOU") between Qwest and Staff), which the Commission approved.

As ordered, this supplemental filing revises the Measured EAS rates as set forth in Appendix A to the MOU. Additionally, this supplemental filing includes "housekeeping" changes to additional services that are Basic Business Flat dependent, which also required a rate reduction, as referenced in Section 1 of the MOU. These further rate reductions have a minimal revenue impact.

If you have questions concerning this filing, please contact Sheila Harris on (503) 242-5950.

Yours very truly,

By   
for Vice President - Oregon  
Qwest Communications, Inc.

Attachments

cc: Service List

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	35	1 <sup>st</sup>
14	34	3 <sup>rd</sup>
14	38	3 <sup>rd</sup>
15	21	2 <sup>nd</sup>

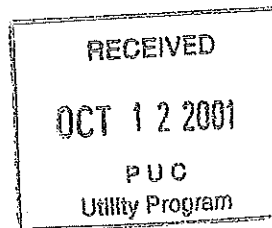
**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
1st Revised Sheet 38  
Cancels Original Sheet 38[2]**

**5. EXCHANGE SERVICES**

**5.2 LOCAL EXCHANGE SERVICE  
5.2.4 FLAT RATE SERVICE**



C. Rates and Charges (Cont'd)

**REPLACED**

The rates listed below do not include the Residential Service Protection Fund (RSPF) surcharge.

2. Business

	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP		
		1	2	3
• Business Line, each[1]	\$31.00	\$26.20 (R)	\$28.70 (R)	\$30.70 (R)

(M)  
(D)  
(M)  
(M1)

(C)  
(C)(M1)

**REPLACED**

[1] EAS rate increment also applies. See 5.1.1.

[2] This sheet cancels the following: Original Sheets 39  
1st Revised Sheet 40.

(N)  
|  
(N)

(M) Material moved to Sheet 37.  
(M1) Material moved from Sheet 40.



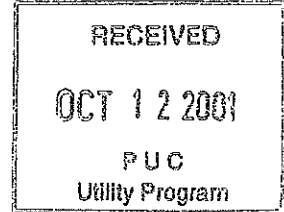
**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
2nd Revised Sheet 53  
Cancels 1st Revised Sheet 53**

**5. EXCHANGE SERVICES**

- 5.2 LOCAL EXCHANGE SERVICE**
- 5.2.8 U S WEST HOME BUSINESS LINE SERVICE**
- B. Terms and Conditions (Cont'd)



4. Additional features to HBL service may be purchased at business rates and charges and under terms and conditions specified in other sections of this Tariff or specified elsewhere.

C. Rates and Charges

**REPLACED**

- *U S WEST HOME BUSINESS LINE, each*

**USOC**

**BHS**

	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP		
		1	2	3
• <i>U S WEST HOME BUSINESS LINE, each</i> [1]	\$31.00	\$29.45 (R)	\$31.95 (R)	\$33.95 (R)

**REPLACED**

[1] EAS rate increment also applies. See 5.1.1.

(N)

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
2nd Revised Sheet 62  
Cancels 1st Revised Sheet 62**

**5. EXCHANGE SERVICES**

**5.3 PRIVATE BRANCH EXCHANGE (PBX) TRUNKS (Cont'd)**

**5.3.3 FLAT RATE TRUNKS**

**A. Types of Trunks**

- Two-Way, Four-Wire trunk

Includes E&M signaling *DID* Service and hunting (not available to Joint User Service customers)

- In-Only Analog *DID* trunk provisioned for *DID* Call Transfer.

Includes *DID* Service, hunting and reverse battery signaling.

**B. Terms and Conditions**

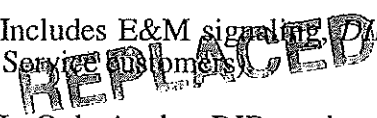
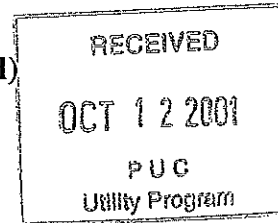
- The nonrecurring charge may not apply to customers who subscribe to the two-way, four-wire trunk during the term of a promotion. The promotion will not exceed four months. See Section 16 for Special Promotions.
- The rates listed below do not include the Service Assistance Program surcharge.

**C. Rates and Charges**

		NON- RECURRING	MONTHLY RATE PER RATE GROUP		
	USOC	CHARGE	1	2	3
• Two-way, four-wire[1]	THHCX	\$31.00	\$47.56 (R)	\$52.56 (R)	\$56.56 (R)
• In-only analog <i>DID</i> provisioned for <i>DID</i> Call Transfer[1,2]	TRH1X	31.00	47.56 (R)	52.56 (R)	56.56 (R)

[1] Requires a *DID* trunk circuit termination. For conditions, rates and charges, see *DID* Service located in 5.3.4.

[2] Certain switch limitations may apply.



**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

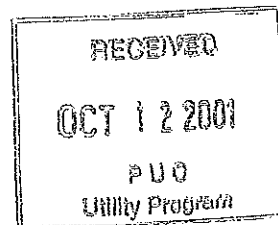
**SECTION 5  
1st Revised Sheet 62.1  
Cancels Original Sheet 62.1**

**5. EXCHANGE SERVICES**

**5.3 PRIVATE BRANCH EXCHANGE (PBX) TRUNKS**

**5.3.3 FLAT RATE TRUNKS**

C. Rates and Charges (Cont'd)



	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP		
			1	2	3
• Two-way	TFB	31.00	\$28.20 (R)	\$30.70 (R)	\$32.70 (R)
• One-way out only	TRD	31.00	28.20	30.70	32.70
• One-way in only	TFB1N	31.00	28.20	30.70	32.70
• One-way in with hunting for DID	TDD	31.00	29.56 (R)	32.06 (R)	34.06 (R)

**REPLACED**

**REPLACED**

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
4th Revised Sheet 96  
Cancels 3rd Revised Sheet 96**

<p><b>RECEIVED</b></p> <p><b>OCT 12 2001</b></p> <p><b>PUC</b> Utility Program</p>
--

**5. EXCHANGE SERVICES**

**5.4 PREMIUM EXCHANGE SERVICES**

**5.4.3 CUSTOM CALLING SERVICES**

- D. Rates and Charges
- 2. Custom Calling Services, each line (Cont'd)

<b>BUSINESS</b>	<b>USOC</b>	<b>MONTHLY RATE</b>
• Call Rejection	NSY	\$ 1.60 (R)
• <del>Call Transfer</del> , each line	EO3	2.00
• Call Waiting, each line	ESX	2.00 (R)
• <i>CALLER ID WITH PRIVACY +</i>	N6S	10.95
• Caller Identification-Name and Number	NNK	7.95
• Caller Identification-Number	NSD	7.50
• Continuous Redial	NSS	1.50 (R)
• Dial Call Waiting, each line	WDD	2.15
• Dial Lock	OC4	3.95
• Directed Call Pick Up, each line	PUN	1.00
• Directed Call Pick Up with Barge-In, each line	PUQ	1.00
• Distinctive Alert, each line	DHA	1.00
• Do Not Disturb		0.95
• Easy Access	SQAVX	0.98
• Hot Line, each line arranged	HLA	2.00

**REPLACED**

**REPLACED**

**U S WEST COMMUNICATIONS, INC.**

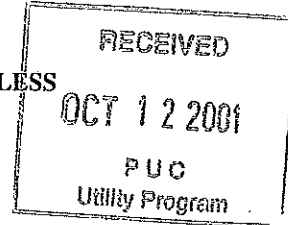
**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
2nd Revised Sheet 136  
Cancels 1st Revised Sheet 136**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)**



**C. Rates and Charges**

**1. Each Basic Public Access Line**

Description	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP		
			1	2	3
Measured - Two-way, per line[1]	17Q	[2]	\$18.00	\$20.50 (I)	\$22.50 (I)
- Outgoing only, per line[1]	16Q	[2]	18.00	20.50 (I)	22.50 (I)
• Measured with 300 Call Allowance - Two-way, per line[1,3]	15W	[2]	26.20 (R)	28.70 (R)	30.70 (R)
• Message - Two-way, per line[4]	1MA	[2]	18.00	20.50 (I)	22.50 (I)
• Message with 300 Call Allowance - Two-way, per line[3,4]	1W3	[2]	26.20 (R)	28.70 (R)	30.70 (R)
• Flat - Two-way, per line[3]	1KY	[2]	26.20	28.70	30.70
• Carrier Package[5]	1N8	[2]	28.20 (R)	30.70 (R)	32.70 (R)

- [1] In addition, Business Measured Service usage rates from 5.2 apply.
- [2] The business access line nonrecurring charge specified in 5.2 applies.
- [3] EAS rate increment also applies. See 5.1.1.
- [4] Message usage charge specified, following, applies.
- [5] Outgoing only service commonly used by Interexchange Carriers. Service includes CUSTOMNET Service and local call restrictions.

Advice No. 1849  
Issued by U S WEST Communications, Inc.  
By J. A. Peppler  
OR2000-076 Supplement No. 1

Effective: January 1, 2002  
Title Vice President

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

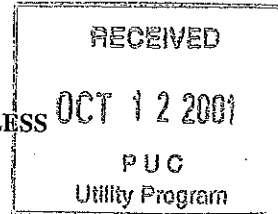
**SECTION 5  
2nd Revised Sheet 137  
Cancels 1st Revised Sheet 137**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE**

**C. Rates and Charges (Cont'd)**



	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP			(C)
			1	2	3	
<b>2. Smart Public Access Line, each</b>						
- Outgoing only, per line[1]	5FO	[2]	\$27.62 (R)	\$29.57 (R)	\$31.05 (R)	
- Two-way, per line[1]	5FP	[2]	27.62	29.57 (R)	31.05 (R)	
• Message						
- Outgoing only, per line[3]	14C	[2]	19.24	21.34 (I)	22.94 (I)	
- Two-way, per line[3]	1NH	[2]	19.24 (R)	21.34 (I)	22.94 (I)	(C)

**3. Message Usage Charges**

- Per message

**MESSAGE RATE  
REPLACED  
\$0.07**

[1] EAS rate increment also applies. See 5.1.1.  
 [2] The business access line nonrecurring charge from 5.2 applies.  
 [3] Message usage charge specified, following, applies.

U S WEST COMMUNICATIONS, INC.

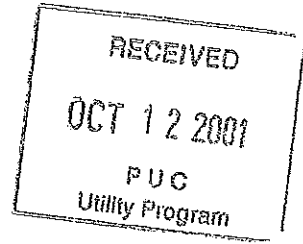
P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 6  
2nd Revised Sheet 30  
Cancels Original Sheet 30[1]

6. MESSAGE TELECOMMUNICATIONS SERVICE

6.2 STANDARD SERVICE OFFERINGS (Cont'd)

6.2.8 BUSY VERIFICATION /INTERRUPT SERVICE



A. Description

Busy Verification and Interrupt Service provides a calling party with:

REPLACED

Information about the status of a line as to whether it is available to be called.

- The ability to interrupt a communication already in progress in emergency situations.

This service applies to local and long distance calls.

B. Terms and Conditions

1. A Busy Verification or Interrupt Charge is applicable only on lines verified as having a communication in progress or as available to be called.
2. A charge will not be applicable for requests for verification of a line when the line is determined to have a maintenance problem.
3. Requests may be billed to a calling card, special billing number or third number. See 6.2.1, Operator Service Charges.
4. No verification or interrupt charge will apply if the requesting customer identifies that the call is from an authorized Public Emergency Agency. An authorized Public Emergency Agency is defined as a government agency which is operated by the Federal, State or local government and has the capability and legal authority to provide prompt aid to the public in emergency situations.
5. If an operator both verifies the condition of the line and interrupts a communication on the same request, only the interrupt charge applies.

REPLACED

C. Charges

	NONRECURRING CHARGE
• Each completed request to verify the availability status of a line.	\$1.40
• Each completed request to interrupt a conversation on a line.	2.80

[1] This sheet cancels Original Sheet 30.1.

(N)

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES

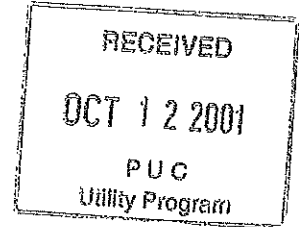
SECTION 6  
1st Revised Sheet 43  
Cancels Original Sheet 43[1]

6. MESSAGE TELECOMMUNICATIONS SERVICE

6.3 OPTIONAL SERVICE OFFERINGS  
6.3.18 CALLING CONNECTION PLANS

A. Description (Cont'd)

Volume Calling Connection



REPLACED

Customers subscribing to this plan are charged a special rate and will also receive a discount based on the monthly MTS Plan usage billed to their account. The discount applies to the customer's total amount of intraLATA toll billed each month, per account. Customers will receive Call Detail with this Plan. In addition, customers will receive a discount on the customer dialed calling card station-to-station service charges specified in C., following.

A multilocation option is available to business customers with additional locations within the state. Each different account(s) must have a legal or formal affiliation such as a partnership or subsidiary relationship with the main account. A maximum number of 25 account(s) must be authorized by the main account. The main account and location account(s) must be in the same telephone company territory.

The main account and location account(s) will receive an additional discount specified in C., following. In addition, customers will receive a discount on the customer-dialed calling card service charge specified in C., following. Both the main account and each additional location account must be located within the state. The monthly rate specified in C. is applied to the main account only.

(D)  
(M)

(C)(M)

REPLACED

[1] This sheet cancels the following: Original Sheet 44.

(M) Material moved from Sheet 44.



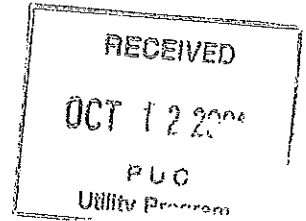
**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 6  
3rd Revised Sheet 50  
Cancels 2nd Revised Sheet 50**

**6. MESSAGE TELECOMMUNICATIONS SERVICE**

- 6.3 OPTIONAL SERVICE OFFERINGS**  
**6.3.18 CALLING CONNECTION PLANS**  
 C. Rates (Cont'd)



Volume Calling Connection and Multilocation Option

**REPLACED**

	<b>USOC</b>	<b>MULTILOCA- TION DISCOUNT</b>	<b>MONTHLY RATE</b>
• Plan with Call Detail	OVDXX	-	\$5.00
• Multilocation-Main Account	OVMIM	2%	5.00[1]
• Multilocation-Location Account	OVMIA	2%	-

Customers subscribing to this plan will receive a 30% discount on customer dialed calling card station-to-station service charges, in accordance with 6.2.1.E., preceding. (T)

The following table is used to apply rates for calls subscribed to under this plan. The time periods for day, evening and night/weekend are the same as found in 6.2.1.E., preceding. (T)

	<b>INITIAL PERIOD (30 SECONDS)</b>	<b>ADDITIONAL PERIOD (6 SECONDS)</b>
• All Days and Hours	\$0.035 (R)	\$0.007 (R)

<b>VOLUME DISCOUNT</b>	
<b>MONTHLY PLAN USAGE</b>	<b>ADDITIONAL DISCOUNT</b>
\$ 50.00 - 99.99	10%
100.00 and over	20%

**REPLACED**

[1] Applies in lieu of monthly rate for Volume Calling Connection.

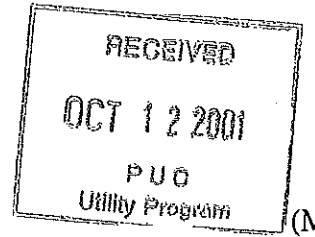
**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 6  
3rd Revised Sheet 52  
Cancels 2nd Revised Sheet 52[2]**

**6. MESSAGE TELECOMMUNICATIONS SERVICE**

**6.3 OPTIONAL SERVICE OFFERINGS  
6.3.18 CALLING CONNECTION PLANS  
C. Rates (Cont'd)**



SUPER SAVINGS Calling Plan

		NON- RECURRING CHARGE	INITIAL (30 SEC.)	RATE PERIOD ADD'L. (6 SEC.)	INITIAL OR ADD'L MIN[1]	
<b>REPLACED</b> USOC Business	OLGFX	-	\$0.040	\$0.008	-	
	• Residence OLGVX	\$3.00	-	-	\$0.08 (R)	(C)(M1) (D)

**REPLACED**

[1] Partial minutes are treated as full minutes for billing purposes.

[2] This sheet cancels the following sheet: 5th Revised, Sheet 53.

(M) Material moved to Sheet 51.

(M1) Material moved from Sheet 53.

(D)  
(T)

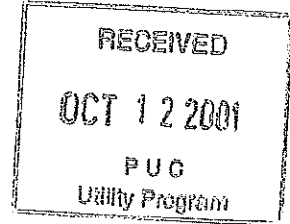
U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 9  
1st Revised Sheet 33  
Cancels Original Sheet 33

9. CENTRAL OFFICE SERVICES

- 9.1 DIAL SWITCHING SYSTEMS
- 9.1.3 CENTRAFLEX SYSTEM 2
- D. Rates and Charges
- 3. Optional Line Features (Cont'd)



REPLACED

	USOC	NONRECURRING CHARGE	MONTHLY RATE
• Speed Calling[1]			
- Six code list, customer changeable, per line	ESTIL	\$3.25	\$2.75
- Thirty code list, customer changeable, per line	ESFIL	3.25	1.50 (R)
- Each additional line using list, per line	ESFAL	3.25	1.00

REPLACED

[1] Only the line assigned the Speed Calling list has the ability to change it.

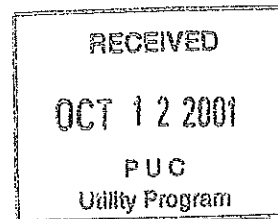
**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 9  
4th Revised Sheet 174  
Cancels 3rd Revised Sheet 174**

**9. CENTRAL OFFICE SERVICES**

**9.1 DIAL SWITCHING SYSTEMS  
9.1.17 CENTREX 21 SERVICE (Cont'd)**



**E. Rates and Charges**

**1. Centrex 21 Analog Station Line**

**USOC**

**REPLACED**

- Month-to-Month Station Line
- Rate Stabilized Station Line
- Month-to-Month Electronic Business Set Station Line
- Rate Stabilized Electronic Business Set Station Line

RXB  
RSX  
R63  
R6V

- 2 - 50, lines each

	<b>NON- RECURRING CHARGE</b>	<b>MONTHLY RATE PER RATE GROUP[1]</b>	
		<b>1</b>	<b>2</b>
- Month-to-Month	\$31.00	\$46.95 (I)	\$46.95 (I)
- 12 to 36 Months	31.00	24.89(R)	31.57 (R)
- 37 to 60 Months	31.00	23.58 (R)	30.14 (R)

**2. Centrex 21 ISDN 2B+S,  
(digital, voice only) line**

**USOC**

- 2 - 50, lines each

**REPLACED** XRW, XRS

<b>NON- RECURRING CHARGE</b>	<b>MONTH TO MONTH</b>	<b>MONTHLY RATE</b>	
		<b>12 TO 36 MONTHS</b>	<b>37 TO 60 MONTHS</b>
\$110.00	\$68.00	\$61.60	\$59.00

[1] Customers in Rate Group 3 see 109.1.17.

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 109  
Original Sheet 58.7

109. OBSOLETE CENTRAL OFFICE SERVICES

109.1 DIAL SWITCHING SYSTEMS (Cont'd)

109.1.17 CENTREX 21 SERVICE

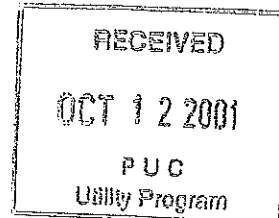
A. Rates and Charges

1. Centrex 21 Analog Station Line

**REPLACED**

- Month-to-Month Station Line
- Rate Stabilized Station Line
- Month-to-Month Electronic Business Set Station Line
- Rate Stabilized Electronic Business Set Station Line

- 3 - 50, lines each



(M)

USOC

RXB  
RSX  
R63  
R6V

	NON- RECURRING CHARGE	MONTHLY RATE RATE GROUP[1] 3
- Month-to-Month	\$31.00	\$65.13 (I)
- 12 to 36 Months	31.00	56.44 (I)
- 37 to 60 Months	31.00	54.70 (I)

**REPLACED**

[1] Rate Group 3 rates for Centrex 21 Analog Station Lines will apply for existing customers only as of the effective date of Original Sheet 21.

(M) Material moved from Sheet 58.1.

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 14  
3rd Revised Sheet 34  
Cancels 2nd Revised Sheet 34**

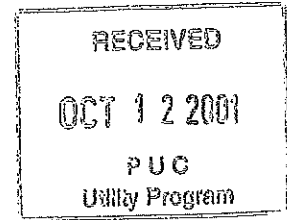
**14. INTEGRATED SERVICES DIGITAL NETWORK**

**14.3 PRIMARY RATE SERVICE OFFERINGS**

**14.3.1 PRIMARY RATE SERVICE**

**D. Rates and Charges (Cont'd)**

**3. ISDN Trunk Connection,  
per B-Channel[1]**



**REPLACED**

	<b>USOC</b>	<b>NONRECURRING CHARGE</b>	<b>MONTHLY RATE</b>
• Call-By-Call[2,3]	PT31C	\$ 50.30	\$ 17.20 (R)
• Dedicated			
- Inward[2]	PT311	50.30	17.20
- Outward[3]	PT310	50.30	17.20
- 2-Way[2,3]	PT312	50.30	17.20 (R)
<b>4. Circuit-Switched Data Connection, per T1 facility</b>			
• 23B data only channels	PT3TA	1,265.00	583.00
• 24B data only channels	PT3TB	1,340.00	608.00
<b>5. UAS Network Connections, per T1 facility[3]</b>			
• UAS Network Connection	NWO	1,200.00	752.00 (R)
• Two-Way Network Connection	NWO2X	1,200.00	752.00
• In-Only Network Connection	NWO1X	1,200.00	752.00 (R)

**REPLACED**

- [1] ISDN Trunk Connections charges do not apply to B-channels on Circuit Switched Data PRS or UAS.
- [2] Requires a Direct-Inward-Dialing (DID) trunk circuit termination. See 5.3.4 for terms, conditions, rates and charges applicable to DID service.
- [3] EAS charges as specified in 5.1.1 also apply.

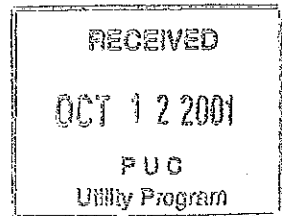
Advice No. 1849  
Issued by U S WEST Communications, Inc.  
By J. A. Pepler  
OR2000-076 Supplement No. 1

Effective: January 1, 2002  
Title Vice President

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 14  
3rd Revised Sheet 38  
Cancels 2nd Revised Sheet 38**



**14. INTEGRATED SERVICES DIGITAL NETWORK**

**14.3 PRIMARY RATE SERVICE OFFERINGS**

**14.3.1 PRIMARY RATE SERVICE**

**D. Rates and Charges (Cont'd)**

**12. ISDN Trunk Connection, per B-channel**

**REPLACED**

	USOC	STABILIZED NONRECURRING CHARGE	STABILIZED MONTHLY RATE
3-Year Plan			
- Call-By-Call			
- 2-Way[1,2]	PT332	\$ 45.15	\$ 32.02 (R)
- Dedicated			
- Inward[1]	PT331	45.15	32.02
- Outward[2]	PT330	25.15	16.34
- 2-Way[1,2]	PT332	45.15	32.02
• 5-Year Plan			
- Call-By-Call			
- 2-Way[1,2]	PT352	-	30.33
- Dedicated			
- Inward[1]	PT351	-	30.33
- Outward[2]	PT350		15.48
- 2-Way[1,2]	PT352		30.33 (R)

**REPLACED**

**13. UAS Network Connections,  
per T1 facility**

• 3-Year Plan			
- Two-Way	NWO23	600.00	752.00 (R)
- In-Only	NWO13	600.00	752.00
• 5-Year Plan			
- Two-Way	NWO25	-	752.00
- In-Only	NWO15	-	752.00 (R)

[1] Separate DID Trunk Termination charges do not apply.  
[2] EAS charges as specified in 5.1.1 also apply.

**U S WEST COMMUNICATIONS, INC.**

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EXCHANGE AND  
NETWORK SERVICES**

**SECTION 15  
2nd Revised Sheet 7  
Cancels 1st Revised Sheet 7**

**15. MISCELLANEOUS SWITCHED DIGITAL SERVICE OFFERINGS**

RECEIVED
OCT 12 2001
PUC Utility Program

**15.1 DIGITAL SWITCHED SERVICE (DSS)**

**D. Rates and Charges (Cont'd)**

	USOC	NONRECURRING CHARGE	MONTHLY RATE
2. Basic trunks with flat usage, each			
• In-only trunk[1]	T2D1X	\$50.30	\$17.20 (R)
• Out-only trunk[2]	T2DOX	50.30	17.20
• Two-way trunk[1,2]	T2DCX	50.30	17.20
3. Advanced trunks with flat usage, each			
• In-only trunk[1,3]	T2J1X	50.30	17.20
• Out-only trunk with answer supervision[2]	T2JOX	50.30	17.20
• Two-way trunk with answer supervision[1,2,3]	T2JCX	50.30	17.20
• Two-way data trunk[1,2,3]	T2JCD	50.30	17.20 (R)

- [1] Hunting from 5.4.11, is available at current rates for basic trunks, if requested. Hunting is required for advanced trunks.
- [2] Extended Area Service increments apply as specified in 5.1.
- [3] Requires a Direct-Inward-Dialing (*DID*) trunk circuit termination. See 5.3.4 for terms, conditions, rates and charges applicable to *DID* service.

Advice No. 1849  
Issued by U S WEST Communications, Inc.  
By J. A. Peppler  
OR2000-076 Supplement No. 1

Effective: January 1, 2002  
Title Vice President



**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 15  
2nd Revised Sheet 8  
Cancels 1st Revised Sheet 8**

**15. MISCELLANEOUS SWITCHED DIGITAL SERVICE OFFERINGS**

RECEIVED  OCT 12 2001  P U C Utility Program
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**15.1 DIGITAL SWITCHED SERVICE (DSS)**

**D. Rates and Charges (Cont'd)**

	USOC	NONRECURRING CHARGE	MONTHLY RATE
4. Resale basic trunks with flat usage, each			
• In-only trunk[1]	T2K1X	\$50.30	\$17.20 (R)
• Out-only trunk[2]	T2K0X	50.30	17.20
• Two-way trunk[1,2]	T2K0X	50.30	17.20
5. Resale advanced trunks with flat usage, each			
• In-only trunk[1,3]	T2Z1X	50.30	17.20
• Out-only trunk with answer supervision[2]	T2Z0X	50.30	17.20
• Two-way trunk with answer supervision[1,2,3]	T2Z0X	50.30	17.20
• Two-way data trunk[1,2,3]	T2Z0D	50.30	17.20 (R)

**REPLACED**

**REPLACED**

- [1] Hunting from 5.4.11, is available at current rates for basic trunks, if requested. Hunting is required for advanced trunks.
- [2] Extended Area Service increments apply as specified in 5.1.
- [3] Requires a Direct-Inward-Dialing (DID) trunk circuit termination. See 5.3.4 for terms, conditions, rates and charges applicable to DID service.

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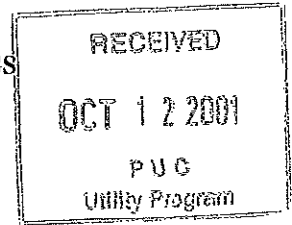
Effective: January 1, 2002  
Title Vice President

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 15  
1st Revised Sheet 12.1  
Cancels Original Sheet 12.1**

**15. MISCELLANEOUS SWITCHED DIGITAL SERVICE OFFERINGS**



**15.1 DIGITAL SWITCHED SERVICE (DSS)**

- D. Rates and Charges
- 7. Rate Stability Plan
- e. (Cont'd)

**REPLACED**  
(2) 3-Year Plan

	USOC	NONRECURRING CHARGE	STABILIZED MONTHLY RATE
Basic trunks with flat usage, each[1]			
- In-only trunk	T5F13	\$25.15	\$16.58
- Out-only trunk	T5FO3	25.15	16.58
- Two-way trunk	T5FC3	25.15	16.58
• Advanced trunks with flat usage, each[1,2]			
- In-only trunk with <i>DID</i>	TY413	45.15	32.02 (R)
- Out-only trunk with answer supervision	TY403	25.15	16.34
- Two-way trunk with <i>DID</i> and answer supervision	TY4C3	45.15	32.02
• Resale advanced trunks with flat usage, each[1,2]			
- In-only trunk with <i>DID</i>	TY513	45.15	32.03
- Out-only trunk with answer supervision	TY503	25.15	16.34
- Two-way trunk with <i>DID</i> and answer supervision	TY5C3	45.15	32.02 (R)

**REPLACED**

- [1] Requires a 1-, 3- or 5-year contract for the DS1 facility in addition to this rate.
- [2] Separate *DID* Trunk Termination charges do not apply.

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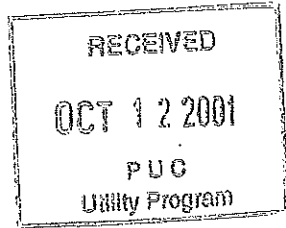
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**P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 15  
5th Revised Sheet 13  
Cancels 4th Revised Sheet 13**

**15. MISCELLANEOUS SWITCHED DIGITAL SERVICE OFFERINGS**



**15.1 DIGITAL SWITCHED SERVICE (DSS)**

- D. Rates and Charges
- 7. Rate Stability Plan
- e. (Cont'd)

**REPLACED**

(3) of Year Plan

	USOC	NONRECURRING CHARGE	STABILIZED MONTHLY RATE
• Basic trunks with flat usage, each[1]			
- In-only trunk	T5F15	-	\$16.05
- Out-only trunk	T5FO5	-	16.05
- Two-way trunk	T5FC5	-	16.05
• Advanced trunks with flat usage, each[1,2]			
- In-only trunk with <i>DID</i>	TY415	-	30.33 (R)
- Out-only trunk with answer supervision	TY4O5	-	15.48
- Two-way trunk with <i>DID</i> and answer supervision	TY4C5	-	30.33
• Resale advanced trunks with flat usage, each[1,2]			
- In-only trunk with <i>DID</i>	TY515	-	30.33
- Out-only trunk with answer supervision	TY5O5	-	15.48
- Two-way trunk with <i>DID</i> and answer supervision	TY5C5	-	30.33 (R)

**REPLACED**

[1] Requires a 1-, 3- or 5-year contract for the DS1 facility in addition to this rate.

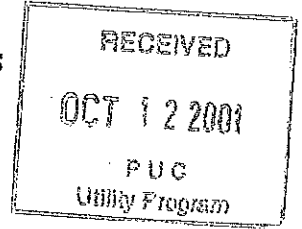
[2] Separate *DID* Trunk Termination charges do not apply.

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 15  
2nd Revised Sheet 14  
Cancels 1st Revised Sheet 14**

**15. MISCELLANEOUS SWITCHED DIGITAL SERVICE OFFERINGS**



**15.1 DIGITAL SWITCHED SERVICE (DSS)**

**D. Rates and Charges (Cont'd)**

**8. Digital Switched Service Volume Discount Plan**

- a. The Digital Switched Service Volume Discount Plan is available to customers subscribing to more than 50 DSS trunks at 1 premises on 1 customer billing number. The discounted rate, specified below, begins with the 51st DSS trunk at the same customer premises. The same customer must subscribe to discounted trunks but the customer billing number may be different than the initial 50 trunks. (T)
- b. Trunks other than DSS trunks, utilizing the DSS common equipment, will not be discounted. (T)
- c. Rates and charges specified in either 1. or 5., preceding, apply to the DSS facility and common equipment and are not part of the Volume Discount Plan. (T)
- d. Rates and Charges for 51 Trunks and Above

	USOC	NONRECURRING CHARGE	MONTHLY RATE
• Basic trunks with flat usage, each			
- In-only trunk[1]	2LMIX	\$50.30	\$17.20 (R)
- Out-only trunk[2]	2LMOX	50.30	17.20
- Two-way trunk[1,2]	2LMCX	50.30	17.20 (R)

**REPLACED**

[1] Hunting from 5.4.11 is available at current rates for basic trunks, if requested. Hunting is required for advanced trunks.

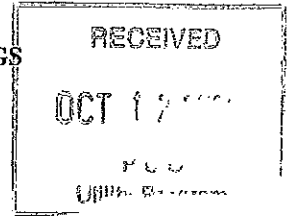
[2] Extended Area Service increments apply as specified in 5.1.

**U S WEST COMMUNICATIONS, INC.**

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EXCHANGE AND  
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**SECTION 15  
2nd Revised Sheet 15  
Cancels 1st Revised Sheet 15**

**15. MISCELLANEOUS SWITCHED DIGITAL SERVICE OFFERINGS**



**15.1 DIGITAL SWITCHED SERVICE (DSS)**

- D. Rates and Charges
  - 8. Digital Switched Service Volume Discount Plan
    - d. Rates and Charges for 51 Trunks and Above (Cont'd)

	USOC	NONRECURRING CHARGE	MONTHLY RATE
• Advanced trunks with flat usage, each			
- In-only trunk[1,2]	2LJ1X	\$50.30	\$17.20 (R)
- Out-only trunk with Answer Supervision[3]	2LJOX	50.30	17.20
- Two-way trunk with Answer Supervision[1,2,3]	2LJCX	50.30	17.20
- Two-way data trunk [1,2,3]	2LJCD	50.30	17.20
• Resale basic trunks with flat usage, each			
- In-only trunk[1]	2LZ1X	50.30	17.20
- Out-only trunk[3]	2LZOX	50.30	17.20
- Two-way trunk[1,3]	2LZCX	50.30	17.20 (R)

**REPLACED**

**REPLACED**

- [1] Hunting from 5.4.11 is available at current rates for basic trunks, if requested. Hunting is required for advanced trunks.
- [2] Requires a Direct-Inward-Dialing (DID) trunk circuit termination. See 5.3.4 for terms, conditions, rates and charges applicable to DID service.
- [3] Extended Area Service increments apply as specified in 5.1.

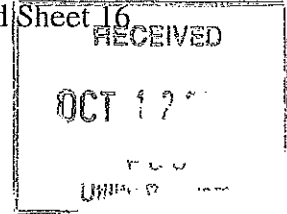
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OR2000-076 Supplement No. 1

Effective: January 1, 2002  
Title Vice President

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 15  
2nd Revised Sheet 16  
Cancels 1st Revised Sheet 16**



**15. MISCELLANEOUS SWITCHED DIGITAL SERVICE OFFERINGS**

**15.1 DIGITAL SWITCHED SERVICE (DSS)**

- D. Rates and Charges
  - 8. Digital Switched Service Volume Discount Plan
    - d. Rates and Charges for 51 Trunks and Above (Cont'd)

	USOC	NONRECURRING CHARGE	MONTHLY RATE
• Resale advanced trunks with flat usage, each			
- In-only trunk[1,2]	2LN1X	\$50.30	\$17.20 (R)
- Out-only trunk with Answer Supervision[3]	2LNOX	50.30	17.20
- Two-way trunk with Answer Supervision[1,2,3]	2LNCX	50.30	17.20
- Two-way data trunk[1,2,3]	2LNCD	50.30	17.20 (R)

**REPLACED**

- [1] Hunting from 5.4.11 is available at current rates for basic trunks, if requested. Hunting is required for advanced trunks.
- [2] Requires a Direct-Inward-Dialing (*DID*) trunk circuit termination. See 5.4.3 for terms, conditions, rates and charges applicable to *DID* service.
- [3] Extended Area Service increments apply as specified in 5.1.

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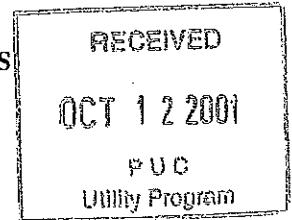
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Title Vice President

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON No. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 15  
2nd Revised Sheet 21  
Cancels 1st Revised Sheet 21**

**15. MISCELLANEOUS SWITCHED DIGITAL SERVICE OFFERINGS**



**15.3 UNIFORM ACCESS SOLUTION SERVICE (Cont'd)**

**D. Rates and Charges**

UAS Service will be provided at the following rates and charges. The following nonrecurring charge applies to add or change UAS Service. UAS DS1 facility and common equipment in quantities greater than 10 shall be priced on an Individual Case Basis.

	<b>USOC</b>	<b>NONRECURRING CHARGE</b>	<b>MONTHLY RATE</b>
• One DS1 facility with common equipment, per facility			
- Month to Month	D10XM	\$ 900.00	\$137.00 (R)
- Rate Stability Plan			
- 3 years	D10X3	900.00	123.30 (R)
- 5 years	D10X5	900.00	109.98
• One DS1 facility with common equipment provisioned on DS3 Service, per each DS1 facility activated[1]	D30	900.00	-
• UAS Network Connection, per DS1 facility	NWO	1,200.00	752.00 (R)
• Two-Way Network Connection, per DS1 facility	NWO2X	1,200.00	752.00
- Rate Stability Plan			
- 3 years	NWO23	600.00	752.00
- 5 years	NWO25	-	752.00 (R)
• In-Only Network Connection, per DS1 facility	NWO1X	1,200.00	950.00
- Rate Stability Plan			
- 3 years	NWO13	600.00	950.00
- 5 years	NWO15	-	950.00

[1] Also requires a DS3 facility and multiplexing specified elsewhere.

DATE: 10/15 COMPANY / ADVICE#: Quest 1849

TO: LANCE BALL *Supp 1*

FROM: JANICE FULKER

NEW TARIFF FILING

Please check names of persons to whom we should provide a copy of the attached tariff filing. Please return the entire package to me within one (1) day. Please indicate "P" for principal staff. Thank you.

- Ball - *copy of cover LR only + 1 copy of yellow pages*
- Birko
- Carter
- Emmons
- Sloan - *same as Stanage*
- Stanage - *copy of PNC OR No. 29 + Exch of network Soc. Oregon Privatist + cancelled sheets + 1 copy of yellow pages*
- Nyegaard (cover letter only)
- Other (Please name: Van Landuyt - *copy of cover letter*)

Does Staff plan to take to public meeting? *12/18*

Is Prehearing conference necessary?

Should an ALJ be assigned?

*PNC OR No. 24 (Access)*

*" " No. 28 (Private Li)*

*+ 1 copy yellow pages + cancelled sheets*



## **WILLIAMS Kathy**

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**From:** BALL Lance  
**Sent:** Thursday, December 27, 2001 10:30 AM  
**To:** WILLIAMS Kathy  
**Cc:** VANLANDUYT Cynthia; TURNER Tom; STANAGE Jim; SLOAN David  
**Subject:** UT 125 Compliance Filing

**Importance:** High

Kathy, all staff (Cynthia VanLanduyt, Tom Turner, Jim Stanage, and Dave Sloan) involved in the recent UT 125 compliance rate filings have given me their assent that the supplemented rates are in compliance to Order No. 01-810. Please prepare an acknowledgment letter for Phil Nyegaard's signature. Thank you.



ORDER NO. 00-191

ENTERED APR 14 2000

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 125/UT 80

In the Matter of the Application of )  
U S WEST Communications, Inc., for )  
an Increase in Revenues. )

ORDER

**DISPOSITION: PORTIONS OF ORDER NOS. 96-183 AND 97-171  
READOPTED**

This is a companion order to Order No. 00-190, entered this date. In that order, among other things, we rescinded Order Nos. 96-183 and 97-171 in compliance with the Stipulation, which we adopted as modified. In the current order, we readopt portions of those orders. The readopted portions either explain methodology or are unaltered by the Stipulation. This readopting order should be read in conjunction with Order No. 00-190 for an understanding of all modifications to Order No. 97-171. Appendix B to Order No. 00-190, Results of Operations, gives a synthetic overview of the effect of all changes to and readoptions of Order No. 97-171.

In summary form, we set out below modifications to and readoptions of Order No. 97-171, as a result of adopting the Stipulation in Order No. 00-190.

- a) Issue 1, Test Year, pages 8-20, is readopted.
- b) Issue 1b, Net to Gross Factors:
  - The discussion on page 9 of Order No. 97-171 is readopted.
  - The stipulated factors are weighted based on the revenue distributions used in settlement of Issue 11, Refund Procedures.
  - The factors shown in Order No. 97-171, Appendix A, page 21, are readopted.
  - The weighted net to gross factors from Appendix B, Lambeth/2, Column 4, of Order No. 00-190 are added.
- c) Issue 2, Cost of Capital, the discussion on pages 20-37 of Order No. 97-171 is readopted.
- d) Issue 3a, U S WEST Direct Yellow Pages Revenue Imputation (*see* Order No. 00-190, Appendix B, Column 16), the discussion on pages 37-43 is readopted *except*:
  - USWC may continue to use the retention rate from UT 102, in effect since June 1992; and
  - Foreign directory revenues are removed from the imputation.

- e) Issue 3b, U S WEST Direct Yellow Pages Revenue Growth, the discussion on page 43 is readopted, but the amount in Appendix A, Column 16a, is amended to reflect the \$0.3 million reduction in growth due to exclusion of foreign directory revenues and the change in retention rate. See Order No. 00-190, Appendix B, Column 16a.
- f) Issue 4, Affiliated Interests and Corporate Allocations, the Issue 4 adjustments at pages 44-59 are readopted.
- g) Issue 5, UP 96 Sale of Exchanges, the Issue 5 discussion at pages 59-62 is readopted.
- h) Issue 6, Operating Revenues, the discussion at pages 62-68 is readopted.
- i) Issue 7, Employee Benefits, the discussion at pages 68-72 is readopted.
- j) Issue 8, Operating Expenses and Taxes, the discussion at pages 72-83 is readopted except as modified with respect to Issue 8f and Issue 8n. Issue 8o is added as shown in Order No. 00-190, Appendix B, Column 59. See Order No. 00-190, Appendix A, Paragraph 12.
  - Issue 8f, ORS 291.349 Income Tax Refund: Staff modified adjustments at Issues 3 and 9 that affected taxable income. The Issue 8f discussion at pages 72-73 is readopted, but the amounts in Column 42 of Appendix A to Order No. 97-171 are amended as shown in Order No. 00-190, Appendix B, Column 42.
  - Issue 8n, PUC Fee Increase: The discussion at page 83 is readopted, but the amounts in Appendix A, Column 49a, of Order No. 97-171 are amended as shown in Order No. 00-190, Appendix B, Column 50.
- k) Issue 9, Service Quality and Reengineering:
  - The findings regarding Issue 9a and 9b at pages 83-93 are readopted. In Order No. 97-171, Appendix A, the revenue requirement consequences of these issues are shown in Columns 50 and 51. In Order No. 00-190, Appendix B, they are shown in Columns 51 and 52.
  - Issue 9c, Service Quality: Staff added Issue 9d, New Plant Investments and Related Costs, for settlement purposes. That addition changed the revenue requirement of Issue 9c. The discussion at pages 93-101 of Order No. 97-171 is readopted, but the amount shown in Appendix A, Column 52, of Order No. 97-171 is amended to include the Issue 9d effects on the service quality adjustment. The new amount is shown in Order No. 00-190, Appendix B, Column 53.
  - Issue 9d, New Plant Investments and Related Costs: Staff added rate base and related expenses to recognize investment made from May 1996 through December 1998, as shown in Column 54, Appendix B to Order No. 00-190.
- l) Issue 10, Final Test Year Separation Factors: Staff modified adjustments at Issues 3a, 3b, and 9d for settlement purposes. Staff calculated the intrastate effects of each adjustment on the final separation factors. The discussion at page 101 of Order No. 97-171 is readopted, but the amounts shown in Appendix A, Column 53 of that order are amended as shown in Order No. 00-190, Appendix B, Column 56.
- m) Issue 11, Refund Procedures: The discussion at pages 101 to 107 is readopted except: 1) the interest rate is revised; 2) the refund eligibility date is updated from May 19, 1997, to reflect the provisions of the Stipulation, Appendix A to this order, starting at 3; 3) we update the date when the refund will begin, in accordance with the Stipulation, *supra*; 4) we allow a refund for former

customers; and 5) we allow temporary rate reductions and bill credits as provided in the Stipulation.

- Issue 11a, Amount of Refund: We revise the conclusions to allow refunds to be based on an amount lower than the adjusted test year revenue requirement.
  - Issue 11b, Interest Rate for Refund: The interest rate for the refund shall be 8.77 percent.
  - Issue 11c, Distribution of Refund: We update the refund eligibility date from May 19, 1997, to be consistent with the Stipulation, Order No. 00-190, Appendix A, Paragraph 1.
- n) Issue 12, Cash Flow; Issue 13, Business Valuation: These issues were combined in Order No. 97-171 at pages 107-113. The issues were part of USWC's argument that Staff's proposed revenue requirement was unreasonable. Because USWC agreed to a revenue requirement in the Stipulation, these issues are moot and are not readopted.
- o) Issue 14, Effect of UM 351 on access revenues: The discussion on page 114 is readopted.
- p) Ordering Paragraph 4f, at page 115 of Order No. 97-171: Distribution of the Refund: This paragraph is readopted.

## ORDER

IT IS ORDERED that:

1. Portions of Order No. 96-183 are readopted, as set out below.

**Order No. 96-183.** This order clarifies the refund procedures for potential overearning during the period in which rates were interim following termination of the Alternative Form of Regulation plan. As a result of the Stipulation adopted in Order No. 00-190, the Resolution, Conclusion, and Order sections of this order are not readopted. However, we do readopt the Introduction, and Discussion sections of the order from pages 1-3 of the original Order, as set out below:

### Introduction

In response to reduced service quality by U S WEST Communications, Inc., (USWC), this Commission recently terminated the company's alternative form of regulation (AFOR) plan authorized in Order No. 91-1598. USWC subsequently filed this Petition for Clarification and Request for Ruling concerning the interpretation of Order No. 91-1598 with respect to the "procedures to be followed or the rates to be charged by USWC in the event the [AFOR] is terminated prematurely[.]" USWC contends that, in determining whether a refund is warranted, we must review the company's actual earnings for the period during which interim rates were in effect.

Staff filed a reply to USWC's petition and disputes the company's interpretation of the refund provisions. It contends that the January 1 to September 30, 1995, annualized test year, as modified by adjustments ordered in pending docket UT 125, should be used to determine if the company overearned during the interim rate period. On July 11, 1996, USWC filed a response to Staff's reply.

#### Discussion

In November 1991, the Commission offered USWC an AFOR plan under terms and conditions set forth in Order No. 91-1598. USWC accepted the offer, and the AFOR was implemented effective January 1, 1992.

Among other things, Order No. 91-1598 contained the method for determining the amount of refund by USWC upon a premature termination of the AFOR. The relevant language in that order provides:

The Commission finds that the [AFOR] stipulation should be modified to include a provision which protects USWC and its customers in the event the Plan is terminated prematurely due to one of the [specified conditions.] We propose that Paragraph 10 should be amended to include the following language[:]

\* \* \* \* \*

(2) If the Commission declares the plan terminated, it may also order USWC to refrain from making any further changes in rates or terms of price listed services. \* \* \* The Commission may also initiate an investigation to determine the rates and terms of service which should be placed in effect on a permanent basis.

(3) Unless otherwise ordered by the Commission, rates authorized under (2) of this subparagraph after the plan has been terminated shall be considered interim rates subject to refund. The amount subject to refund with interest shall be that portion of USWC's earnings which the Commission finds have exceeded a reasonable rate of return, commencing with the date of the order terminating the plan and ending with the date that permanent rates are set and are in effect. For purposes of determining the amount of the refund, the Commission shall

not be bound by the provisions of this paragraph or any other provision of the Plan.

\* \* \* \* \*

The amendments proposed by the Commission are intended to remove any uncertainty regarding the procedures to be followed in the event the Plan is prematurely modified or terminated. The changes will also prevent USWC from over or under earning while proceedings are held to establish new permanent rates. To clarify: Subparagraph (2) provides that the Commission may freeze the rates charged by USWC at the levels in effect on the date the plan is terminated. The Commission would likely choose this option if the Plan is terminated because USWC's earnings have exceeded the upper limits established in the Plan. \* \* \* Lastly, subparagraph (2) permits the Commission to initiate a separate proceeding to determine the permanent rates to be charged.

Subparagraph (3) specifies that the rates in effect from the date the plan is terminated until the date new permanent rates are set shall be interim rates subject to refund. A refund will take place only where USWC has been determined to have been overearning. *The amount of any refund will equal the difference between the amount USWC is actually earning and the amount subsequently found to be reasonable.* Any refunds will accrue interest at USWC's authorized rate of return on rate base.

Order No. 91-1598 at 27-29 (footnote omitted) (emphasis added).

Relying on the italicized language, USWC contends that, now that the AFOR has been terminated, our refund determination must be based on an examination of the company's actual earnings during the period rates are interim. Comparing the process to a true-up of base earnings in an application for deferral under ORS 759.200(4), it argues that earnings cannot be adjusted for disallowances imposed retroactively, for annualization of intra-period events, or normalization adjustments for nonrecurring and unusual events.

Staff disputes USWC's assertions and presents a different interpretation of the language cited above. It contends that the amount subject to refund is equal to the difference between the permanent rate level established by the Commission and the current, interim rate level, assuming that

the latter amount of revenues is greater than the former. It argues that the Commission used the term "interim rates" to refer to the commonly understood method of refund determination used in ORS 757.215(4) and 759.185(4).

2. Portions of Order No. 97-171 are readopted, as set out below.

**Order No. 97-171.** This is the order in which the Commission determined the revenue requirement for USWC. Appendix A to this order, Results of Operations, is based on Appendix A to Order No. 97-171. References to Adjustments by number are to this Appendix. Figures or notes that have changed in Appendix A to Order No. 97-171 have been blanked out in Appendix A to this order. For a summary of the effects of readoption and of portions of Order No. 97-171 and the modifications to the conclusions of that order mandated by the Stipulation adopted in Order No. 00-190, *see* Appendix B to Order No. 00-190.

Appendix B to this order is the same Appendix B as to Order No. 97-171, the First Stipulation. Appendix C, and Appendix D are also the same as the same designated appendices to Order No. 97-171. Appendix E is not readopted.

*Issue 1. Test Year.* The discussion at pp. 8-20 of Order No. 97-171 is readopted.

#### ISSUE 1: TEST YEAR

##### *Completely Settled Issues:*

- *Issue 1a(2), Annualization Methods (Adjustment 1).* Staff and USWC agree to start with total Oregon data recorded during the 9 months ending September 30, 1995, and add annualizing adjustments, to estimate the last 3 months. See Appendix B, First Stipulation, Paragraph 1a.
- *Issue 1b, Net to Gross Factors.* Staff and USWC agree to use the revenue sensitive factors shown in Staff Exhibit 3, Lambeth 4, Columns d-f. See Appendix B, First Stipulation, Paragraph 1b.
- *Issues 1c-m(1), Side Records and Annualizations (Adjustments 2-13).* Except for USWC's inclusion of costs related to switching assets that are no longer in service (Issue 1m(2)), Staff and USWC agree on the annualization of side records,



revenues, expenses, and rate base.  
See Appendix B, First Stipulation,  
Paragraph 1a.

- *Issue 1n, Separations.* Staff and USWC agree on the intrastate factors to apply to the base period and adjustments. However, Staff and USWC disagree about the underlying expenses, rate base, and taxes used to compute the final factors (Issue 10). See Appendix B, First Stipulation, Paragraphs 1a, 25.

**Disputed Issues:**

- *Issue 1a(1): Test Year.* The Commission "normally establishes utility rates prospectively based upon a test year reflecting the restated and normalized operating results during such period. The test year may be adjusted for abnormal or nonrecurring items and for known changes occurring after the test period" (Order No. 77-125). Staff and USWC agree that "the purpose of a test year is to be representative of the period in which rates will be in effect." See Revised Staff Exhibit 1, Lambeth 17-19; USWC Exhibit 1, Inouye 15.

Staff attempted to determine on a going forward basis the amount of revenue and the rate levels that are necessary to provide USWC with the opportunity to earn a fair return on its investment. Staff believes that USWC's adjustments to the annualized test year are not sufficient to represent the period when rates from this docket will be in effect. USWC has made adjustments only for some events that will have occurred by the time rates become effective (May 1, 1996). Staff used the 32 month period from May 1, 1996, to December 31, 1998, to represent the period when rates from this docket will be in effect. Rates became effective on May 1, 1996, and Staff assumes that USWC will file a new rate case in

time for new rates to become effective January 1, 1999.

Staff maintains that the purpose of a rate case, whether it uses a historic or a future test year, is to determine whether the reported results of operations are reasonably representative of future operating conditions. USWC contends that use of a historic test year presumes that the past represents the future. USWC also argues that forecasting methods are so complicated and uncertain that forecast adjustments should not be applied to historic data. In past orders, the Commission has disagreed with USWC's argument.

USWC disagrees with Staff's test year and claims that Staff has inappropriately adjusted for changes in operations that will occur (or have occurred) after December 31, 1995. The primary disputes are about pro forma adjustments (including forecasts and other estimates) and normalizing adjustments, which develop or restore normal recurring cost and revenue relationships representative of the period when rates from this docket will be in effect. Normalizing adjustments also remove unusual events, which Staff believes USWC's reengineering program is.

- *Issue 1m(2), Switching Assets (Adjustment 14a)*. Staff disagrees with the inclusion of costs related to switching assets that are no longer in service.

#### Issue 1a(1): Test Year

A fundamental issue in this case is how the test year should be constructed. In *Pacific Northwest Bell Telephone Company*, UT 43, Order No. 87-406 at 11-12, we set out the purpose and characteristics of the test year in ratemaking:

The starting point for setting rates is either the results of operations for a historical 12 month period or forecasted

results of operations for a future period. The period chosen is called a "test year."

Results of operations are useful only as a starting point because they normally include (1) expenses that will not be incurred in the future, and (2) revenues that will not be realized in the future. Since the utility can be expected to overearn if nonrecurring expenses are covered by the recurring revenues resulting from a rate increase, nonrecurring expenses are eliminated from consideration. To avoid underearnings, nonrecurring revenues also are excluded.

Ratemaking is done on a prospective basis. Therefore, recurring increases in revenues and expenses that are reasonably certain to occur are added to the test year.

Another common adjustment in development of the test year is annualization of recurring revenues or expenses that begin partway through the 12 month period. An example would be a new wage contract that takes place in July of a January to December test year. By annualizing the wage increase, the test year will reflect that the higher wages will be in effect for the entire 12 months of a future year.

USWC and Staff agree that the purpose of a test year is to represent the period in which rates will be in effect. They agreed to use historic data as a starting point for development of the test year for this proceeding. They agreed that their starting point should be USWC's recorded results of operations for the nine months ended September 30, 1995. They further agreed that the last three months of 1995 should be estimated and added to the nine months of data to obtain an annualized test year.

Staff and USWC disagree, however, about the adjustments that should be made to the annualized test year to make it representative of future operations. The adjustments USWC proposes would increase its revenue requirement by approximately \$23 million; Staff's adjustments would decrease USWC's revenue requirement by approximately \$100 million.

*Adjustments to the Test Year.* USWC has largely limited its test year adjustments to events that occurred on or before January 1, 1996, the effective date for the new rates. Staff's position is that USWC's proposed adjustments are not sufficient to make the annualized test year representative of the period during which rates will be in effect.<sup>1</sup> Specifically, Staff believes that:

- USWC's future revenues will be significantly higher than USWC claims. See, e.g., Issues 3a and 3b (Yellow Pages imputation and growth), 6c (price and contract changes since January 1, 1995), and 8j (access line growth). These Staff adjustments account for \$57 million of the difference between Staff's and USWC's revenue requirement estimates.
- USWC's recurring expenses will be less than USWC claims. This bears particularly on Issues 9a and 9b, reengineering and extraordinary expenses, which account for \$32 million of the difference between Staff's and USWC's estimated revenue requirement.

Staff has recommended both pro forma and normalizing adjustments to the test year. Pro forma adjustments restate the test year to include the effects of changes that have occurred or are reasonably certain to occur after the test year.<sup>2</sup> Directory revenue growth (Issue 3b) and access line growth (Issue 8j) are examples of pro forma adjustments. Normalizing adjustments develop or restore normal recurring cost and revenue relationships representative of the period when rates from this docket will be in effect. In Issue 7e, for instance, Staff removed part of an accrual that will end soon after rates in this proceeding go into effect. Some of Staff's

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<sup>1</sup> Staff used the 32-month period from May 1, 1996, through December 31, 1998, for the period during which rates from this proceeding would be in effect. USWC's rates became interim rates subject to refund on May 1, 1996, when the Commission terminated USWC's Alternative Form of Regulation (AFOR) plan by Order No. 96-107. May 1, 1996, is therefore the effective date for rates from this proceeding. Because USWC has opposed many of the revenue requirement recommendations Staff has made in this proceeding, Staff assumes that USWC will file for new rates to be effective no later than January 1, 1999.

<sup>2</sup> See Order No. 87-406 at 11.

adjustments are for events that happened after the historic test period (January 1 to September 30, 1995). That is the case with Issue 6c, where Staff annualized the effects of tariff, price, and contract revisions USWC has made since January 1995.<sup>3</sup>

USWC opposes Staff's pro forma and normalizing adjustments. USWC argues that it and Staff agreed to a 1995 test year, and contends that Staff has improperly made projections to August 1997. USWC argues that the Commission should largely ignore changes in its operations that occur after the end of the historic test year (December 31, 1996). For instance, USWC objects to Staff's adjustment for tariff increase effects (Issue 6c).

USWC also objects to adjustments based on forecasts, claiming that the Commission does not use forecasted test years or forecasts for adjustments to historic test year data. For this reason, USWC objects, for instance, to test year adjustments to reflect revenues from access line growth (Issue 8j), what Staff contends are nonrecurring expenses related to reengineering (Issues 9a and 9b), and cost savings from new information management systems (Issue 8l). USWC argues that adjustments to test year data are permitted only under limited circumstances: "to remove abnormal events not expected to recur and . . . to include the effect of known changes in data which are expected to persist into the future." *Portland General Electric*, UF 3518, Order No. 80-021 at 24. In USWC's view, use of recent historic test year data provides the most accurate means of estimating a utility's operations.

USWC proposes that adjustments may be made to the test year only (1) to annualize the effects of specific events that occur during the test year and (2) for known changes that occur after the test year, but whose effects are reasonably measurable. USWC maintains that the first type of adjustment should be made only for items that are not linked, logically and economically, with other

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<sup>3</sup> Disputed pro forma adjustments include: Issue 3b, U S WEST Directory Growth; Issue 4d2, Fax Services Growth; Issue 7a2, SFAS 106 Postretirement Benefits; Issue 8b2, Other Payroll Changes; Issue 8j, Average Growth in Access Lines; and Issue 8n, PUC Fee.

Disputed normalizing adjustments include: Issue 4dl, Fax Services; Issue 5a, UP 96 Sale of Exchanges; Issue 6c, tariff, Price, and Contract Changes; Issue 8l, Information management systems; Issue 9l, Service Reengineering Costs; and Issue 9b, Extraordinary Expenses.

revenues, expenses, or investments. That caveat serves to minimize interdependencies and to maintain the match among revenues, expenses, and investments in the test year. USWC takes the second category of adjustment to preclude adjustments based on forecasting.

USWC also challenges Staff's proposed disallowance of certain expenses (for instance, Issue 8a, Bonuses; Issue 4a and 4b, Lease Rates; Issue 5a, UP 96 Sale of Exchanges). USWC argues that the Commission may not disallow actually incurred expenses unless they were imprudently incurred, and no allegation of imprudence was made with respect to these expenses.

Staff points out that USWC has been inconsistent in its position. USWC proposed adjustments to the test year to include an adjustment for increased depreciation expense (Issue 8g).<sup>4</sup> Staff argues that this adjustment reflects shortened asset service life projections and resulting higher depreciation rates, based on forecasts of future changes in telecommunications technology. Staff argues that USWC also wishes to include an adjustment for the future adverse effects of the orders in Commission docket UM 351 (Issue 14).

Staff also takes issue with USWC's contention that this Commission does not use forecasted test years or forecasts for adjustments to historic test year data. Staff points out that through the late 1970s and early 1980s, when the per unit cost of electricity was rising, the Commission used present or future test periods rather than historic test periods, and forecast adjustments to the test year to prevent the utility from underearning during the period in which rates were to be in effect.<sup>5</sup> Staff argues that USWC is in the opposite position. That is, USWC is facing increasing revenues and stable or decreasing ongoing expenses per access line. Staff believes this fact explains why USWC urges the Commission to rely on historic data and make few adjustments for the future.

*Disposition.* The purpose of a test year is to provide a basis for determining a utility's revenue requirement. All test years are estimates

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<sup>4</sup> Staff agreed to this adjustment, which reflects the results of docket UM 767. See Appendix B, First Stipulation, Paragraph 21.

<sup>5</sup> Staff cites to *Portland General Electric Co.*, Order No. 77-776 at 7; *Portland General Electric Co.*, UF 3218, Order No. 76-601 at 4, 8.

of future conditions for the utility. When, as here, the test year is based on an historical period, that period is merely a starting point for determination of the revenue requirement. The Commission must ensure that the historical period is reasonably representative of the period during which rates will be in effect. The point is to prevent overearning or underearning during that period.

USWC challenges many of Staff's normalizing adjustments on grounds that they may distort the relationship among investments, revenues, and expenses. We have reviewed each of Staff's proposed normalizing adjustments, issue by issue, and disagree with USWC. We find that Staff has been careful to match investments, revenues, and expenses for its proposed adjustments. We will deal with these arguments as they arise in the context of the individual issues.

USWC challenges many of Staff's pro forma adjustments because they are based on forecasts. USWC sets up a "known and measurable" standard for adjustments to the test year data for future events, and argues that that standard precludes use of forecasted adjustments. We disagree. The standard USWC proposes for pro forma adjustments is more restrictive than the one we set forth in *Pacific Northwest Bell*, UT 43, Order No. 87-406. In that case we stated that because ratemaking is prospective, "recurring increases in revenues and expenses that are reasonably certain to occur are added to the test year." *Id.* at 11. The "reasonably certain" standard, rather than the "known and measurable" standard, is the correct one for judging whether a given adjustment is appropriate. That standard does not preclude forecasts. We use the same standard to exclude nonrecurring revenues and expenses. We have reviewed each of Staff's proposed pro forma adjustments under this standard. Moreover, we note that USWC has proposed forecasted adjustments of its own: the proposed depreciation expense adjustment and the adjustment for the future adverse effects of the orders in Commission docket UM 351.

Finally, USWC argues that actually incurred expenses may not be disallowed absent a finding of imprudence. We disagree. As we stated above, in the section called "USWC's Burden of Proof Argument," USWC must show that its expenses are

reasonable for us to allow them as part of the revenue requirement calculation.

*Reasonableness of Staff's Adjusted Test Year.* USWC contends that Staff's test year adjustments are improper because the results of Staff's adjustments are unreasonable. USWC supports its argument with reference to its calculation of Oregon revenue and expense per access line. USWC submits Exhibits 156 (revenues) and 157 (expenses), which graph revenues and expenses per access line from 1992 through 1995 and show Staff's 1997 projections. USWC's calculations on Exhibit 156 show actual revenues in 1995 of \$285, while Staff's calculation of revenue per access line for 1997 is just under \$300. USWC Exhibit 157 shows 1995 expense per access line at approximately \$233, while Staff shows 1997 expense per access line at about \$204. According to USWC, the disparity between its calculations and Staff's demonstrates that Staff's results are unreasonable.

Staff responds that USWC's exhibits are based on unanalyzed recorded results of operations, whereas Staff's results are based on analyzed and adjusted test year results. Moreover, Staff argues that USWC's actual 1995 Oregon revenue per access line figure reflects only \$34.8 million of U S WEST Direct's Oregon directory revenues, while Staff's 1997 figure reflects \$57.8 million in directory revenues, the sum of Staff's recommended adjustments in Issue 3a and 3b.

Further, Staff argues that its results are reasonable because the difference between USWC's actual Oregon revenue per access line in 1995 and Staff's estimate for 1997 as depicted on USWC Exhibit 156 is less than 6%. That equates to an average revenue growth of less than 3% per year for 1996 and 1997. Staff argues that U S WEST Direct's Oregon directory revenues are increasing by 7% or more per year, and USWC's local service revenues are increasing by 7 to 9.5% per year. USWC access lines are increasing by 3 to 5 % per year, so Staff concludes that USWC's revenue per access line is increasing several percent per year. Therefore, Staff contends, Staff's adjusted test year revenues for USWC are reasonable.

As to expenses, Staff again argues that its results are analyzed and adjusted, whereas the USWC figures have not been analyzed, normalized, or adjusted for reasonably certain future changes. Moreover, Staff contends, the recorded expense



figures on which USWC relies are subject to change from events such as accounting changes or changes in separation factors.

Staff prepared two exhibits to clarify the pattern of expense growth. Based on evidence in the record, Staff produced Appendices B and C to its opening brief. Appendix B shows recorded and adjusted test year expense per line on the same basis as USWC Exhibit 157, but unlike USWC Exhibit 157, Appendix B provides the recorded results for 1989 through 1991 and sets the origin to zero. Appendix C to Staff's brief shows the recorded and adjusted test year expense in total rather than on a per access line basis. Appendix C shows comparable expense levels from 1989 to 1991, a spike in expenses in 1992, perhaps associated with the change in accounting for retirement benefits, and comparable results for 1992, 1993, and the test period.

Staff contends that its Appendices B and C show relatively flat expense growth over time except for a spike in 1992 and higher expenses in 1994 and 1995, the period with nonrecurring reengineering expenses and extraordinary expenses.

USWC claims that some of Staff's adjustments double count and overlap. Staff responds that it held many meetings to coordinate its review of USWC's case and that it made adjustments wherever it discovered errors in its calculations. Staff asserts that USWC's claim is without merit.

USWC also claims that Staff did not take into account increased expenses related to some of its revenue adjustments. Staff contends that USWC has not presented persuasive evidence to support these claims.

**Disposition.** We conclude that the results of Staff's adjusted test year and USWC's calculations on Exhibits 156 are not inconsistent, given the growth rates in directory revenues and in access lines. Staff's growth rate assumptions are conservative compared to the increases in Oregon directory revenues and local service revenues that Staff cites. Staff's explanation of the difference between its calculations and USWC's is persuasive.

We are also persuaded by Staff's explanation of the difference between its expense projections and USWC's recorded expenses. USWC's Exhibit 157 includes nonrecurring reengineering and extraordinary expenses in the test period (see

discussion at Issue 9 below). Staff has normalized and adjusted expenses to arrive at its projection. We conclude that the disparity between revenue and expense figures that USWC presents in Exhibits 156 and 157 does not prove that Staff's case is unreasonable.

As to USWC's argument that Staff has double counted or allowed overlaps of expenses, we note that Staff has amended its testimony where errors have been pointed out to it. We also note that USWC alleges double counting with respect to Issues 6c and 8j, but that is based on a misunderstanding of Issue 8j. See discussion of that issue below. We are persuaded by Staff's defense of its calculations.

#### Issue 1m(2): Switching Assets

The step by step and crossbar equipment under discussion in this issue are electromechanical switching assets that were last used in January 1987. The total Oregon step by step and crossbar depreciation reserve accounts for these assets currently have negative balances totaling approximately \$5.938 million. USWC's total Oregon plant in service account also includes \$243,000 for this unused equipment. A negative depreciation account balance increases the rate base on which USWC may earn a rate of return.

Staff argues that the step by step and crossbar accounts were scheduled to be completely amortized for intrastate purposes by June 30, 1989. Staff therefore proposes to reduce the total Oregon rate base in this case by \$6.181 million, the sum of the negative depreciation account balances and the \$243,000 in the Oregon plant in service account.

USWC contends that the negative depreciation reserves are largely due to unexpectedly high costs of removal of the equipment. USWC admits that its negative depreciation reserve balance should be decreased by \$2.236 million because USWC charged Oregon for State of Washington reclamation costs. USWC proposes to transfer the remaining negative depreciation reserve balance to the digital switch reserve account.

*Background.* In 1985, the Federal Communications Commission (FCC) approved a 4.5 year amortization of the step by step and crossbar accounts to address imbalances in the depreciation account reserves. FCC Order No. 85-656, 103 FCC 2d 185, 190-191 and 220. The Order, at 190, notes that the

Commission and Pacific Northwest Bell (now USWC) agreed that the amortization procedure should be used so the utility would have a chance to recover its embedded costs. The intrastate amortization was scheduled to end by June 30, 1989.

On January 13, 1989, Mr. Conrad, USWC's Director of Capital Recovery, wrote a letter to Commission Staff that stated in part:

Based upon an analysis of year end balances, it appears that the Step account will be fully amortized, except for minor trueups, at the end of the scheduled amortization. For the Crossbar account however, the additional six months of amortization will likely create an overaccrual situation of approximately \$1M. As you suggested, we will allow the amortization to run its course, as prescribed, and true up any overaccrual in year end 1989 business. This will allow us to take into account any other entries, such as gross salvage and cost of removal, that will be made during the year.

USWC argues that no explicit order or directive mandated an earlier elimination of the negative reserve balances. USWC characterizes the FCC's order as a guideline only, and contends that Mr. Conrad's letter is open to interpretation. We find Mr. Conrad's letter clear enough. It projects full amortization of the step by step account except for minor trueups and an overaccrual in the crossbar account, which will be amortized and trued up at year end 1989. The letter indicates that USWC was well on its way to reducing or eliminating the negative balances in these accounts. Instead, ten years after the equipment was retired, these accounts still have a negative balance of about \$6.181 million.

*Discussion.* At issue here is not whether USWC was required to bring these account balances to zero at the end of the scheduled amortization period. At issue is whether the approximately \$6.181 million, less the misallocated \$2.236 million, should be included in rate base. USWC is permitted to earn a return on rate base, which is, with narrow exceptions, utility property that provides the service for which rates are charged. See *Pacific Northwest Bell Tel. Co. v. Sabin*, 21 Or App 200, 205 n. 4, rev den (1975). These reserve balances relate to plant that has long been out of service.

USWC had many options for dealing with the negative reserve balances in these accounts. Under the accounting procedures in place when the equipment was retired, dead or dying depreciation account reserve imbalances that were not material (that is, not greater than 1% of current depreciation expense) were to be charged to operating expenses for the then current period. Material amounts could be amortized if the company proposed an amortization schedule. Therefore, any immaterial negative reserve balances in the accounts as of the end of 1989, or later additions to those accounts, could have been eliminated year by year, by charges to ongoing expenses under accepted accounting procedures. If the negative reserve balances were material, USWC could have proposed an amortization schedule during its 1991, 1993, or 1995 depreciation dockets.<sup>6</sup>

USWC has determined that the negative depreciation reserves result from four sources:

1. power equipment reclassification;
2. directly charged cost of removal expenses;
3. retirement activity; and
4. allocated cost of removal expenses.

We address each of these categories and determine how the amounts in question should be handled.

1. *Power equipment reclassification.* During the last six months of 1989, USWC transferred power and other support equipment from the retired step by step and crossbar accounts to the digital switch account. This transfer occurred after the step by step and crossbar account reserves were to have been fully amortized under the agreement reflected in FCC Order No. 85-656. The step by step reclassification was \$.3 million and the crossbar reclassification was \$1.1 million.<sup>7</sup>

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<sup>6</sup>The docket and order numbers relating to those cases are, in order: UM 400, Order No. 91-1276; UM 694, Order No. 94-2064; and UM 767, Order No. 96-177. Pursuant to OAR 860-014-0050, we take official notice of these orders.

<sup>7</sup>A capital asset transfer occurred with respect to these accounts, but USWC's witness on this issue, Ms. Mulcahy, was uncertain as to when it took place. The crossbar account began 1989 with a plant balance of about \$211,000. The January 1, 1989, crossbar asset account balance was therefore not large enough to allow a plant transfer commensurate with the reserve account transfer of \$1.1 million that occurred during the last six months of 1989.

The transfer itself is not at issue here. However, the transfer increased the negative balance in the step by step and crossbar accounts. The increased negative balance could have been dealt with in the trueup Mr. Conrad foresaw for the end of 1989 or in the 1991, 1993, or 1995 depreciation dockets. The increased negative reserve could also have been handled as part of the previously approved amortization of the imbalances in the accounts. The 1987 FCC amortization of the remainder of the reserve accounts took just two years; the Oregon amortization of the accounts was 4.5 years. If USWC had acted promptly under procedures that were available to it, the effects of the plant equipment reclassification on the negative reserves could have been eliminated long ago.

*2. Directly charged costs of removal.* The second source of the increase in the negative reserves is labor and material removal costs that were directly charged to the step by step and crossbar accounts from 1989 through 1992. These charges, which amount to \$2.7 million and \$1.2 million respectively, were incurred in connection with a cleanup project to bring certain central offices up to code and remove cut dead equipment. The 1989 charges should have been dealt with in the 1989 trueup. The subsequent years' costs should have been expensed, not added to rate base.

*3. Retirement activity.* This category involves plant retirements for the step by step and crossbar plant, which occurred through 1989 with a clean up of records through 1991 and subsequent years. The retirements should have been dealt with in a 1989 trueup or amortization. Subsequent retirements due to record clean up should have been charged to depreciation expense each year, not added to rate base. The retirement amounts should not be in rate base for purposes of this case.

*4. Allocated costs of removal expenses.* USWC admits that it made two accounting errors with respect to this category of charge. First, from 1991 through 1995, it charged amounts to these accounts that should have been allocated to other accounts. Second, from 1989 through 1995, it allocated Washington reclamation costs to Oregon. Those errors account for \$2.236 million, and USWC agrees that rate base should be reduced by that amount. However, USWC argues that the remaining \$1.2 million in reclamation costs should be assigned to the digital switch account.

We conclude that USWC has not established that such a transfer is appropriate. First, USWC should have written off as depreciation expense the actual step by step and crossbar reclamation costs. USWC could also have expensed or amortized those costs.

Second, USWC admits that the 1991-1995 reclamation charges were not tracked to specific equipment. Because all the Oregon step by step and crossbar equipment was removed by 1989, we cannot determine that any portion of these later reclamation charges are related to equipment used in Oregon. USWC has not shown these to be reasonable Oregon costs.

Third, USWC's warehouse record keeping creates an allocation problem. The Portland warehouse where the reclamation occurred serves Oregon and Washington, but did not allocate reclamation costs by state. It is possible that other Oregon accounts, such as the digital switch account, have improperly been charged with Washington expenses. The warehouse also processed central office equipment other than step by step and crossbar equipment. Thus the reclamation costs in the years after 1989 likely involved these other types of equipment. The inadequacy of USWC's record keeping presents a reasonable likelihood that the claimed expenses are misstated due to geographical allocation errors. Therefore, we decline to assign the portion of the negative depreciation account reserve to a successor account for purposes of this rate case.

*Disposition.* In the past we have allowed utilities to include unrecovered investment in prematurely retired plant in the cost of replacement equipment. See, e.g., UM 528, Order No. 93-1678. The underlying basis for such allowance is that customers are better off because the dollars saved by prematurely retiring plant are greater than the cost of building new plant. See UE 88, Order No. 95-322 at 33. Here, however, the company seeks to recover not capital assets but removal costs, particularly those that accrued after an amortization.

We have also recognized that a company may seek adjustments in depreciation rates when an unanticipated premature retirement becomes likely, to avert reserve deficiencies. See UM 204, Order No. 90-837. Here, however, USWC does not assert that the step by step and crossbar equipment was

prematurely retired. Instead, USWC claims that the negative reserves are due largely to high removal costs. The removal and reclamation costs thus have nothing to do with the replacement technology or the accelerated application of new technology. Moreover, a depreciation reserve transfer should follow capital assets that have been transferred to a successor account, which is not the case here.

We conclude that it is inappropriate to include the negative depreciation account reserve balances in rate base. This conclusion is consistent with our prior decisions, as noted above. None of our decisions permit a depreciation reserve account deficiency transfer more than seven years after the conclusion of an original amortization and nine years after the assets were last used and useful. We therefore disallow the \$6.181 million amount of the negative depreciation reserves. In permitting the 1985 through 1989 amortization of the step by step and crossbar reserve imbalances, we gave USWC the opportunity to address potential reserve deficiencies in advance, as contemplated by UM 204 and Order No. 90-837. USWC had ample opportunity to true up, expense, or amortize these accounts before now. USWC has not justified transfer of the 1991-95 misallocated reclamation costs to other accounts. We find that USWC has failed to establish that it is reasonable for it to earn a return on these items.

*Issue 2. Cost of Capital.* The entire section, pages 20-37 of Order No. 97-171, is readopted:

***Completely Settled Issues:***

- *Issues 2 a-b, Cost of Debt and Capital Structure.* Staff and USWC agree to a cost of debt of 6.98 percent with a capital structure of 44.5 percent debt and 55.5 percent equity. See Appendix B, First Stipulation, Paragraphs 2a-b.

***Significantly Undisputed Issue:***

- *Issue 2d, Interest Coordination (Adjustment 15).* Staff and USWC agree that interest coordination should be computed using the weighted cost of debt (3.1061 percent) times net rate base. See Appendix B, First Stipulation, Paragraph 2c.

**Disputed Issue:**

**Issue 2c, Cost of Equity.** USWC proposed a return on equity of 12.5% in its original filing. The company subsequently revised its requested return on equity to 13.75%. That amounts to a return on rate base of 10.74%. Staff recommends a range of return on equity of 10.2% to 12.9%, with 11.6% as the midpoint. Staff's recommendation amounts to a range of return on rate base of 8.77 to 10.27%. The amounts of three adjustments depend on the resolution of this issue:

- Issue 4a, Rent Compensation Study (Adjustment 17)
- Issue 4e, Affiliated Interest Return Component (Adjustment 21)
- Issue 4h, Nonregulated Costs Removed in Adjustment 21 (Adjustment 23a)

**Issue 2c: Cost of Equity**

**Ratemaking Standard:** The rates the Commission sets in this case must provide the utility's investors an opportunity to earn a return that is commensurate with those earned in enterprises of similar risk and sufficient to enable the company to attract capital. *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310 (1989); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n*, 262 U.S. 679, 689-90 (1923).

**Cost of Equity:** The cost of equity capital, or required return on equity, is the rate of return expected by investors on alternative investments of equivalent risk. USWC and Staff were unable to agree on the appropriate cost of equity capital.

USWC's original recommendation for the return on equity was 12.5%. In its rebuttal testimony, filed in October 1996, USWC updated its rate of return recommendation to reflect the developments that have occurred in the telecommunications industry and the financial markets since its direct testimony was filed. Those events are the Telecommunications Act of 1996, which opened local telecommunications markets to competition, and the FCC's Interconnection Order, which implemented the interconnection provisions of the Act. USWC argues



that these events have increased its risk and caused it to revise its cost of equity estimates upward. The updated testimony also adds a direct analysis of USWCG's stock. The updated return on equity recommendation is 13.75%.

Staff's recommendation is a return on equity of 11.6%, or 10.2% if the Commission accepts Staff's proposal of a service quality adjustment.

Both USWC and Staff use the Discounted Cash Flow (DCF) and Capital Asset Pricing Model (CAPM) methods to determine the cost of equity capital. Staff and the company differ significantly on a number of variables in each method, however.

#### Discounted Cash Flow Method

The DCF method is one standard way of determining the cost of equity. This method assumes that a firm's current stock price is equal to the present (that is, discounted) value of all expected future dividends from the investment. The constant growth DCF method computes an investor's expected return on equity using current stock price, the expected dividend in the coming year, and the expected growth rate of future dividends. The basic constant growth DCF formula is:

$$k = D_1 / P_0 + g,$$

where "k" is the cost of equity capital, "D<sub>1</sub>" is the expected cash dividend per share for the next period, "P<sub>0</sub>" is the current stock price, and "g" is the expected long run growth rate in cash dividends.

Although Staff and USWC agree generally that the DCF method is an appropriate tool to determine a utility's cost of equity, they disagree on some key issues. They disagree on the sample of comparable firms and about the effect of the Telecommunications Act and the FCC Interconnection Order on stock prices.

*Telecommunications sample, comparable companies, and targeted stock.* Both the DCF model and the CAPM method involve applying a financial model to data from a company or a group of companies. In his opening testimony, Mr. Cummings, USWC's cost of capital witness, applies the DCF model to two groups of proxies for USWC: a sample of telecommunications companies and a sample of companies with risks thought to be comparable to USWC's. Mr. Cummings states that he uses data from two sets of companies because broader market

evidence limits the potential for error or bias inherent in using data from just one company. In November 1995, U S WEST, Inc., issued targeted stock for its two main business groups, Communications Group (USWCG) and Media Group. In his rebuttal testimony, Mr. Cummings applied the model to USWCG targeted stock as well.

Staff applied the DCF model to a sample of 10 telecommunications companies. Mr. Thornton, Staff's cost of capital witness, used this sample rather than analyzing USWC itself, because the new USWCG financial reports and stock prices are not comparable to the U S WEST, Inc., financial reports and stock prices that existed before targeted stock was issued. Mr. Thornton contends that applying the CAPM and DCF models to samples of firms in the same industry mitigates measurement errors that may arise in estimating a single company's return on equity in isolation. Mr. Thornton's sample companies include only companies:

- covered by Value Line in the "Telecommunications Services Industry" reviews,
- that are primarily local exchange carriers,
- that have not omitted an annual dividend in the past five years,
- which Value Line forecasts continued dividend payments,
- for which it was possible to calculate CAPM betas, which measure relative riskiness, for consistency with Mr. Thornton's CAPM analysis.

Staff takes issue both with USWC's selection of comparable companies and with USWC's treatment of its telephone company sample. The comparable companies include, for instance, Anheuser Busch, a brewer, can manufacturer, and theme park operator. Staff argues that USWC's comparable companies are on average riskier than USWC.

As to the telephone company sample, Mr. Cummings' final DCF estimate for his group of telephone companies is 13.7%. Mr. Cummings originally included nine telephone companies in his DCF estimates and determined a range of DCF estimates for those companies of 7.5 to 15.3%, with an average of 12.9%. Mr. Cummings then eliminated the minimum and maximum values of the population sample to arrive at the truncated mean for the

sample, 13.3%. Mr. Cummings then eliminated four companies from his sample because they announced merger intentions in April 1996, and computed a truncated mean on the reduced sample to yield the 13.7% figure. Because it derives from a truncated mean, the 13.7% figure is an average of only three companies. Staff argues that this procedure illustrates Mr. Cummings' tendency to bias results upwards.

We share Staff's concerns about Mr. Cummings' treatment of his telephone company sample. We are also persuaded that Mr. Thornton's group of telecommunications firms is more similar to USWC than Mr. Cummings' group of other firms, that Mr. Thornton's reasons for not analyzing USWCG itself are sound, and that Mr. Thornton's larger sample of ten telecommunications companies does more to mitigate measurement errors than Mr. Cummings' sample of three. We therefore conclude that Staff's selection of companies for its application of the DCF model is preferable to USWC's selection of companies.

*Effect of Telecommunications Act and Interconnection Order.* USWC argues that cost of equity estimates should be updated to reflect events since the company filed its direct testimony in December 1995. Specifically, USWC contends that the Telecommunications Act of 1996 and the FCC Interconnection Order have increased the risk to which USWC is subject. Mr. Cummings testified that Regional Bell Operating Company (RBOC) stocks were up 3.6% from the first of the year prior to the passage of the Telecommunications Act in February 1996. Between the passage of the Act and issuance of the FCC order in August 1996, RBOC stocks fell 12.1%. At the time Mr. Cummings prepared his testimony, toward the end of October 1996, RBOC stocks were down 9.8%, while the Standard & Poors (S&P) 500 stocks and the market index, were up 13.8%.

Staff investigated Mr. Cummings's claims and determined via statistical analysis that 76% of the change in RBOC stock prices after issuance of the FCC order appears to be related to interest rate changes, indicating that the drop in RBOC stock prices was largely related to rising interest rates. Staff further notes that the FCC interconnection order has been stayed indefinitely. Staff also states that the decline in RBOC stock performance follows an overperformance in the last half of 1995. Staff

cites a Merrill Lynch analyst's report written after issuance of the FCC order:

RBOCs are down 10% as the market is up 7% this year. This year to date 17% underperformance of the RBOC group is due mostly to the down trend in the bond market (down 11% ytd) and the group's rally in the second half of 1995 (30%+ outperformance of the S&P 500).

In rebuttal testimony, Mr. Thornton stated that lower RBOC prices may be due to expectations of potentially lower earnings and dividend growth rates, not increased risk. Mr. Cummings replies that analysts' earnings growth rate expectations for RBOC stocks are not significantly changed from September 1995 to November 1996. Mr. Thornton responds that the steady earnings growth expectations for the RBOCs support his position that risk has not increased due to the Act and order.

Staff also points out that Mr. Thornton's telecommunications company sample raw beta, calculated from data through 1994, is .80; Mr. Cummings' unadjusted beta for his telecommunications company sample calculated from data available through August 1, 1996, is .78.

AT&T cost of capital witness Carter also argues that the Act and the FCC order have not increased the risk of USWC stock. Mr. Carter bases his conclusions on the facts that Value Line's beta and safety rank measures of risk have not increased for the sample telecommunications companies. Moreover, Mr. Carter points out that USWC's provision of local service will remain a monopoly at least at the wholesale level in the near future. Finally, Mr. Carter notes that the Commission has previously found that any increase in risk that might occur from competition will be reflected in the data underlying the DCF and CAPM analyses.

We conclude that there is no need to update Staff's analyses. We are persuaded that the 1996 Telecommunications Act and the FCC order have had little effect on the riskiness of telecommunications stocks. With the stay of the FCC order, we are persuaded that the risk represented by competition will be slow in appearing. We also find it plausible that increased interest rates and overperformance account for much of the fluctuation in RBOC stocks

from 1995 to 1996. Finally, we agree that any increased risk from competition will be captured in the underlying data used for the DCF and CAPM analyses.

*Technical Differences between USWC and Staff in the DCF Model:* USWC and Staff have a number of technical differences with respect to the use of the DCF model:

1. Mr. Thornton uses the annual DCF model, whereas Mr. Cummings uses an unadjusted quarterly DCF method to measure dividend cash flows to the investor;

2. To determine the current stock price input, Mr. Thornton uses a spot price, whereas Mr. Cummings uses a two week average of prices;

3. To estimate next year's dividends, Mr. Thornton uses Value Line's expectations of dividends over the next 12 months, whereas Mr. Cummings uses his own dividend forecast; and

4. To estimate future dividend growth rates, Mr. Thornton uses an internal growth approach for his constant growth model and uses Value Line historical dividend growth for his nonconstant growth model, whereas Mr. Cummings uses short to intermediate term earnings growth forecasts as a proxy for infinite dividend growth.

1. *Quarterly v. Annual DCF.* USWC modifies the standard DCF model to account for quarterly dividend cash flows to the investor, as they are actually paid out. Staff uses the model that assumes dividends are paid once a year. USWC argues that modeling cash flows quarterly, as investors receive them, is more accurate than Staff's approach.

Staff replies that the annual model is appropriate in this case and cites UT 113, Order No. 94-336 at 14-15, where the Commission dealt with this issue and resolved it in favor of the annual model.<sup>8</sup> Staff also concedes that both models have shortcomings. The annual model does not capture the quarterly payment of dividends. The quarterly model can correctly estimate an investor's

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<sup>8</sup> We take official notice of Order No. 94-336 pursuant to OAR 860-014-0050.

effective required rate of return. But Staff relies on an academic article by Linke and Zumwalt<sup>9</sup> to show that the quarterly model should not be applied to a regulatory rate base without a three step downward adjustment, which Mr. Cummings did not perform. The adjustment steps, described in Linke and Zumwalt at 19, account for the reinvestment assumption and for the regulatory rate base to which the allowed return on equity is applied.

In defense of its use of the annual model, Staff notes that the annual model can produce the correct return on equity estimate, even without capturing the quarterly payment of dividends, assuming the utility reinvests its retained earnings on a quarterly basis and earns on the increased investment. Therefore, Staff concludes that the annual DCF model is appropriate for beginning of period ratemaking.

The current case is based on average of period ratemaking. The end of period rate base here is higher than the beginning of period rate base. According to Mr. Thornton, the annual DCF model estimate must be adjusted downward if applied to an average of period rate base. Staff did not make this adjustment. Therefore its annual DCF model is biased in USWC's favor.

USWC's quarterly DCF model also does not take into account the fact that USWC receives monthly revenues from its customers. That gives USWC the opportunity to reinvest its monthly earnings and to earn more than its authorized return on equity. Staff demonstrates that a nominal rate earned on a monthly basis will produce the effective (quarterly DCF) rate over a year when applied to beginning of month book values (rate bases). Assuming that Mr. Cummings' 12.1% quarterly DCF estimate for telephone companies is correct, Staff argues that the estimate should be reduced to 11.5 %, the nominal return that would earn the company 12.1% if compounded monthly beginning with the original investment. The existence of monthly revenues to USWC therefore also requires a downward adjustment, which Mr. Cummings did not make.

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<sup>9</sup> "Estimation Biases in Discounted Cash Flow Analyses of Equity Capital Cost in Rate Regulation," *Financial Management*, Autumn 1984.

On review of the record and the arguments advanced by USWC and Staff, we conclude that both the annual and the quarterly DCF models require adjustments to eliminate bias and error. USWC did not adjust its quarterly model to account for the application of the quarterly model to regulatory rate base or for the monthly receipt of revenues. Staff did not adjust its annual DCF model downward to account for average of period rate base. If it had, the higher return produced by considering quarterly dividends would have been more than offset. Both the USWC and Staff DCF approaches give too high a result, but we conclude that Staff's recommendation is the more reasonable approach in this docket.

2. *Current Stock Price Input.* There are two subissues with respect to this dispute. First, there is a question whether it is appropriate to average stock prices over a ten day period or choose a spot price from a single day; second, there is an issue of whether the stock price should be updated to account for events that have transpired since testimony was filed.

For the current price variable in the DCF model, USWC used an average of the daily closing stock prices for the ten trading days, November 1 to November 14, 1995. Mr. Cummings chose a ten day average to guard against the possibility that the selected stock price might be anomalous in reaction to a news story or other external event.

Mr. Thornton chose the spot prices closing on July 2, 1996, as reported in the July 3, 1996, *Wall Street Journal*. Staff argues that the most current spot prices are the appropriate prices to use for the  $P_0$  term in the DCF model, because under the efficient markets hypothesis as advanced by modern corporate finance theory, those prices include all information incorporated into historical prices, plus the most recent information.

In UT 113, Order No. 94-336, we considered whether a spot price or an average of prices was superior. We stated, at 13:

Conceptually, the stock price to use is the current price of the security at the time of estimating the cost of equity. In an efficient market, the current stock price provides the best indication of future prices. An efficient market implies that prices adjust instantaneously to the arrival of new information. Therefore

current prices reflect the fundamental economic value of the security.

Here, as in that docket, we conclude that Staff's method of calculating stock price based on spot prices is more reasonable than averaging prices because it is more consistent with the theory of efficient markets. We have already addressed the problem of updating stock price information, under the discussion of risk from competition above.

3. *Estimation of the Next Year's Dividend.* To estimate next year's dividends, the " $D_1$ " term of the DCF model, Mr. Cummings makes his own forecast using historical dividends and expected earnings growth rates.

Mr. Thornton uses Value Line's expectations of dividends over the next 12 months for the " $D_1$ " term. Staff took the ratio of  $D_1$  to  $P_0$ , the current stock price, for each company in his sample and averaged the ratios to arrive at an average required dividend yield of 3.5%. Staff asserts that its method is more direct than USWC's and that USWC's method is flawed in using forecasted earnings growth to forecast dividend growth over the coming year.

Staff supports its position with the argument that near term earnings growth forecasts are unduly influenced by earnings cycles, making them unreliable as predictors of earnings growth in the long term. Dividend growth is a function of earnings growth in the long term. Near term dividend growth may not even be related to near term earnings growth, Staff argues, because companies smooth dividend payments in the face of earnings cycles.

We are persuaded by Staff's argument. The horizon for the earnings growth forecast is too short and is subject to the possible distortions of earnings cycles. We find that Staff's approach to estimating next year's dividends is more reasonable, and adopt it.

4. *Estimation of Future Dividend Growth Rate.* To estimate the expected dividend growth rate, the " $g$ " term of the DCF model, Mr. Cummings uses Institutional Brokers' Estimate System (IBES) analysts' expectations of earnings growth one to five years forward. His result is a 6% growth rate. In support of his method, Mr. Cummings quotes from a research study that USWC provided to Staff in response to a data request:



We have compared the accuracy of four methods for estimating the growth component of the discounted cash flow yield on a share: past growth rate in earnings (KEGR), past growth rate in dividends (KDGR), past retention growth rate (KBRG), and forecasts of growth by security analysts (KFRG). . . . For our sample of utility shares, KFRG performed well, with KBRG, KDGR, and KEGR following in that order.

The superior performance by KFRG should come as no surprise. All four estimates of growth rely upon past data, but in the case of KFRG, a larger body of past data is used, filtered through a group of security analysts who adjust for abnormalities that are not considered relevant for future growth.<sup>10</sup>

Staff uses two different annual DCF models in its analysis: the constant growth model and the nonconstant growth model. In the constant growth model, Mr. Thornton uses the internal growth approach to estimate future dividend growth. This approach is based on the observation that dividends grow by a firm's book return on equity (b) times the amount of equity retained in the firm, also called the retention ratio (r). The  $b * r$  growth model is based on a review of historical data from Value Line, of which investors are aware. The  $b * r$  approach is appropriate if the retention ratio for a firm is fairly constant and the market to book (M/B) ratio is expected to be 1.0. Mr. Thornton notes that the retention ratio has been reasonably constant in the telecommunications industry, but the M/B ratio is well above 1.0, based on investors' expectation that the telecommunications services industry will earn substantially more than its cost of capital.

To correct for this expectation, Mr. Thornton added a second growth term to his  $b * r$  growth rate range, the term " $v * s$ ." The variable "v" represents the fraction of funds raised from common stock sales that accrues to old shareholders. The variable "s" represents an expected rate of increase in common equity from stock sales. Mr. Thornton then adds his  $v * s$

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<sup>10</sup> David A. Gordon, Myron J. Gordon, and Lawrence I. Gould, "Choice among Methods of Estimating Share Yield," *The Journal of Portfolio Management*, Spring 1989, pp. 50-55.

estimate to his  $b * r$  growth rate range to calculate his constant growth rate range. Mr. Thornton's  $v * s$  estimate is 1.8%; his  $b * r$  growth rate range is 2.6% to 8.9%. Accordingly, his range of DCF estimates based on the constant growth approach are 7.9% to 14.2%, which averages to 11.1%.

The nonconstant growth DCF model estimates investors' forecasts of dividend growth and allows expected annual dividends to grow at different rates over time. This approach allows an analyst to incorporate near term dividend growth rates that are much lower or higher than a long run expectation.

Mr. Thornton used two nonconstant analyses to estimate growth. Both are based on a finding that dividend growth in the telecommunications industry has been relatively stable. Therefore, Mr. Thornton forecasts future growth based on historical dividend growth, using up to 19 years of data.

For his first nonconstant growth analysis, Mr. Thornton uses historical dividend growth as a proxy for future dividend growth. His result is 9.3%. For his second analysis, Mr. Thornton uses Value Line forecasts of dividend growth through the year 2000, and then uses historical dividend growth beyond that. His result using this method is 9.2%. The results average to 9.3%.

Mr. Cummings takes issue with Staff's numbers in its use of  $b * r$  growth rates. Mr. Cummings notes that Staff's work papers show a large difference between the average historical  $b * r$  growth rates from 1988 to 1995 and the forecasted  $b * r$  growth rates for 1996, 1997, and 1999-2001. The numbers change from 5.71% for 1988-1995 to 14.74% for 1999-2001.

Given such growth, Mr. Cummings notes that Staff provides no explanation why an average of 1988 to 1995  $b * r$  growth rates would reflect investors' expectations for future growth, and also calls the accuracy of the numbers into question. Mr. Cummings believes that analysts' forecasts are a better proxy for future growth in dividend cash flows than an average of historical growth, which Mr. Thornton uses in his nonconstant growth model.

We conclude that Staff's analysis of the growth rate is more direct than USWC's. Staff relies on historic and forecasted *dividend* data, and USWC

relies on near and short term *earnings* growth forecasts. Over a period of five years or less, the growth in dividends paid by a company may not always equal earnings growth, although it must in the long run. Staff's general approach is, thus, superior to USWC's.

To validate its method over Staff's, USWC relies on a passage Gordon, Gordon, and Gould, set out above. This passage is too vague to serve as an argument in favor of its method in this case. Moreover, the company argues that it uses long term forecasts of earnings in its analysis, but the record indicates that it uses growth forecasts only one to five years forward. We conclude that Staff's use of dividend data is more reliable than USWC's use of earnings data.

Staff performed a constant growth analysis and two nonconstant growth analyses to arrive at its estimate for "g." Staff's procedure was thus more thorough and contained more internal checks than USWC's. USWC objects to the forecasted growth numbers in Mr. Thornton's work papers, but does not specify the basis for its objection. USWC only notes that it questions why an investor's expectations would be based on past growth rates when future growth rates are greater. We believe that Staff cured any potential flaw in its inputs by using a combination of several approaches to determine its "g" estimate. We adopt Staff's ranges for the growth term.

*Final DCF Range of Estimates.* Staff's final DCF range of estimates is 9.2% to 14.2%, with a midpoint of 11.7%. Mr. Thornton derived this range by eliminating his lowest estimate (7.9%), on the ground that he did not expect the cost of USWC's equity to be as low as that.

USWC's final DCF range of estimates is 12.6% to 13.7%, and a point estimate for USWCG of 13.9%.

**DCF conclusion:** Incorporating the dividend yields and growth term ranges derived by Staff and adopted above, the Commission concludes that an appropriate range for DCF is 9.2% to 14.2%, with a midpoint at 11.7%.

#### Capital Asset Pricing Model

The CAPM is a risk premium analysis that calculates the expected equity return by estimating a risk free rate of return and adding a

risk premium. Staff and USWC agree that the basic CAPM formula is:

Expected return for a stock = risk free  
return + (relative risk [beta] for the stock  
\* market risk premium).

The CAPM is a holding period model that requires estimates of the risk free interest rate, the relative risk, or beta, for a stock, and the market risk premium over the assumed holding period. The analyst must select the holding period. The holding period assumption dictates consistent estimation choices for the risk free interest rate and market risk premium. The CAPM model expresses the average beta as 1.0.

USWC and Staff disagree on each aspect of CAPM in this case:

1. The assumed holding period;
2. The risk free rate of return;
3. The estimate of beta, including the propriety of weighting betas; and
4. The market risk premium.

1. *The Assumed Holding Period.* The holding period is assumed prior to the determination of the risk free interest rate and the market risk premium in the CAPM model. The risk free rate is estimated with reference to the yields of U.S. Treasury securities. The yields for U.S. Treasury securities vary directly with the term of the securities. Short term and intermediate term securities normally have a lower yield than long term securities.

Mr. Thornton assumes an intermediate term holding period for his CAPM analyses, in conjunction with his use of intermediate term U.S. Treasury securities for his risk free rate of return. Mr. Thornton makes this choice of holding period because he believes that the intermediate term corresponds more closely to the typical period for which rates are in effect. In this case, rates will likely be in effect from May 1996 through December 1998. Moreover, Mr. Thornton believes that intermediate term U.S. Treasury securities avoid both the volatility of short term U.S. Treasury bills and the risk premia of long term U.S. Treasury bonds.

Mr. Cummings also uses intermediate term Treasury securities as a risk free rate. However, USWC also uses a long term risk free rate in its CAPM

estimates. Mr. Cummings chooses U.S. Treasury security rates with three to thirty years' maturity for his risk free rate; Staff argues that that indicates an assumed holding period of three to thirty years. According to Staff, Mr. Cummings' attempt to estimate both intermediate term and long term market risk premia suggests assumed intermediate and long term holding periods.

Mr. Cummings testified that for telecommunications industry stocks, the expected holding period is less than three years. He distinguishes between portfolio turnover and investment horizon, noting that investors turn over their portfolios every one to three years, not every thirty years. He states that equity investors rebalance their portfolios often but have a long term focus for their portfolio investment. Therefore, he concludes that equity investors' holding periods do not have to be thirty years long to use a thirty year U.S. Treasury bond as a risk free rate.

In his direct testimony, however, Mr. Cummings equates investment horizon and holding period: "In practice, however, common stock investments are actively traded in the capital markets, indicating that investors have relatively short investment horizons or expected holding periods."

We conclude that Mr. Cummings has inconsistently assumed conflicting holding periods. This inconsistency biases his cost of equity estimates upward. Staff's holding period assumption is more reasonable, because it is internally consistent and because it tracks better than USWC's with the time the rates from this case will be in effect.

2. *Risk Free Rate of Return.* As noted above, the CAPM requires an estimate of the risk free rate of return. Staff's analysis assumes an intermediate holding period and relies on the average of spot yields for intermediate term U.S. Treasury securities.<sup>11</sup> Staff's risk free rate estimate is 6.6 %.

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<sup>11</sup> Staff's intermediate term securities are five, seven, and ten year securities. Mr. Thornton took the rates from the July 3, 1996, edition of the *Wall Street Journal*, as noted in the DCF discussion above. The rates averaged 6.66%. Because this case is based on an average of period rate base, which requires a downward adjustment (see discussion of DCF model above), Mr. Thornton adjusted the rate downward to 6.57%, then rounded to 6.6%.

Mr. Cummings' risk free rate is 7.09%. He uses thirty year U.S. Treasury securities for his risk free estimate. Staff argues that Mr. Cummings' use of long term securities is inappropriate because it is inconsistent with his holding period assumption, as noted above, because it causes an upward bias in his market risk premium estimation for holding periods greater than one year (see discussion at 3. below), and because long term bonds include a liquidity risk premium that must be extracted before they are used in a CAPM analysis. Mr. Cummings disagrees that a risk premium must be extracted from long term bonds.

As discussed above, the holding period assumption should be much shorter than thirty years in this case, where rates will likely be reexamined in late December 1998 and the cost of capital will be reestimated based on market conditions at that time. An investor with a short holding period is exposed to large potential gains or losses by purchasing a long term instrument, because the instrument will be sold before it matures. For CAPM analysis, therefore, a U.S. Treasury security with a maturity greater than the assumed holding period should not be used as a proxy for the risk free rate.

We agree with Staff that the long term Treasury rate includes a liquidity risk premium.<sup>12</sup> As Mr. Thornton pointed out, it is possible to correct the long term Treasury yield by subtracting the liquidity risk premium. Mr. Cummings did not make this correction. We conclude that Staff's risk free rate is the more appropriate.

3. *Beta*. Beta is a measure of that portion of a company's risk that cannot be diversified away. The market risk premium is multiplied by the company's beta to determine investors' required return above the risk free rate.

Mr. Thornton used the Fisher-Kamin regression technique to calculate his beta estimate.<sup>13</sup> He estimated the beta of his sample telecommunications companies to be .80, based on

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<sup>12</sup> Staff/4, Thornton/43, citing Brealey and Myers, *Principles of Corporate Finance*, 3d ed., McGraw-Hill Book Co., New York, 1988, p. 184.

<sup>13</sup> The Commission has previously approved this beta calculation method. See, e.g., Order No. 94-336 at 25; Order No. 87-406 at 66; and Order No. 80-634 at Appendix, 21-22.

data through 1994. (When he included 1995 data, the beta dropped to .72.) To arrive at his beta estimate, Mr. Thornton regressed his sample companies' stock returns minus the risk free rate on the New York Stock Exchange returns, also minus the risk free rate. The pertinent data for beta estimation includes market portfolio returns, company stock returns, and risk free rates. Mr. Thornton used the Center for Research in Securities Prices (CRSP) value weighted index of New York Stock Exchange stock returns as a proxy for the portfolio returns and for data on his sample's stock returns. Mr. Thornton drew his risk free data from Ibbotson Associates' publication, *Stocks, Bonds, Bills, and Inflation 1995 Yearbook*. Both CRSP and Ibbotson data series ran from 1926 through 1994.

To estimate USWC's beta, Mr. Cummings uses daily data, based on 219 trading days. Value Line uses five years of weekly data to estimate beta. The shorter data frequency on which Mr. Cummings relies biases his beta estimate upward. Mr. Cummings argues that he corrects for the daily beta bias statistical problem by using the Dimson and modified Scholes-Williams regression methods. Mr. Cummings chooses the S&P 500 as a proxy for the market portfolio, and derives beta estimates of .75 and .76 from that group of companies, with an average of .76.

In keeping with the practice of Merrill Lynch, which weight raw betas 1/3 toward 1.0, Mr. Cummings adjusts his .76 average USWC beta toward 1.0, yielding a .84 beta. Then, in a manner similar to Value Line, which weights its betas toward 1.06, Mr. Cummings further rounds upward to .85.

Staff and USWC have a number of technical differences involving the derivation of their respective betas, but their raw betas are almost identical. The betas of Staff and USWC differ because they employ different methods to adjust their raw betas. Mr. Thornton takes an average of telecommunications industry stocks and does not adjust his average beta, arguing that use of the industry average renders adjustment unnecessary. USWC adjusts its beta toward 1.0, the average of all betas (or toward 1.06, using the Value Line adjustment).

We conclude that Staff's telecommunications industry average beta is more reasonable than a beta adjusted toward the average of all betas or

toward an even higher standard, such as Value Line uses. As Nobel laureate economist William F. Sharpe says:

Information of the type shown in Table 13-4 [industry average betas] can be used to "adjust" historic beta values. For example, the knowledge that a corporation is in the air transport industry suggests that a reasonable estimate of the beta value of its stock is greater than 1.0. It thus makes more sense to adjust a historic beta value toward a value above 1.0 than to the average for all stocks.<sup>14</sup>

Mr. Sharpe's support of the adjustment toward industry average is borne out by empirical studies that Staff has performed. Over a number of years, Mr. Thornton testified that Staff has concluded that weighting public utility betas toward 1.0 is inferior compared to weighting betas toward the average industry beta.

Conversely, it makes more sense to adjust a historic company's beta toward a value below 1.0 if it is in the telecommunications services industry, because the record reveals that telecommunications services companies are less risky than the average stock. Thus, if any adjustment to the raw beta is appropriate, it should be toward the industry average rather than toward a generic average of all stocks. Staff points out that if Mr. Cummings' truncated telecommunications company sample average relied on raw betas, rather than betas adjusted toward 1.0 or 1.06, the average beta would be .78, lower than Mr. Thornton's estimate of .80. Because Mr. Thornton's sample takes the average of telecommunications services companies, we conclude that no adjustment to his raw beta is necessary.

4. *Market Risk Premium.* The CAPM multiplies the estimated beta by the market risk premium, which must also be estimated. To estimate the market risk premium, Mr. Thornton uses an unbiased estimation method, whereas Mr. Cummings uses a method which he admits is biased upward for holding periods greater than one year.

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<sup>14</sup> *Investments*, 2d ed., Prentice-Hall, Inc., Englewood Cliffs, 1981, p. 344.



Mr. Thornton's method assumes that the average market risk premium over a large number of historical intermediate term holding periods is a reasonable estimate of the expected intermediate term market risk premium. He estimates the average historical intermediate term market risk premium by calculating the difference between expected compounded returns on the market portfolio and the compounded returns on the risk free asset over an intermediate period (the holding period assumption discussed in paragraph 1 above). In other words, the market risk premium is the difference in returns between an investor's two accounts, the one invested in the stock market and the other invested in U.S. Treasury securities, over an intermediate period. The difference is then annualized.

Mr. Thornton used CRSP's 1926-1995 New York Stock Exchange/AMEX/ NASDAQ return series as a proxy for the theoretical market portfolio returns (a sample of approximately 8,000 stocks in his last month of data). He used 1926-1995 data in intermediate term U.S. Treasury securities rates from Ibbotson Associates' *Stocks, Bonds, Bills, and Inflation 1996 Yearbook* to represent the risk free rates over that period. Mr. Thornton used two different series from the *Yearbook*: yield (ex ante rates) and total returns (ex post rates). He performed separate analyses on each of the series and generated two series of estimates. He then separated his 1926 to 1995 data into holding periods of five to ten years each, such that all his data were used only once. He then calculated the average rate of return difference between holding the market portfolio and holding the risk free rate over the intermediate term. Finally, Mr. Thornton averaged the market risk premium estimates for each of the holding periods. His estimate of the historical market risk premium using ex post U.S. Treasury security returns is 5.8%; of historical market risk premium using ex ante returns, 6.3%.

Mr. Cummings uses an arithmetic average approach to market risk premia. His estimates are the arithmetic difference between annual stock returns and annual bond returns. All of Mr. Cummings' ex post market risk premium estimates are based on arithmetic averages of annual data. The market risk premium range in USWC's rebuttal testimony is 7.5% to 7.7% for intermediate term risk free rates and 7.1% to 7.3% for long term risk free rates. The ex post and ex ante estimates are very close.

USWC argues that this indicates that the estimation of the market risk premium is sound.

USWC objects to the fact that Staff uses only historical data to estimate the market risk premium, whereas USWC uses an average of an historically derived (ex post) and current expected (ex ante) market risk premium. USWC argues that Mr. Thornton's range is biased downward because his calculation is based on differences of geometric means and the use of bond total returns rather than bond income returns. USWC contends that the theoretical literature and the provider of the data (Ibbotson Associates), as well as investors in U.S. Treasury bonds and the S&P 500 stocks, support the validity of the arithmetic mean procedure.

Staff argues that Mr. Cummings' estimates are biased upward because, as he admitted on cross examination, a method like his that relies on the arithmetic average of annual data will produce an upwardly biased estimate if the holding period is assumed to be more than one year. Staff reminds us that Mr. Cummings implicitly assumes an intermediate term and long term holding period by his choice of risk free rates. Staff also points out that Mr. Cummings admitted that Staff's method is an unbiased estimator method.

Moreover, Staff takes issue with Mr. Cummings' ex ante market risk premium. Ex ante has a different meaning in Mr. Cummings' calculation than the yield that Mr. Thornton used as a term of his analysis. Mr. Cummings uses the term to mean a current market risk premium. Staff points out that Mr. Cummings stated in his direct testimony that the best estimate of the market risk premium, which varies over time around an average or mean, is the average risk premium over the longest period for which data are available. Nonetheless, Mr. Cummings gives equal weight to his ex ante analysis, which involves performing a DCF analysis on the S&P 500 and subtracting intermediate term or long term interest rates. Staff argues that Mr. Cummings' application of the DCF to the S&P 500 is inappropriate, because he relies in the IBES short term and near term earnings forecasts as proxies for indefinite future growth. This choice skews his results upward, Staff contends.

We are persuaded that Mr. Thornton's method of estimating the market risk premium is superior to Mr. Cummings'. Mr. Thornton uses an unbiased estimator, as Mr. Cummings admits. Appendix IV to

Mr. Cummings' direct testimony (USWC Exhibit 14) cites an article by Fuller and Hickman as the source of an unbiased estimation procedure.<sup>15</sup> Mr. Thornton testified that the procedure in that article is substantially the same as the procedure he used in this case to estimate the market risk premium.

USWC argues that the theoretical literature supports Mr. Cummings' position on the arithmetic mean, but the articles included in his Appendix IV indicate that if an analyst has annual data and assumes a holding period of greater than one year, the analyst should compound returns over the assumed holding period before taking an average. This is what Mr. Thornton did with his monthly data. Mr. Cummings' analysis biases his results upward. We conclude that Mr. Cummings' results are less accurate as an estimate of the market risk premium, and adopt Mr. Thornton's estimates.

**CAPM conclusion:** We have adopted Staff's recommendations on each of the contested issues in the CAPM analysis. Therefore, we adopt Staff's CAPM cost of equity estimates. They are 11.2% for the ex post U.S. Treasury security returns and 11.6% for the ex ante (yield) returns. These estimates average to 11.4%.

#### **Flotation Cost Adjustment**

Mr. Cummings proposes to adjust his CAPM and DCF return on equity ranges upward by a factor of 1.0115 to provide USWC with a return on estimated historical stock issuance costs. Staff recognizes that flotation costs are a necessary cost of business, but recommends that issuance expenses be recovered as an expense item, not through an increase in return on equity. Staff contends that Mr. Cummings' proposed approach improperly gives stockholders a one time gain. Staff also presented evidence that USWC does not expect to require large amounts of new equity financing.

*Disposition.* We consider stock issuance costs to be expenses. Therefore, such costs must be included in rates when the expenses are incurred. See Order No. 94-336 at 28. Recovery of past issuance expenses in future rates would be retroactive ratemaking. See *id.*; see generally

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<sup>15</sup> "A Note on Estimating the Historical Risk Premium," *Financial Practice and Education*, Fall/Winter 1991, pp. 45-48.

Letter of Advice dated March 18, 1987, to Charles Davis, Public Utility Commissioner (OP-6076).

Mr. Cummings' proposal amounts to a perpetual return on historical estimated issuance expenses. Under regulatory schemes, bond costs are embedded and have fixed lives. Common stock, however, does not have a fixed life. Bonds are thus not analogous to stock in this context. Approval of the amortization of embedded costs such as fixed life bond expenses over the life of a bond does not justify a perpetual return on estimated historical stock issuance expenses.

We note also that Mr. Cummings' flotation cost adjustment method has no basis in the financial or economic literature. The record discloses that when asked about support for his adjustment method, Mr. Cummings provided an article by Brigham and Gapenski discussing the cost of capital adjustment method (which is also what Mr. Cummings called his method). However, Mr. Cummings did not use the method prescribed in the Brigham-Gapenski article. The article discusses no adjustment to the CAPM for flotation costs. Mr. Cummings admitted that he had seen no professional literature containing mathematical proofs justifying the application of a flotation cost adjustment to the CAPM.

Moreover, a flotation cost adjustment is internally inconsistent with the CAPM. The CAPM assumes that transaction costs are irrelevant, but flotation costs are transaction costs. For the above reasons, we reject Mr. Cummings' proposed flotation cost adjustment.

#### Coverage Ratio

At Issues 12 and 13, below, we discuss the implications of our decision on USWC's cash flow and business valuation. However, we must also discuss here one aspect of USWC's argument about its viability in view of our decision. Mr. Cummings argues that Staff's case will cause a negative pretax interest ratio for USWC. Mr. Cummings supports his contention by hypothesizing a stand alone entity, USWC-Oregon. Mr. Cummings prepared an exhibit, USWC Exhibit 120, to demonstrate the effect of Staff's case on USWC's pretax interest coverage ratio. Mr. Cummings states that bond rating agencies calculate interest coverage as follows:

$$\text{Pretax Interest Coverage} = \frac{\text{Pretax Income} + \text{Interest}}{\text{Interest}}$$

Staff contends that this exhibit compares an unadjusted USWC test year with Staff's adjusted test year. Staff moreover points out that USWC's calculations do not account for USWC's proposed \$34.9 million U S WEST Direct revenue imputation, any revenue requirement adjustments due to the sale of exchanges to PTI, any revenue requirement adjustments due to extraordinary 1995 customer service and maintenance expenses, any adjustments for tariff changes, or any adjustments for reengineering savings. Thus, Staff argues, USWC's Exhibit 120 does not even reflect USWC's adjusted version of the rate case.

Staff has compared Mr. Cummings' pretax interest coverage formula for the hypothetical USWC-Oregon under Staff's adjusted test year after the second stipulation, both before and after revenue requirement reductions. Staff argues that it is clear that USWC-Oregon, if it were a stand alone entity, would have a financially sound interest coverage ratio. Staff notes that Mr. Cummings does not calculate pretax interest coverage in a manner consistent with the formula he provides, which is set out above. Instead, he merely divides pretax net operating income by interest expense.

Staff included an Appendix A to its Cost of Capital brief in which showed the interest coverage ratio calculations for Staff's fully adjusted test year (including a 10.2% return on equity), before and after a rate reduction. Staff uses both the method Mr. Cummings attributes to bond rating agencies and the method he actually uses in USWC Exhibit 120. Appendix A to Staff's Cost of Capital brief demonstrates the following about pretax interest coverage ratios under Staff's case after the second stipulation:

*Pretax Interest Coverage Before Rate Reduction*

Rating agency method: 9.02  
USWC Exhibit 120 method: 8.02

*Pretax Interest Coverage After Rate Reduction*

Rating agency method: 4.88  
USWC Exhibit 120 method: 3.88

Staff points out that a pretax interest ratio coverage of 4.88 places USWC-Oregon above the Standard and Poor's AA benchmark of 4.5 for

telecommunications companies, and a ratio of 3.88 places the entity within the A benchmark. Both AA and A ratings are superior to mere investment grade ratings. Staff concludes that a 10.2% return on equity, together with the rest of Staff's adjustments, will allow the hypothetical USWC-Oregon to maintain its financial integrity.

*Disposition.* Staff's arguments persuade us that Mr. Cummings' pretax interest coverage ratio exhibit, USWC Exhibit 120, does not reflect even USWC's adjusted case. Moreover, as Staff points out, Mr. Cummings does not use the bond rating agency formula to calculate interest coverage. We find that Staff's calculations in Appendix A to its Cost of Capital brief are methodologically correct and demonstrate that USWC-Oregon, if it existed, would have a pretax interest coverage even after rate reduction sufficient to maintain its financial integrity.

*Conclusion.* Under *Duquesne*, the rates we set in this case must give USWC's investors an opportunity to earn a return commensurate with those earned in enterprises of similar risk and sufficient to enable the company to attract capital. Based on the considerations set out above, we find that Staff's cost of equity analysis is superior to USWC's in meeting these criteria. Mr. Thornton's telecommunications company sample better reflects the risk USWC faces. Mr. Cummings' selection of comparable companies are, on average, riskier than USWC. We find Mr. Cummings' analysis biased upward. Therefore, his analysis fails to meet the *Duquesne* criterion of setting a return like those earned by enterprises of similar risk.

Further, we are satisfied that Staff's recommended return will maintain USWC's financial integrity. Finally, we are persuaded that the return is high enough to attract capital. Therefore, we adopt Staff's recommendation of 10.2% to 12.9% as the reasonable range of return on equity. The midpoint of that range is 11.6%.

**Proposal to Set Allowed Return at Low End of Reasonable Range:** After establishing a range of a return on equity the midpoint of which is 11.6%, Staff recommends a service quality adjustment to lower the return on equity to 10.2%. We adopt this recommendation. See discussion at Issue 9 below.

*Issue 3a, U S WEST Direct Yellow Pages Imputation.* The discussion on pages 37-43 of Order No. 97-171 is readopted *except* that USWC may continue to use the retention rate from UT 102, in effect since June 1992; and foreign directory revenues are removed from the imputation. The adjustment to the retention rate increases the annual intrastate revenue requirement by \$4.9 million.

### ISSUE 3: U S WEST DIRECT DIRECTORY REVENUE IMPUTATION

#### *Disputed Issues:*

*Issue 3a, U S WEST Direct Directory Imputation (Adjustment 16).* Staff and USWC agree that the test year should be adjusted but disagree about the amount of the adjustment and the method used to calculate the imputation. Staff used the method and publishing fee rate adopted in docket UT 85 to calculate revenues from U S WEST Direct. USWC used the \$34.7 million directory revenue imputation that was in the UT 85 revenue requirement.

*Issue 3b, U S WEST Direct Directory Growth (Adjustment 16a).* Staff included growth at the level expected to occur during the period when rates from this docket are in effect. Staff and USWC disagree about the need for pro forma adjustments (see Issue 1a, Test Year). If the Commission includes Staff's adjustment in the test year, the final amount depends on the resolution of Issues 3a, Directory Imputation, and 8j, Access Line Growth.

#### **Issue 3a: U S WEST Direct Directory Revenue Imputation**

Before the divestiture of AT&T, the local Bell telephone companies published and distributed alphabetical and classified telephone directories (the white and yellow pages) within their service territories. Historically, the publication of telephone directories has been part of the local telephone company's service obligations, and the revenues from directory publishing and advertising have been used to defray the utility's revenue requirement and maintain affordable local telephone rates.

After the breakup of AT&T, directory operations remained with the local telephone companies. Since that time, some of the Bell operating companies, including USWC, have transferred their directory operations to nonregulated affiliates. USWC's current directory publishing affiliate is U S WEST Direct (USWD), which was created in 1986. See Order No. 88-488, UI 54, in which the Commission authorized USWC (which was then known as Pacific Northwest Bell, PNB) to enter into various publishing agreements with USWD. But for imputation, the transfer of assets from the regulated utility to a nonregulated affiliate would have diverted the publishing revenues from ratepayers to shareholders.

USWD's directory operation is highly lucrative. The USWD directory dominated the field in 1988, when the Commission approved the publishing agreements, and USWD dominates the field today. Its revenue growth rate has consistently been high; see discussion at Issue 3b below.

Like a number of other states, Oregon opposed this attempt to transfer the assets of the regulated telephone company to nonregulated affiliates without customer compensation. We reasoned that the value of the directories is connected directly to the regulated operations of the local telephone company. The relationship between telephone service and yellow pages advertising in the directories is symbiotic. As we said in Order No. 88-488, at 7:

[T]he Commission believes that the thing of value which is being transferred, and which makes these Yellow Pages different and much more valuable than others, is their connection with the local exchange telephone company . . . . The distribution of the classified advertising with the necessary white pages by, with the blessing of, or in association with the local exchange company sets [the Yellow Pages] apart from any other classified advertising efforts.

We further reasoned that the local exchange company's position as incumbent telecommunications service provider was conferred on it by the State of Oregon through the Commission. ORS 759.020, 759.025. We concluded that the directory publishing rights, opportunities, and profits are



valuable assets that have been derived by the local exchange company in connection with its state authorized position as a monopoly or regulated local telecommunications service provider. In considering PNB's publishing agreements with USWD, we stated (Order No. 88-488 at 8):

The Commission is not disposed to permit the parent company to spin off the money-making ventures of its operating companies, one by one, thus increasing the net revenues required to support local service. This is especially true when those revenues result from a venture which receives its value from its close association with the communications services provided by the local exchange company.

Accordingly, when we approved the publishing agreements between PNB and USWD, we provided that "the revenues which will be credited to PNB as a result of the transfer will be based on the difference between the revenues received from the publication venture, and the reasonable costs of publication." Order No. 88-488 at 9. In that same docket (UI 54), PNB represented that regardless of the transfer of the directory publishing operation to USWD, regulated ratepayers would continue to benefit from such publishing.

In other words, we have imputed to PNB, now USWC, directory revenues. This imputation lowers USWC's revenue requirement. In PNB's last general rate case in Oregon, UT 85, we determined that

a level of directory publication expense equal to [\*\*\*]<sup>16</sup> percent of USWD's [Oregon] net revenues is fair and reasonable for purposes of this proceeding. The remaining [\*\*\*\*] percent of USWD's [Oregon] net revenues should be imputed to PNB, lowering its revenue requirement by \$29.066 million. Order No. 89-1807 at 34.

Imputation of directory revenues to USWC is the form of annual compensation that was adopted by the Commission to remunerate the utility's ratepayers for USWD's use of their directory

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<sup>16</sup> The bracketed data are confidential.

related assets. See Order No. 89-1807 at 28-42. Those assets are USWD's right to publish directories on behalf of USWC and the associated opportunities, goodwill, reputation, and profits that derived from PNB's position as a regulated telecommunications service provider. In Order No. 89-1807, we determined that those assets belong to USWC's ratepayers.

In UT 85, Order No. 89-1807, we adopted a revenue retention ratio for determining the amount of directory revenues to impute to PNB. The ratio is derived by determining directory expenses as a percentage of USWD's net revenues (i.e., gross revenues less uncollectibles) and then imputing the remaining percentage of USWD's net revenues (directory profits) to USWC. Order No. 89-1807 at 29-30. Also in Order No. 89-1807, we adopted a 4.1% growth adjustment for PNB, because "the evidence indicates that there is a substantial likelihood that growth in directory revenues will equal or exceed 4.1% in the foreseeable future." At 41-42.

In UT 80, Order No. 91-1598, we adopted an Alternative Form of Regulation (AFOR) plan for USWC. As part of the plan, the utility agreed that

[it] will not challenge, through legislation or litigation, the Commission's authority to impute Yellow Pages revenues for ratemaking purposes. This agreement is binding for the five-year term of the Plan and for five years after the end of the Plan. However, USWC is not prohibited from challenging the methodology and amount of imputation after the term of the Plan has expired.

Order No. 91-1598 at 8-9. On May 1, 1996, the Commission terminated the AFOR plan by Order No. 96-107. The five year post AFOR period during which USWC is prohibited from challenging our authority to impute Yellow Pages revenues for ratemaking purposes runs through April 30, 2001.

Despite this agreement, USWC spent considerable time at hearing and in its briefs arguing against the rationale for imputing Yellow Pages revenues, against the legality of such imputation given the Telecommunications Act of 1996, and against the policy of imputation in the current deregulatory, procompetitive climate.

We will not address USWC's arguments about the rationale for Yellow Pages imputation. We believe we have set out our arguments clearly in the orders cited above. The directory publishing assets belong to the ratepayers. The ratepayers should be compensated for the profitable enterprise that PNB transferred out of its regulated operations.

As to USWC's legal arguments, we find them to be not only direct challenges to the Commission's authority to impute Yellow Pages revenues for ratemaking purposes, in violation of the AFOR provision quoted above; we also find them to be incorrect. We address them summarily.

USWC argues that the Telecommunications Act of 1996 requires that universal service support mechanisms be competitively neutral or they are subject to FCC preemption. 47 USC §253. The record in this case does not indicate that Yellow Pages imputation supports universal service entirely. Instead, it shows that profits from Yellow Pages are used to meet USWC's total revenue requirement. It is also premature to claim that USWC's local rates would be subsidized illegally as a result of imputation, because the Commission will not decide on particular service rates until the end of the rate design phase of this case. Finally, USWC in its comments to the FCC in FCC docket No. 96-98 raised the directory revenue imputation issue. The FCC did not adopt USWC's suggestion that state imputations of directory revenues be preempted. See FCC Order 96-325 (the Interconnection Order).

Even if directory revenue imputation were prohibited by the universal service provisions of the Act or by the provisions prohibiting barriers to competition, which USWC also argues, we would not simply allow USWC's shareholders to keep the directory profits. Ratepayers would have to be compensated for the valuable intangible assets (directory publishing rights, opportunities, reputation) that USWC has acquired in connection with USWC's position as a regulated telecommunications service provider.

USWC argues that it is unfair to use revenues from an advertising business conducted by another company, which never even appear on USWC's books, to depress USWC's retail rates. This plaint ignores the historical relationship of PNB and the directory assets, which we have determined belong to ratepayers.

USWC contends that ORS 759.050, the Competitive Zone statute, prohibits directory revenue imputation. USWC reasons that imputation creates a subsidy of the utility's local residential telephone rates, which will inhibit competitive entry. We do not consider imputation a subsidy, as we have stated, but compensation for assets that belong to ratepayers. Moreover, we note that although a number of potential competitors of USWC in the local exchange market have intervened in this docket, they have been silent as to the detrimental effects of directory revenue imputation on local competition.

USWC asserts that ORS 759.030(5) prohibits directory revenue imputation. This argument was considered and rejected by the Commission in UT 85, Order No. 89-1807 at 12-13, and will not be addressed again here.

USWC maintains that directory revenue imputation is prohibited by 47 USC §254k. That section provides:

SUBSIDY OF COMPETITIVE SERVICES PROHIBITED. A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The [Federal Communications] Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

This section does not apply to directory revenue services, which are nonregulated services legally subject to competition. USWC errs in relying on Staff's factual assertion that USWD dominates the directory publishing industry in Oregon.

Finally USWC argues that directory revenue imputation trenches on USWD's free speech rights. USWD, a separate entity from USWC, is not a party to this proceeding. USWC has no standing to assert USWD's rights here. Moreover, even if USWC did have standing, the First Amendment argument is meritless. USWC asserts that imputation, by extracting a subsidy from the directory advertising business, deters the exercise of the expressive and creative activities in that business. The implication is that absent

imputation, USWD would more aggressively increase its Yellow Pages revenues, concomitantly exercising editorial creativity and the expression of ideas. As we have stated many times, imputation compensates USWC ratepayers for use of assets that belong to them. If USWC feels that this arrangement impedes its affiliate's creativity and expression, USWC and its affiliate should arrange for some other form of compensation for ratepayers. The First Amendment does not contemplate uncompensated use of another's assets in the exercise of editorial creativity or the expression of ideas.

In the present case, USWC proposes a directory revenue imputation amount of \$34,829,500 for the test year. This is the amount the Commission has imputed to USWC annually since January 1, 1992. Staff, arguing that USWD's Oregon revenues have grown substantially since 1992, recommends an imputation amount of \$[deleted text not readopted]. Staff calculated this amount by applying the [\*\*\*\*] percent directory revenue retention ratio approved by the Commission in UT 85 to USWD's 1995 Oregon net revenues of \$[\*\*\*\*].

USWC contends that the following sources of directory revenues should not be imputed to it: sale of advertising to non USWC subscribers (national advertisers); [deleted text not readopted]; and recycling of directories. We reject this argument. These sources of revenues exist because USWC provides local telecommunications service. Regardless who purchases an advertisement, the point is to sell whatever is advertised to the subscribers of USWC, who receive the telephone directory. The value of the directory is directly linked to the regulated operations of the telephone company. Revenues from [deleted text not readopted] directory recycling also arise in connection with USWC's directory publication and distribution obligations as a regulated telephone company.

[Deleted text not readopted] USWD's financial worksheets for 1995 show that its Oregon net operating revenues after expenses were greater than Staff's recommended imputation amount.<sup>17</sup>

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<sup>17</sup> This assumes that a confidential amount in unspecified U S WEST Inc., budgeted (not actual) expenses allocated to USWD's Oregon operations were proper costs. There is some indication that USWD's Oregon costs for 1995 may be inflated by unidentified "other general and

Moreover, the factors relevant to the retention ratio have either not changed or have improved for USWD in Oregon. USWD still dominates the directory publishing market, with more than an 80% share. USWD's rates for advertisements have increased faster than the rate of inflation. USWD's Oregon revenues, net operating revenues, and net income have grown steadily since 1992 and USWD's returns on equity are very high. [Deleted text not readopted]

*Issue 3b: US WEST Direct Directory Revenue Growth.* The discussion on page 43 of Order No. 97-171 is readopted, but the amount in Appendix A, Column 16a, is amended to reflect the \$0.3 million reduction in growth due to exclusion of foreign directory revenues and the change in retention rate.

Staff recommends a directory revenue growth adjustment [deleted text not readopted] to Account 5230 (Directory Revenues) for the period rates resulting from this proceeding are expected to be in effect. This amount is 3.8% of the 1995 base directory revenue amount [deleted text not readopted], which equals the 6.8% growth, figured as a geometric average, of USWD's Oregon net directory revenues between 1992 and 1995, less the 3% access line growth adjustment Staff advocates in Issue 8j, Access Line Growth. Staff used August 31, 1997, the midpoint of the 32 month period when rates are expected to be in effect, to calculate the directory growth adjustment.

Staff argues that its directory revenue growth adjustment is reasonable in light of USWD's consistent record of directory revenue growth since 1992 and of the forecasts of outside financial analysts. Staff notes that USWD continues to dominate the directory publishing markets in Oregon. In 1995, USWD's publishing revenues grew by 7%; in second quarter 1996 they increased by 8% compared to the same period in 1995. For third quarter 1996 they increased 7% over against the same period in 1995. USWD also experienced a 4% increase in revenues per advertiser. Finally, Oregon is one of the ten fastest growing states in the nation, and USWC is facing strong demand for its telecommunications services in Oregon.

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administrative expense." There is also some indication that USWD underreported its Oregon revenues.

USWC argues that Staff's growth adjustment is onesided because Staff did not include any expenses in the adjustment. Staff responds that directory expenses are factored into the revenue retention ratio [deleted text not readopted], which Staff has used in this rate case. The ratio determines directory expenses as a percentage of USWD's net revenues. Only USWD's profits are imputed to USWC. Staff notes that USWC did not prove that USWD's future expenses for Oregon directory operations will be greater than the expense amounts factored into Staff's revenue retention ratio. As USWD's Oregon directory revenues grow, the amount of expenses incorporated in the retention ratio increases by a percentage of the revenue increase equal to 100 minus the retention ratio.

We adopted a 4.1% growth adjustment for PNB in UT 85, Order No. 89-1807, because of substantial likelihood that growth in directory revenues would equal or exceed 4.1% in the future. The same reasoning applies here. The evidence strongly points to continued growth for USWD directory revenues. Staff's proposal of 3.8% is conservative given USWD's growth to date. We adopt Staff's proposed growth adjustment. USWC's argument that Staff's calculation failed to include expenses is mistaken.

*Issue 4, Affiliated Interests and Corporate Allocations.* The Issue 4 adjustments at pages 44-59 of Order No. 97-171 are readopted.

#### ISSUE 4: AFFILIATED INTERESTS AND CORPORATE ALLOCATIONS

##### *Completely Settled Issues:*

- *Issue 4c, Strategic Marketing (Adjustment 19).* Staff and USWC agree to restate expenses to recognize the break up of Strategic Marketing. Appendix B, First Stipulation, Paragraph 4.
- *Issue 4d(3), Affiliated Interest Charges (Adjustment 20b).* Staff and USWC agree to remove charitable contributions, dues and memberships, lobbying and certain other affiliated interest charges. Appendix B, First Stipulation, Paragraph 5.

- *Issue 4g(1), Part 64 Still Regulated (Adjustment 23)*. The FCC deregulated certain services and required below the line accounting. That is, nonregulated and nonoperating income amounts are shown below the net operating income line on the income statement. Some of these services remain regulated in Oregon. Staff and USWC agree on amounts to add back, but disagree about whether revenues should be imputed to render these services revenue neutral (Issue 4g(2)).

***Significantly Undisputed Issues:***

- *Issue 4e, Affiliated Interest Return Component (Adjustment 21)*. Staff and USWC agreed to remove the rate of return that USWC had recorded in excess of the midpoint of Staff's rate of return range. For the final adjustment, Staff and USWC agreed to use the rate of return authorized in this docket. The final amount therefore depends on the resolution of Issue 2c, Cost of Equity. Appendix B, First Stipulation, Paragraph 6.
- *Issue 4f, Headquarters Allocations (Adjustment 22)*. Staff and USWC agree to (a) restate the test year to reflect the corporate allocation factors that became effective January 1, 1996, and (b) consider the effects of the exchange sales that occurred after the development of the factors that become effective January 1, 1996. The final amount depends on the resolution of disputed expense issues. Appendix B, First Stipulation, Paragraph 7.
- *Issue 4h, Nonregulated Costs Removed in Columns 18-21 (Adjustment 23b)*. Staff's test year is based on total Oregon data subject to separations. However, three of Staff's adjustments contain small amounts of unregulated costs, which Staff has removed. Staff and USWC agree that this adjustment



should be made if the Commission adopts Staff's adjustments in Issues 4b through 4e, affiliated interests. Therefore, the final amounts depend on the resolution of Issues 4b through 4e.

*Disputed Issues:*

- *Issue 4a, Rent Compensation Study (Adjustment 17).* Staff and USWC agree on this adjustment except that USWC disagrees that the Commission should disallow any costs related to square footage. Staff and USWC agree to replace the rent compensation carrying charge (a reduction to Miscellaneous Revenues) with rate base and expense amounts. The final amount also depends on the resolution of Issue 2c, Cost of Equity. In calculating the carrying charge, USWC used an overall company achieved rate of return of 10.81 percent. Staff recommends using the midpoint of the authorized rate of return range. The final amount also depends on the resolution of Issue 4b (UM 753 Lease Expenses) and the final allocation factors from Issue 4f (Headquarters Allocations).

Staff made the following adjustments to the July 1995 Rent Compensation Study:

- Removed 3.8958 percent of the headquarters, centralized and cross boundary amounts. This percentage represents the nonregulated portion.
- Adjusted the headquarters and centralized rent compensation floor space to reflect a composite amount of 300 square feet per employee.
- Adjusted the headquarters and centralized allocation factors based on labor dollars to reflect the UP 96 sale of exchanges to Telephone Utilities of

Eastern Oregon, Inc.,  
d.b.a. PTI Communications.

- Adjusted the operating rent amounts to reflect adjustments prepared by Staff in Docket UM 753.
- *Issue 4b, UM 753 Lease Expenses (Adjustment 18)*. Four leases were moved from docket UM 753 for litigation in this docket, and Staff has adjusted expenses accordingly. Staff also reduced lease expenses to reflect Order No. 96-179 in UM 753.
- *Issue 4d(1) and 4d(2), Fax Services (Adjustments 20-20a)*. Staff argues that fax services are regulated telecommunications services under the Commission's jurisdiction. Staff therefore restated revenues to recognize the June 1, 1995, service agreement.

Staff also increased the revenues to reflect the level expected during the period when rates from this docket will be in effect. USWC considers these fax services issues to be growth adjustments outside the test year. Staff disagrees; it argues that Issue 4d(1) is a normalizing adjustment.

- *Issue 4d(4), FCC License (Adjustment 20c)*. Staff restated the test year to recover the value of an FCC license sold by USWC. USWC disagrees with Staff's adjustment, arguing that it was already included in a rate case.
- *Issue 4g(2), Part 64 Still Regulated Revenue Imputation (Adjustment 23a)*. USWC disagrees that revenues should be imputed to render these services revenue neutral. If the Commission includes Staff's revenue imputation adjustment, then Staff and USWC agree that the final amount depends on the resolution of Issue 6c, Tariff, Price, and Contract Changes. The

final amount also depends on  
Issue 2c, Cost of Equity.

**Issue 4a: Rent Compensation Study - Excess  
Building Space**

USWC has telephone operations in fourteen states, of which Oregon is one. Within those states, USWC houses headquarters and centralized employees with multistate job functions and duties. Because of the multistate nature of the functions, USWC must perform studies to allocate the associated costs among the states it serves.

Staff proposes to adjust USWC's state composite headquarters and centralized employee space allowance to 300 square feet per employee. Staff's position is that building space expenses should be recognized in rates only if the expenses are reasonable. Staff's purpose in making the adjustment was to ensure that Oregon ratepayers do not bear costs for excess building capacity. Staff's adjustment would decrease USWC's proposed total Oregon rate base by \$2,151,561 and total Oregon operating expenses by \$735,484.

To establish its standard for square feet per employee, Staff compared USWC's rent compensation studies for 1992 and 1995. In its rent compensation study, USWC adjusts total building costs to remove nonadministrative space.<sup>18</sup> Staff determined that USWC's square footage per employee increased from 309 in 1992 to 347 in 1995. Total employees in the studied locations decreased by 6,284 from 1992 to 1995, but the number of headquarters and centralized employees at the studied locations increased by 7,785 during the same period.

Staff determined that the ratio of headquarters and centralized employees to total employees in a building is increasing, as is the square footage per employee. Staff concludes that with these increases, more dollars are assigned to the headquarters and centralized category for allocation among the 14 states. Staff argues that the increase in square feet per employee indicates

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<sup>18</sup> To achieve this, USWC deducts from total usable space vertical penetration (stairwells, elevator shafts), core areas (restrooms, lobbies, corridors, mechanical rooms), network equipment space, space rented to affiliates, third-party leased space, and computer space to arrive at administrative space.

that there is idle capacity and the fixed costs associated with it are being passed through for recovery in rates.

Staff notes that it selected 300 square feet per employee as a reasonable amount because that was approximately the amount calculated from the 1992 rent compensation study and because it was a conservative amount, being more than the Building Owners Management Association (BOMA) recommendation of 250 to 270 square feet per employee and more than the Public Utility Commission building use of 278 square feet per employee. Staff believes that because the 1995 study captures USWC's reorganization and downsizing, the proposed adjustment more accurately represents where USWC's building cost level will be during the time rates are in effect.

USWC argues that the Commission may not disallow the expenses in question without a showing that they have been imprudently incurred. USWC notes that Staff does not claim that USWC acted imprudently in acquiring or failing to dispose of building space. USWC maintains that it made a good faith decision to acquire space when it was needed, and that it should now be allowed to recover costs for idle building space just as it is allowed to recover other telephone investment.

USWC also argues that Staff's calculation of square footage relies on USWC's rent compensation studies, which were designed to allocate building investment and lease expense for space used in providing service for more than one state. The data in those studies, USWC maintains, were not collected to measure average floor space per employee, and the studies do not use the BOMA definition of usable administrative space. Therefore, USWC argues, Staff draws incorrect inferences from the study and makes comparisons to external measures that Staff cannot show to be reasonably comparable. USWC contends that space for parking and cafeterias is included in its rent compensation studies but not in the external measures Staff uses, while contract employees and employees of vendors are not included in Staff's calculations, although they are present in USWC's buildings. USWC argues that these factors result in an overstatement of the company's space per employee. USWC argues that, taking these factors into account, its "usable administrative space" is within Staff's 300 square feet per employee standard.

USWC also charges that Staff's 300 square feet per employee standard is arbitrary. Staff responds that it did not set the 300 square foot per employee limit solely based on the Commission building or the BOMA standards. Staff used those external comparisons only as guidelines. If it had, the limit could have been 270 or 275 square feet per employee. Instead Staff set the limit at 300 square feet, which, it argues, accommodates the existence of contract employees.

USWC notes that it provided actual data for its major buildings that should be used for this analysis, rather than the inapplicable rent compensation study. USWC asserts that its affiliate Business Resources, Inc., (BRI) tracks usable administrative square feet for major buildings, and this tracking shows the major building space per employee to be 269 square feet in September 1996. USWC Exhibit 75 summarizes BRI's results. This information, according to USWC, is traced in a manner consistent with the BOMA definition of usable space.

Staff contends that this exhibit omits minor buildings, which constitute about one third of USWC's total headquarters and centralized employee space. The average square footage per employee in the 1995 rent compensation study for minor buildings exceeds the average for major buildings by 48 square feet.<sup>19</sup> Staff argues that USWC Exhibit 75 does not establish USWC's reasonable use of "minor building" space or that its total composite state building space is reasonable.

Second, Staff notes that USWC Exhibit 75 contains no comparison with July 1995. Staff points out that a comparison of Exhibit 75 and the July 1995 rent compensation study shows that headquarters employees increased from 26,049 in 1995 to 31,830 in USWC Exhibit 75. Staff argues that the increased concentration of headquarters employees in major buildings may have decreased the major building square footage per employee found in September 1996.

Moreover, Staff responds that USWC fails to recognize that the initial basis for Staff's adjustment was the comparison between the 1992 and

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<sup>19</sup> According to Appendix D to Staff's Opening Brief, at 4, USWC's response to Data Request 89, the 1995 building study, indicates that the major buildings have a square footage per person average of 332, while the minor buildings average 380 square feet per person.

the 1995 rent compensation studies. If the studies include any space that deviates from what would be included under the BOMA standards, this is largely irrelevant, Staff contends, because the additional space would be included in both the 1992 and the 1995 calculations. Staff gives weight instead to the increase in square feet per employee, which it contends is attributable to excess building capacity.

USWC responds that the Commission should give more weight to Exhibit 75 than to the rent compensation studies figures. First, the company argues that Exhibit 75 measures according to BOMA standards, so that it is clear what is included and what is excluded. Second, USWC adds the 48 square feet by which the minor buildings exceed the major building average in Staff's Appendix D to the 269 square foot average for the major buildings in Exhibit 75 to arrive at an average for the minor buildings of 317 square feet. USWC then weights this figure, multiplying the major buildings' 269 square feet by 67% and the minor buildings' 317 square feet by 33%, which yields a composite 285 square feet per employee.<sup>20</sup>

*Disposition.* We accept Staff's calculation of 300 square feet of administrative space per employee in headquarters and centralized buildings as reasonable. However, we believe that the record is unclear with respect to what the rent compensation studies include. Staff notes that the figures do not include contract workers, but argues that its 300 square foot figure is conservative enough to accommodate such workers. However, Staff does not answer USWC's contention that the rent compensation studies include space for parking and cafeterias, whereas the external measures do not.

Staff seems to argue against an adjustment based on Exhibit 75 because during the test year the square footage per employee in headquarters and centralized buildings could have exceeded 300 square feet. However, as we stated in the discussion of Issue 1A, the function of a test

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<sup>20</sup> USWC also calculates the minor building average square footage on a percentage relationship. The rent compensation study gives 380 square feet as average for the minor buildings, which is 14% greater than the 332 square feet for the major buildings. Applying the same percentage relationship to the BRI major buildings yields 308 square feet for the minor buildings. If these figures are weighted by percentage, the composite is 282 square feet.

year is to represent expenses during the time rates will be in effect. Staff notes that the 1995 rent compensation study captured a point at which USWC had not completed its plan to position itself for competition. Therefore, we find it appropriate to consider the 1996 data represented by Exhibit 75. Not only do those data reflect a later period, in which we may assume that USWC has progressed in its plan for competition; we also have better assurances that those data reflect only administrative space.

Following USWC's calculation of minor and major building square footage per employee, we conclude that USWC's average square footage per employee in headquarters and centralized buildings is under 300 square feet. USWC's rent expenses are, therefore, reasonable and will be allowed. We note that our decision on this issue is limited to the facts before us. Where the use of space changes, we will not automatically approve continued expense. We approve the expenses in this issue because we find them reasonable.

#### Issue 4a and 4b: Lease Expense

Staff proposed adjustments for various aspects of USWC's lease expense for certain identified properties. USWC stipulated to each adjustment except for the one concerning the property called "1201 Farnham." At issue is the allocation of space at that property between office/administrative space and lab/computer space. The allocation is significant, because lab/computer space is more expensive than administrative space.

From a consultant's study provided by USWC, Staff determined that the Farnham space should be allocated roughly 80% to office use and 20% to computers. Staff proposes to disallow \$243,013 of lease expense for this property on a system wide basis. The Oregon share of this disallowance is approximately \$20,000. USWC claims that these percentages should be reversed. With its reply testimony USWC submitted an exhibit, USWC Exhibit 79, which USWC alleges shows the actual configuration of the property. USWC argues that Staff's allocation of space should have been revised in view of these actual data about the building's composition. USWC contends that it is arbitrary and capricious of Staff to ignore the actual evidence of its second exhibit.

Staff responds that it took the first data USWC submitted, the consultant's study, to be actual data with respect to the configuration of the Farnham property, and that the second document USWC submitted conflicted with the first. Staff further asserts that it had not had a fair opportunity to analyze, verify, and possibly normalize the data in the second document. Moreover, Staff argues, Exhibit 79 was not supported by any documentation.

*Disposition.* We conclude that USWC's evidence is insufficient to show that the actual configuration of the Farnham property is dedicated roughly 80% to lab/computer functions and 20% to administrative functions. It is reasonable for Staff to rely on the evidence USWC first submitted, because Staff has not had a reasonable opportunity to examine the second document USWC submitted, which conflicts with the first. If USWC can document its new numbers for the Farnham property, the lease expense should be higher in the next rate case.

#### Issue 4d(1): Fax Services

Staff recommends increasing Account 5260, Miscellaneous Revenue, by \$137,200 to account for revenues USWC receives from CSC Intelicom, Inc., (CSC) in conjunction with the provision of facsimile (fax) services. Staff takes the position that fax service is a regulated telecommunications service and that USWC is jointly providing fax services with CSC.

USWC argues that the Commission has no jurisdiction to regulate fax services. The company further argues that it is not providing fax services but merely providing marketing support for CSC, which owns the hardware and, according to USWC, controls the provision of the services.

USWC also argues that Staff's position on this issue is inconsistent with the position it takes on Issue 4g, Part 64 Still Regulated. Finally, USWC argues that Staff's adjustment is incorrectly calculated.

*Service Provision.* The contract between CSC and USWC is a confidential exhibit (Staff 81). The contract confirms USWC's claim that CSC owns the hardware involved in provision of fax services, and USWC is responsible for marketing. However, the contract reveals that USWC is also responsible



for controlling significant aspects of the fax service provided over its telephone lines. We conclude, therefore, that USWC is jointly providing fax service with CSC.

*Jurisdiction.* Staff argues that the Commission has jurisdiction over USWC's provision of fax services because we have jurisdiction over the service a utility provides. Staff cites to Order No. 89-1807 (UT 85) at 9-13 (discussion of Commission jurisdiction over directory revenues).

USWC argues that the Commission has no jurisdiction over the provision of fax services. USWC argues that the FCC has deregulated fax services and that they should therefore not be regulated by the Commission. USWC also argues that since fax services are generally not regulated by the Commission, the fax services USWC provides with CSC should also not be regulated. USWC rebuts Staff's argument of jurisdiction by arguing that the Commission's conclusion that it had jurisdiction over directory revenues in Order No. 89-1807 was based on a finding that the directory was a facility used in conjunction with voice communications. USWC contends that there is no evidence in the record that fax services are used in the same way with reference to voice communications.

We conclude that it is irrelevant that the FCC has deregulated provision of fax services. Unless the FCC preempts state regulation, that regulation remains a matter for the states. See, e.g., the discussion of Part 64 Still Regulated, below.

The discussion in Order No. 89-1807 does not rely on a relationship between a service and voice communication for a finding of jurisdiction. Instead, at 10, it sets out the definition of "service" in ORS 756.001(12), which provides that "service" shall be used "in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or product." The order concludes that "the Commission possesses authority over not only the provision of natural gas, electricity, telephone messages, and the like, but also over those ancillary services which are closely related to the provision of public utility service." *Id.* The definition of "telecommunications service" or "service" in OAR 860-032-0001(10) supports the position that we have jurisdiction over fax services. That definition reads in part: "[S]ervice' means two-

way switched access and transport of voice communications, and all services provided in connection with such services . . . ."

Fax services are provided in connection with telecommunications services in that they employ telephone lines to transmit data. We conclude that we have jurisdiction over USWC's fax services.

*Consistency of Staff's Position.* USWC notes that in Issue 4g, Staff imputed revenues equal to the services' costs to keep them revenue neutral for purposes of this rate case. USWC argues that fax service is a Part 64 service and should also be revenue requirement neutral. However, Staff did not impute costs for fax services.

Staff responds that its adjustment in Issue 4g is not a global adjustment for all Part 64 Still Regulated services, but applies only to specific services. This argument is set out in greater detail in the discussion of Issue 4g below.

We conclude that Staff is correct in its argument. Staff has recommended imputation of revenues for five enhanced services that are underearning. Fax services are not underearning and are, therefore, not included in the Part 64 group of services in Issue 4g.

*Calculation of Staff's Adjustment.* USWC asserts that the \$137,200 imputation for fax services is too high because it does not include actual costs. The company also contends that the test period is flawed, because it contains 20 months rather than 12. Finally, USWC suggests that the \$137,200 may contain interstate revenues.

Staff replies that USWC witness Carl Inouye stated on cross examination that the company had not provided cost information to Staff on fax services. Staff argues that the test period for fax revenues is correct. Staff used USWC's fax revenue estimates for post-June 1995, 1996, and part of 1997. Staff argues that the test period is not overstated. In fact, Staff reduced the level of 1996 and 1997 fax revenues in its adjustment because USWC had failed to meet its own revenue projections for 1995.

Staff notes that its adjustment accounts for interstate revenues because Staff uses a separations factor to separate intrastate revenues from interstate revenues on all adjustments. Staff

also notes that it used the company's own numbers to calculate the adjustment.

*Disposition.* We are persuaded by Staff's arguments. We conclude that the adjustment for fax services Staff has proposed is reasonable and should be accepted. The revenues from fax services will be imputed to USWC.

#### Issue 4d(2): Growth in Fax Services

*Growth Adjustment.* Staff recommends an increase of \$807,100 to Account 5260 to account for growth in fax services for 1996 and 1997. Staff points out that it reduced the level of 1996 and 1997 fax revenues in its adjustment because the company had not met its revenue projections for 1995. USWC opposes a fax services growth adjustment for the same reasons it opposes other adjustments to the test year. That is, USWC argues that the adjustment distorts the test year by failing to include expense or investment involved in generating the revenues at issue. USWC witness Inouye testified that because of its disagreement with Staff over test year construction, USWC did not intend to provide cost estimates for 1996 and 1997. Tr. 321-22.

*Disposition.* We support Staff's growth adjustment for the same reason we support other growth adjustments (see, e.g., discussion of Issue 3b above and 8j below). These adjustments make the revenues representative of the time that the rates from this docket are likely to be in effect.

USWC cannot both refuse to submit cost estimates and complain that Staff fails to include revenues and expenses in its test year adjustments. USWC has the burden to show that its costs are reasonable. ORS 759.180(1). Staff's growth adjustment is fair and reasonable and should be accepted. The revenues from fax service growth will be imputed to USWC.

*Filing a Tariff for Fax Services.* USWC currently offers fax services without a tariff. Staff asks the Commission to order USWC to file a tariff for fax services and to properly record the fax service revenues in the appropriate account.

*Disposition.* In view of our conclusion that we have jurisdiction over USWC's provision of fax services, we conclude that USWC must file a tariff

for its fax services and record its fax service revenues in the appropriate above the line account. If USWC wishes to petition to have fax services deregulated, it may do so pursuant to ORS 759.030.<sup>21</sup>

#### Issue 4d(4): FCC License

Staff proposes a \$448,185 increase in total Oregon miscellaneous revenues to account for the value of an FCC license that USWC (then Pacific Northwest Bell, PNB) sold to U S WEST NewVector Group, Inc., (NVG), an affiliated company.

In Order No. 90-1516, the Commission approved a sale of paging service assets by USWC to NVG. The assets included an FCC license. Staff takes the position that Order No. 90-1516 did not place a value on the FCC license, but left to "the next rate case" the issue of valuation and ratemaking treatment of the license. Staff has now calculated a value for the FCC license.

USWC takes issue with Staff's determination that the value of the license should be part of UT 125 and with the calculation of the value of the license.

Order No. 90-1516 approving the transfer of paging assets from PNB to NVG contains a stipulated settlement with regard to the transfer. The settlement provides, in relevant part:

1. Staff and ORCCA [Oregon Radio Common Carrier Association] recommend that the Commission approve both parts of PNB's application based upon PNB's agreement to conditions 2 through 7.

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<sup>21</sup> USWC argues that if the Commission orders USWC to file a tariff for its fax services, under the Equal Protection clause, we must also order the same for the hundreds of other sales agents who do precisely the same thing that USWC does with fax services in Oregon. We disagree for two reasons. First, we have found that USWC is not merely a sales agent but a coprovisioner of fax services. Second, USWC is a regulated utility subject to Commission jurisdiction over its telecommunications services and services provided in connection with those services. See discussion at Issue 4d(1) above. That is not the case with the hundreds of other sales agents operating in Oregon.

2. PNB will transfer the paging assets to NewVector at net book value determined as of the date of the Commission Order adopting the Settlement Stipulation.
3. NewVector will make an additional one time payment to PNB in the amount of \$135,400.
4. PNB will recognize the \$135,400 payment it receives from NewVector on its books of accounts as a liability.
5. The Commission shall determine the appropriate treatment of this liability described in No. 4 during PNB's next rate case.

Order No. 90-1516, Appendix A at 2. The Commission adopted the terms of the stipulation.

The sum of \$135,400 in addition to net book value of the paging assets represented the present value of an annual payment of \$28,443 for 10 years. \$28,443 was Staff's estimate of PNB's 1989 net revenue from the paging service; 10 years corresponded to the remaining life of the existing assets. *Id.* The purpose of the \$135,400 payment in addition to the transfer of the net book value amount was to compensate the utility for the potential loss of revenue resulting from the paging asset transfer. Staff argued that the two components, net book value of the assets and compensation for potential revenue loss, gave a reasonable approximation of fair market value. *Id.*, Appendix A at 8 (testimony of Staff witness E. Michael Myers). Mr. Myers characterized this mechanism for approximating fair market value as one "by which the sale of the utility property which is the subject of UI 90/UP 53 is fair and reasonable and not contrary to the public interest." *Id.* at 7.

Staff argues that the \$135,400 was merely a placeholder for the minimal value of the paging assets and was to be revisited in the next rate case, at which time a more accurate value for the FCC license would be substituted for the placeholder value. Based on conversations with Staff members involved in the docket that resulted in Order No. 90-1516 (UI 90), Staff witness Marion Anderson concluded that Staff had been unable to assign a fair market value to the FCC license, because no market information was available.

Therefore, he testified, the issue was put aside to be dealt with later.

Staff asserts that its calculation of the value of the FCC license, while likely not correct, is flawed due to USWC's failure to provide necessary information for the valuation to be accurately computed. Finally, Staff argues that UT 125 is the "next rate case," rather than UT 102, as USWC asserts.

USWC argues that Staff's proposed adjustment would violate the terms of the settlement agreement set forth above. USWC argues that according to the plain language of the settlement, the only issue preserved for the next rate case was the ratemaking treatment of the \$135,400 payment. USWC submits that that amount may not be reevaluated and reset in this docket. USWC points out that the radio licenses transferred in Order No. 90-1516 were specifically listed in the application seeking Commission approval; the option of reevaluating the FCC license was therefore not preserved by silence. Moreover, USWC notes that in the first paragraph of the stipulation, Staff specifically recommends that the Commission adopt both parts of PNB's application. That recommendation includes the FCC licenses.

USWC points out that with Staff's concurrence, the \$135,400 was returned to ratepayers along with approximately \$4.9 million in Ballot Measure 5 property tax savings, as a one time refund in the January 1995 billing cycle.

**Disposition.** According to Mr. Myers' testimony in support of the stipulated settlement of Order No. 90-1516, Staff believed it had found a mechanism for treating the transfer of paging assets, which included the FCC license, in a way that was fair and reasonable and in the public interest. Rather than being a placeholder value, the order at 3 and Mr. Myers' testimony show the figure to be the calculation of an income stream from the paging assets with the purpose of replacing revenues lost due to the transfer. The record shows that the paging assets were carefully valued. Order No. 90-1516 at 3.

We do not read either the stipulation or Mr. Myers' testimony to preserve the reevaluation of the \$135,400 in Paragraph 4. The agreement gives a liquidated amount for the liability mentioned in Paragraph 5. The only undetermined issue with respect to the asset transfer is what

ratemaking treatment the amount is to receive. Whether UT 102 or UT 125 is the appropriate forum for that decision is moot, since the issue was resolved by a one time refund in 1995.

We conclude that Staff's proposed adjustment should not be accepted.

#### Issue 4g(2): Part 64 Still Regulated

Part 64 refers to the FCC regulations codified at 47 CFR Part 64, Subpart I, §§64.901 through 64.904. These regulations govern the allocation of costs between regulated and nonregulated activities. Oregon has adopted similar cost allocation standards at OAR 860-027-0052 and OAR 860-035-0050. The allocation of joint and common costs between regulated and nonregulated operations under Part 64 is designed to prevent regulated ratepayers from supporting the costs of providing nonregulated services. Services purchased by the nonregulated operations from the regulated operations are purchased at tariffed rates. The remaining joint and common costs are allocated, to the extent possible, on a directly assigned or attribution basis. Only costs with neither direct nor indirect measures of attribution, such as certain general office expenses, are allocated on a general allocator, which is based on the expenses previously allocated by direct assignment or attribution.

Currently, enhanced services<sup>22</sup> are subject to Part 64 allocation. Part 64 deals with five categories of enhanced services, only two of which concern us here: services that have never been subject to federal or state tariff regulation, such as video dialtone, and federally deregulated services that remain regulated by the state jurisdiction.

The USWC services that are deregulated in the interstate jurisdiction but still subject to regulation in the state jurisdiction and subject to Part 64 allocation are:

<sup>22</sup> OAR 860-035-0020(13) defines "enhanced service" as:  
a service which employs computer processing applications that act on the format, content, code, protocol or similar aspects of the customer's transmitted information; provides the customer with additional, different, or restructured information; or involves customer interaction with stored information. . . .

1. Protocol Conversion: converts data transmission protocols in cases where the originating protocol is different from the terminating protocol.
2. Customer Dialed Account Recording (CDAR): allows customers to identify call billing details to various customer assigned account codes for their own internal purposes.
3. Voice Messaging Service (VMS): allows a customer to maintain a voice mail box to record, save, and retrieve phone messages.
4. Video Dialtone Service (VDT) (currently renamed Open Video Systems (OVS)): provides for broadband network deployment for interactive video and other multimedia customer services.
5. Planning for Enhanced Services: encompasses various planning and market research activities but primarily appears to target screenphone services that allow the customer to take advantage of advanced network call handling and messaging features.

Staff recommends that the Commission impute \$3,377,859<sup>23</sup> in total additional revenue for the five categories of Part 64 services, in order to render the five services revenue requirement neutral for purposes of this rate case.

Staff and USWC agree that under Part 64 attributable cost accounting methods, these five enhanced services individually and collectively earn less than their costs. USWC and Staff also agree on the financial impact of the services.

Staff does not recommend a global policy of imputing revenues for all Part 64 services. Staff recommends addressing other services on a case by case basis. The enhanced services for which Staff recommends imputation in this docket are all

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<sup>23</sup> Staff originally recommended that the Commission impute \$3,472,397, then recommended reducing that amount by \$94,538 to eliminate double counting of new USWC voice message promotions should we approve Staff's adjustment under Issue 6c. We approve Staff's 6c adjustment and use the reduced figure here.



underearning, and each has a unique context. Therefore, we discuss the services one by one.<sup>24</sup>

1. and 2. *Protocol Conversion and CDAR*. Both of these services appear to be moribund. Protocol Conversion was canceled in December 1995, and CDAR is neither tariffed nor price listed currently. Both services involve minimal revenues. Staff argues that it is unreasonable to continue to support these dying services until the next rate case, and recommends imputation to render the services revenue requirement neutral.

3. *VMS*. Revenue for this service is significantly below cost. However, VMS is the fastest growing enhanced service. VMS regulation is addressed by the 1996 Telecommunications Act and subsequent FCC action. Section 260(a)(1) of the Act provides that a local exchange carrier "shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access [service]." In its Order No. 96-490, ¶¶ 39-45, the FCC concluded that §260 extends to the prevention of improper cross subsidization related to intrastate service.<sup>25</sup> Staff argues that the VMS revenue imputation it proposes will help USWC comply with the Act and the FCC order.

4. *VDT/OVS*. This service is in the planning and development stages, with a successful trial underway in Omaha, Nebraska. There is no Oregon revenue and no Oregon tariff for this service. Without a revenue imputation to render this service revenue neutral for this rate case, Staff argues that other services will in effect pay the test year VDT development costs in the amount Staff proposes to impute. This support would continue until the next rate case.

The 1996 Telecommunications Act addresses OVS at 47 USC §651 and 653. The FCC has published a Notice of Proposed Rulemaking (FCC Order No. 96-214<sup>26</sup>) indicating its intent to apply Part 64 cost allocation methods to protect regulated telecommunications services against cost misallocations due to the provision of OVS by local exchange carriers. In addition to the goal of

<sup>24</sup> Staff's recommended imputation amount per service is confidential. See Confidential Staff Exhibit 11.

<sup>25</sup> We take official notice of FCC Order No. 96-490 pursuant to OAR 860-014-0050.

<sup>26</sup> We take official notice of FCC Order No. 96-214 pursuant to OAR 860-014-0050.

ensuring that rates are just and reasonable, the FCC stated:

We also seek to ensure, as mandated under Section 254(k) of the 1996 Act, that incumbent local exchange carriers do "not use services that are not competitive to subsidize services that are subject to competition." Order No. 96-214 at 12.

Staff argues that the Commission should not support the VDT/OVS venture with revenues from other telecommunications services and ratepayers. In the current environment, Staff contends, it is appropriate that this new venture stand alone. The simplest way to accomplish that, according to Staff, is to impute sufficient revenues to render VDT revenue requirement neutral for purposes of this rate case. Staff argues that this action would leave the Commission positioned to respond to either federal preemption of VDT/OVS or to a USWC petition to deregulate the service without having to consider potential ratepayer claims to profits from the service.

*5. Planning for Enhanced Services.* As is the case with VDT/OVS, there is currently no Oregon revenue for this service. Staff's proposed imputation amount is considerably less than for VDT/OVS, however. Staff acknowledges uncertainty about the actual use of the service. If the service addresses only advanced network calling features, then it would be directed at a still regulated service. On the other hand, if it focuses ultimately on screenphones, which are a type of customer premises equipment, then it is preemptively deregulated by the FCC. Given the uncertainty surrounding this service and its absence of Oregon revenues, Staff recommends rendering it revenue requirement neutral for purposes of this rate case.

Staff argues in favor of imputing revenues from these five services in order to prevent cross subsidy of these competitive services by services that are not subject to competition; i.e., basic service.

USWC contends that Staff is inconsistent in its position on imputation. On the one hand, USWC argues, Staff wants to impute Yellow Pages revenues to USWC. USWC views this imputation as a cross subsidy of basic service by directory revenues. On the other hand, USWC maintains that Staff justifies its recommended imputation in this issue by saying it wishes to prevent cross subsidy

of enhanced services by basic service. USWC also argues that it is unfair to select out a group of services subject to competition and impute their revenues without subjecting all competitive services to the same imputation methodology.

USWC also objects to Staff's proposed imputation of revenues for the Part 64 services, in part because Staff applies the imputation on the basis of a fully distributed cost method instead of an incremental cost method. USWC argues that it is bound to price its services at incremental cost and Staff's imputation methodology is therefore unfair.<sup>27</sup>

We find the imputation of Yellow Pages revenues a different matter from imputation of revenues from these services to make them revenue requirement neutral for purposes of the rate case. As we discussed in Issue 3a, Yellow Pages imputation gives ratepayers a benefit for the use of assets that belong to them. In our view, Yellow Pages imputation is a solution to the historical effects of divestiture and PNB's spinning off the directory publishing affiliate. That makes Yellow Pages imputation unique. We do not consider Yellow Pages imputation a subsidy.

The imputation at issue for the five Part 64 Still Regulated services is designed to prevent subsidies flowing from basic service to services that are a) subject to competition and b) underearning. Staff's recommended imputation is fair in two ways. It protects customers from

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<sup>27</sup> USWC also maintains that in Dockets CP1, CP 14, and CP 15, USWC's competitors argued that the company should be prevented from having revenues granted in rate proceedings that could be used to support services subject to competition. USWC argues that the Commission rejected the competitors' arguments and reiterated its obligation to provide USWC with an opportunity to recover its capital and earn a fair rate of return. Order No. 96-188 at 98. USWC appears to have taken an argument out of context. The passage in question refers to the necessity of retaining a revenue requirement for the local exchange carriers as long as rate regulation is still in effect. The passage reads:

AT&T, MCI, and ELI argue that the concept of a revenue requirement has no validity in a competitive environment. Revenue requirement calculation is necessary as long as LECs are subject to rate of return regulation. Although competition is emerging in telecommunications, we continue to have a constitutional obligation to regulate LECs in a manner that provides them a fair opportunity to recover their costs and earn a reasonable return. *Duquesne Light Co. v. Barasch*, 488 US 299, 310, 109 S Ct 609, 102 L Ed2d 646 (1989).

paying rates that reflect costs of services that are not paying for themselves, and it shields USWC from eventual claims by ratepayers to profits or development costs for these services.

USWC objects to Staff's imputation methodology, which applies the imputation on the basis of a fully distributed cost method. We find Staff's method reasonable for the following reasons. First, there is no Oregon total service long run incremental cost or other measure of incremental cost for nonexistent services, such as Planning for Enhanced Services, OVS, Protocol Conversion, or CDAR. Second, the FCC accounting rules and our own accounting rules provide that the fully distributed cost method should be used in accounting for these services. 47 CFR Part 64; OAR 860-027-0052; 860-035-0050. Finally, we note that Staff and USWC have stipulated to the financial impact of these services.

We conclude that Staff's imputation recommendation is reasonable in principle and applies the correct methodology. We accept Staff's recommendation on Issue 4g(2).

*Issue 5, UP 96 Sale of Exchanges.* The Issue 5 discussion at pages 59-62 of Order 97-171 is readopted.

#### ISSUE 5: UP 96 SALE OF EXCHANGES

##### *Completely Settled Issues:*

- *Issue 5b, Stipulation (Adjustment 25).* In docket UP 96, USWC agreed to use part of the gain on the sale as a rate base reduction. Staff and USWC agree on the intrastate effects, but the total Oregon amount depends on the final factors in Issue 10, Final Test Year Separation Factors. This has no effect on revenue requirement. See Appendix B, First Stipulation at Paragraph 10.
- *Issue 5c, Effect on Property Taxes (Adjustment 26).* Staff and USWC agree to include the property tax savings resulting from the sale of exchanges to PTI. See Appendix B, First Stipulation at Paragraph 11.

*Disputed Issue:*

- *Issue 5a, Sale of Exchanges (Adjustment 24).* Staff and USWC disagree on plant specific, plant nonspecific, customer operation and corporate operation expenses. Revenues, property taxes, rate base, and other expenses were stipulated. See Appendix B, First Stipulation at Paragraph 9.

In October 1995, USWC sold 23 exchanges totaling about 16,000 lines to Pacific Telecom, Inc. (PTI). The Commission approved the sale in Docket UP 96, Order No. 95-526. To normalize the test year to reflect the financial effects of this sale, Staff proposes a controllable expense reduction of \$3.030 million. This adjustment includes labor expense reductions of \$1.991 million and associated nonlabor expense reductions of \$1.039 million.<sup>28</sup>

Staff's approach to normalizing the test year took three factors into account. First, in analyzing the financial impact of the sale, USWC estimated that the UP 96 controllable expense reduction would be about \$3.0 million. Second, Staff used information USWC provided during the UP 96 docket to project controllable expense savings from the PTI sale at \$2.998 million. Finally, Staff considered that USWC's Oregon direct employee count in 1995 dropped by over eight times the number of employees that Staff estimated were saved due to the UP 96 sale. Staff's approach is set out below.

*USWC's estimate of controllable expense reduction.*  
In developing its 1996 headquarters allocation factors, USWC computed savings due to the PTI sale. USWC estimated that UP 96 would effect a \$2.5 million reduction in plant specific, plant nonspecific, and customer operations for ten months of 1995. USWC's estimate was based on

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<sup>28</sup> All other financial effects of the sale have been settled between Staff and USWC. The parties disagree on the amounts of adjustments for labor and associated nonlabor controllable expense components in Column 24, Lines 9 (Plant Specific), 11 (Plant Nonspecific), 14 (Customer Operations), and 16 (Corporate Operations) of Appendix A, p. 6.

average per line costs. Annualized, this estimate comes to \$3.0 million.

*Estimate of savings developed during UP 96.* Staff compared USWC's savings estimate of \$3.0 million with Staff's estimate of expense reductions in the UP 96 case and found them nearly equal. Staff's estimate of \$2.998 million was based on a USWC financial model and information provided by USWC. In UP 96, USWC witness Carl Inouye testified that Staff's estimate of savings was a reasonable estimate of the effect of the sale a year or so after the sale. Staff argues that its current estimate of UP 96 savings is thus consistent with the figures USWC presented to Staff during UP 96 and used in part to justify the sale as being in the public interest.

*Employee reductions.* Staff's \$2.0 million labor reduction component of the UP 96 savings is equivalent to a reduction of 1.9 managers and 37.6 craft employees. These numbers, Staff notes, are comparable to the information provided to Staff in UP 96. As part of its analysis, Staff considered the overall loss of direct Oregon USWC employees between December 1994 and December 1995 to help evaluate whether the estimated loss of UP 96 employees was reasonable. Staff determined that the actual direct employee loss in 1995 was over eight times the 40 employees attributed to the UP 96 sale, and concluded that the 40 employee figure was reasonable or even conservative.

USWC identifies its controllable expense savings from the sale of the 23 exchanges as being \$157,207 (power costs of \$107,057 and maintenance costs of \$50,000). USWC argues that its ongoing expense level has not declined. It argues that any further adjustment, if allowed,<sup>29</sup> should be limited to recognizing elimination of four employees, a reduction of \$.226 million in labor expense.

The testimony of Mr. Inouye indicates that the labor expenses associated with the four employees were the actual expense reductions associated with the PTI transfer.<sup>30</sup> But USWC witness Michael Solso, to whose testimony Mr. Inouye refers, testified on redirect that his purpose in the rate

<sup>29</sup> This characterization of USWC's position is based on Mr. Inouye's written testimony on UP 96 in this docket, which does not acknowledge the existence of the power and maintenance cost savings.

<sup>30</sup> See us Exhibit 55, Inouye 111.

case was to "identify the technicians that were associated with the sale of the exchanges." Tr 39. He identified six technicians, two of whom were redeployed.

Staff argues that not only did Mr. Solso fail to mention the acknowledged power and maintenance cost savings, or other savings such as plant and maintenance record savings, clerical and support staff savings, customer complaint savings, billing and collection savings, and fractional technical employee savings, he did not even address all the technicians who served the sold exchanges. Staff points out that the six technicians identified by Mr. Solso were located at staffed wire centers in Burns, John Day, and Heppner. Of the remaining 20 wire centers in the exchange, 15 were served by other employees. Those 15 exchanges were responsible for more than half the lines sold to PTI. Additionally, Staff notes that technicians from Hermiston, Baker City, or Pendleton sometimes backfilled even the directly served exchanges because of illness or vacation.

Staff also notes that USWC did not update its 1993 power cost information to 1995 for the 23 sold exchanges, and did not include any power costs for the Durkee or Merrill exchanges or power for outside remote facilities.

In his prefiled testimony, Mr. Inouye compared USWC "equivalent employee" counts in September 1995 (3,865) and December 1995 (3,891) and suggested that these figures indicate that Staff's direct employee reduction analysis is unreliable. The 3,891 figure, Staff objects, does not include changes in the Oregon allocated headquarters and centralized employee calculations due to the PTI sale. The revised factors incorporating the sale were not computed until January 1996. Staff points out that the March 1996 headcount is the first quarterly equivalent employee number available after the PTI sale that includes the impact of the sale. That number is 3,863, or 38 fewer employees than the December 1995 figure and 196 fewer employees than the March 1996 figure. Staff argues that a proper comparison of equivalent employee numbers supports Staff's estimate of UP 96 controllable employee cost savings.

Finally, USWC contends that Staff's UP 96 adjustment errs in using the USWC financial analyses that were based on "steady state operations." Staff acknowledges that other aspects

of USWC's operations may change, but asserts that its proposed adjustment fairly captures USWC's savings on a going forward basis. Staff argues that USWC's Oregon equivalent employee counts are falling. Staff also notes that USWC's employee efficiency per access line is improving (down to 31.2 employees per 10,000 access lines in third quarter 1996, compared with 32.7 in third quarter 1995). Hence, Staff contends, steady state assumptions for purposes of a UP 96 adjustment are fair and reasonable to USWC.

*Disposition.* Staff presents its proposed adjustment as a normalizing adjustment to remove from the test year expenses that, due to the sale of 23 exchanges, USWC no longer incurs. We find such an adjustment reasonable, and USWC does not oppose such an adjustment in theory, it appears. The conflict is about how to measure the effects of the UP 96 sale. USWC objects to Staff's methodology on the ground that USWC's expenses for network technicians, among other categories of expense, continue to grow.

We find that USWC's objection misses the point of Staff's adjustment. The growth in network technician expense, as an example, is necessarily unrelated to the UP 96 sale of exchanges. That is, exchanges that USWC no longer owns cannot possibly account for increased network technician expenses. USWC's objection that its overall expenses are increasing in various categories does nothing to address the question of how to adjust the test year to account for expenses it will not occur, due to the sale of exchanges to PTI.

We conclude that Staff's methodology for calculating controllable labor and nonlabor expense reductions due to the sale of exchanges is proper. Staff used USWC's own financial analyses to compute the costs savings. USWC's arguments in this docket attempt to minimize the costs, but we find them unpersuasive. Staff's proposed adjustment of reductions of controllable labor expenses of \$1.991 million and nonlabor expenses of \$1.039 million are adopted.



*Issue 6, Operating Revenues.* The discussion at pages 62-68 of Order No. 97-171 is readopted.

#### ISSUE 6: OPERATING REVENUES

##### *Completely Settled Issues:*

- *Issues 6a-b, EAS Conversion (Adjustment 27 [and Adjustment 28]).* Staff and USWC agree to include the annual effects of 13 new extended area service (EAS) routes, effective October 7, 1995, and 18 routes that will be converted on October 5, 1996. See First Stipulation, Paragraphs 12-13.
- *Issue 6d, Switched Access Filing (Adjustment 30).* Staff and USWC agree to (a) restate the test year to include the final revenue requirement from the annual access filing that was effective February 21, 1996, and (b) add the effects of the 1996 Oregon Customer Access Fund filing on USWC's access expense. See First Stipulation, Paragraph 14.

##### *Disputed Issue:*

- *Issue 6c, Tariff, Price, and Contract Changes Made after January 1, 1995 (Adjustment 29).* Staff adjusted the test year to include the effects of the many tariff and price list filings USWC made after the company filed its testimony in December 1995. USWC disagrees about the need for normalizing and pro forma adjustments. See discussion under Issue 1a(1) above. In addition, Staff annualized the effects of tariffs that USWC changed during January through September 1995. USWC disagrees with most of the filings Staff included in this adjustment.

Issue 6c deals with revenue and cost changes resulting from 26 USWC tariff, price, and contract change filings.<sup>31</sup> Staff proposes a net increase to local revenues of \$7.92 million and a \$.029 million net decrease to long distance revenues.

The filings introduce new and revised services, local service contracts, rate increases, and local service promotions. Staff argues that its adjustment recognizes the reasonably anticipated changes to revenues, expenses, and capital costs arising from the filings. Staff argues that the impact of the filings on USWC's operations during the time rates will be in effect is reasonably certain and that Staff's adjustment accurately reflects that impact.

*Settled Filings:* Filings 7, 8, 10 (in part), 14, 22, and 24 are completely settled.

*Partially Settled Filings:* Filing 2: issue of use of 1995 actual data has been removed.

Filing 18: issue of double counting of revenues has been removed.

Filings 12 and 25: issue of migration effects has been removed.

Filing 19: issue regarding elimination of two promotions has been resolved.

**Areas of General Disagreement: The Test Year Issue.** USWC objects to most of Staff's adjustments. USWC's first class of objection has to do with test year construction. USWC does not object to post test year adjustments in general, but notes that volume changes are usually not adopted because they distort the relationship among expenses, revenues, and investments. Several adjustments are annualizations of in year volume changes (sales promotions and new service introductions). USWC argues that Staff's revenue adjustments for filings 1, 2, 3, 5, 6, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20, and 21 are flawed because there is no accounting for the related expenses and capital costs.

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<sup>31</sup> The tariff filings, their effective dates, the annual revenues (from USWC's work papers), annual expenses (also from USWC work papers), number of days to add to annualize the test year, and annualized adjustment after Staff's final revisions are attached as Appendix D and incorporated herein by reference.

Staff responds that it twice revised its testimony in express recognition of the original testimony's omission of some volume related filing expenses and capital costs. Its revisions were based on additional information and corrections offered by USWC. Staff argues that its amended testimony corrects for the interdependency problem raised by USWC. Staff maintains that its final position properly recognizes the relationship among revenues, operating expenses, and capital costs associated with the filings.

*Disposition.* In our discussion at Issue 1a(1), we approved Staff's post test year adjustments as reasonable. We do so again here. Staff's adjustments serve to make the test year representative of the time when rates from this docket will be in effect. Staff has made considerable effort to revise its adjustments to reflect volume related filing expenses and capital costs. The record shows that after conferring with the company, Staff witness Mr. Ball twice revised his adjustments in the company's favor. We conclude that Staff's adjustments to the filings do not distort the test year as USWC alleges.

*Forecasted v. Actual Data.* USWC's second objection has to do with the fact that Staff relied on forecasted information when actual results were available, although Staff admitted that actual results were available. USWC notes that the test year already contains actual revenue for the period the price change was in effect. Therefore, USWC argues, Staff's test year has a combination of actual and forecasted revenue. USWC contends that the Commission should not rely on a forecast when actual information is available.

Staff responds that it properly chose to use company supplied incremental costs (LRIC, or long run incremental costs) as a surrogate for operating expenses and capital costs for each filing. Staff also used USWC information, provided with the filings, for its estimate of revenues. Staff points out that USWC's actual data was unverified and presented late in the rate case. Therefore, Staff used the incremental costs.

*Disposition.* USWC relies on a court case and a number of cases from other commissions for the proposition that the Commission should not use a

forecast when actual information is available.<sup>32</sup> These cases do not resolve our issue. The issue here is not whether actual data are preferable to forecasted data. That may well be the case, as a general rule. The issue is rather what it means to say data are available. If USWC produces data for Staff's consideration so late in the day that Staff has inadequate opportunity to verify and possibly normalize the data, they are not available for all practical purposes. Here, we find that USWC produced its actual data too late for verification. The actual data on these issues were, therefore, not available to Staff.

We find the use of LRIC as a surrogate for operating expenses and capital costs reasonable. Staff acted correctly in using the best information available to it. Moreover, Staff's witness Mr. Ball used company provided actual historical data along with company provided estimates as the basis for his adjustment.

**Areas of Specific Disagreement: Costs for Filings 2 and 3.** USWC contends that Staff did not include costs for filings 2 and 3. Staff replies that USWC failed to include any costs in the work papers it submitted in support of those filings. Staff contends that its approach is therefore consistent with USWC's filings.

**Disposition.** We conclude that USWC did not supply cost data with its work papers. Therefore, USWC may not now complain that Staff did not include costs for those filings. The company has not met its burden of producing cost data to show that its costs are reasonable.

**Overlap with Issue 8j.** Additionally, USWC asserts that this adjustment overlaps with Staff witness Ed Morrison's Issue 8j adjustment for average growth in access lines. USWC charges that Staff witnesses were aware of the possibility of overlap and distortion, but failed to coordinate regarding Issues 6c and 8j. The company argues that this lack of coordination results in an unreasonable overall final result for Staff's case. See discussion at Issue 1a(1) above.

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<sup>32</sup> *State Public Service Commission v. Mississippi Power Company*, 429 So2d 883 (Miss.), cert. denied, 464 U.S. 819 (1983); *In re Missouri Public Service*, 152 PUR 4<sup>th</sup> 333 (1994); *In re Jamaica Water Supply Co.*, 104 PUR 4<sup>th</sup> 273 (1989); and *In re Boston Edison Co.*, 53 PUR 4<sup>th</sup> 349 (1983).

Staff responds that Mr. Ball's predecessor as witness on this issue, Jon Wolf, was part of a group that included Mr. Morrison and which met to discuss the various Staff adjustments under consideration at the earliest stages of the case.

According to Staff, after Mr. Wolf left the Commission, Mr. Ball took over his duties on this case. Mr. Ball considered USWC's claim of overlap with Mr. Morrison's adjustment and was satisfied that there was no overlap. Mr. Morrison's adjustment was based strictly on access line growth. Mr. Ball's adjustment restates 1995 booked revenues, operating expenses, and capital costs to appropriate test year levels and then identifies 1996 annual revenues, operating expense, and capital costs associated with the 26 tariff filings on a prospective basis. Staff also points out that USWC does not explain how these adjustments overlap.

*Disposition.* As Staff has explained, Mr. Morrison's and Mr. Ball's adjustments address very different issues. USWC has not explained how these issues overlap. We are persuaded that they do not overlap.

*Additional Argument; Disposition.* Finally, we note that USWC summarily argues that Staff's adjustment annualizes some in year events, such as promotions and new service offerings, while ignoring others. USWC concludes that the adjustment is unbalanced and should be rejected. This argument is not developed and we cannot determine its reference. The argument is rejected.

**Filings with No Settled Issues:** Filings 1, 3, 4, 5, 6, 9, 10 (in part), 11, 13, 15, 16, 17, 20, 21, 23, and 26 are completely unsettled.

*Promotional Filings.* Filings 1, 5, 6, 11, 12, 15, 17, 19, 20, and 21 concern promotional filings. USWC argues that promotions are short lived and that their effects should therefore not be recognized in this rate case. USWC argues that Staff adjusts the test year as if the demand were present throughout the year, whereas, according to USWC, Staff admits that promotions do not cause a permanent change in demand units. Promotions, USWC contends, have service lives of 12 to 25.4 months. USWC points out that Staff witness Lance Ball testified that promotional activity would be relatively short lived.

Moreover, USWC argues that Staff has previously taken the position that promotions have a specific time frame. USWC refers to a Staff memo dated April 23, 1992 to support its position that changes due to promotions are temporary and should not be annualized.<sup>33</sup>

According to Staff, its review shows that the promotions at issue represent an express company action calculated to permanently change customer demand for service. Confidential Staff Exhibits 91 and 92 show that USWC expects certain promotion units to remain in service for 12 to 25.4 months. Certain promotions are designed to have a longer term effect, as Mr. Ball testified:

In some revenue studies filed by U S WEST to support its tariff filings, the company forecasts revenues several years out. By doing so, the company is apparently trying to justify promotions that are heavily discounted in the near term (with the consequence of less near term revenues) with higher revenue streams in the longer term. Supplemental Staff/32, Ball 3-4.

*Disposition.* USWC is correct that Appendix B to its brief sets a time frame of 120 days for promotions. Thus it is accurate to say that promotions are short lived. However, USWC conflates the duration of promotions themselves with the impact of promotions. The record shows that the desired impact of promotions, which USWC projects in its promotional tariff filings, is to increase demand for the promoted service for a longer period than the period of promotion. USWC projects the effects of promotions mentioned in the record from one to several years. We conclude that Staff is correct in assuming a long term effect for promotions and that Staff's adjustment captures the reasonable financial effects of the promotions during the period rates will be in effect.

*Filings 25, 26.* USWC asserts that Staff failed to include the economic effects of migration between services that the filings cause. That is, if a filing results in a customer using a new service rather than an existing service, the effects of the filing for the new service may be overstated.

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<sup>33</sup> According to the memo, Appendix B to USWC's reply brief, "Promotions should be limited to 120 days per year for each service."

Staff responds that USWC failed to include any effects for alleged migration in the work papers it filed in support of filing 26. Where USWC work papers identified cross elastic or migration effects for other services, Staff asserts that it did incorporate all such effects as estimated by the company. Staff points out that USWC witness Inouye testified that Staff incorporated migration effects for filings 12 and 25.

*Disposition.* We are persuaded by Staff's arguments on the migration effects of the filings. Where USWC failed to provide information on projected effects of migration, Staff properly worked with the information available to it. Staff could not account for an effect USWC did not identify. Where USWC provided information on migration or cross elastic effects, Staff incorporated them. We conclude that Staff's treatment of migration or cross elastic effects for the filings was correct.

*Filing 16: Frame Relay Special Contract Issues.*

Frame Relay is a five year special contract that took effect in 1996. This filing accounts for most of the dollar differences between Staff and USWC. Staff alleges that the difference is due to several mistakes USWC made in calculating the costs, revenues, and rate base associated with this filing. .

Staff argues that USWC has front loaded all of the five year contract costs during the test year, so that the company shows a net revenue loss of \$7,233,482 for this contract during the test year.<sup>34</sup> Staff argues that it is improper to account for all costs in the beginning of a contract, as USWC has done with filing 16. The company shows employee related costs of \$6.5 million for the first year of the contract,<sup>35</sup> but at the April 2, 1996, Public Meeting, USWC informed the Commission that it was dedicating only 16 fulltime network technicians to the Frame Relay project.<sup>36</sup> Staff argues that USWC could not be expending \$6.56 million for 16 employees the first year of the contract and concludes that the contract expenses must have been improperly front loaded.

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<sup>34</sup> This figure is from USWC Exhibit 72, line 16, col. 10.

<sup>35</sup> See Confidential Staff Exhibit 96 at 8, lines 13-14.

<sup>36</sup> We take official notice of the minutes of the April 2, 1996, Public Meeting, pursuant to OAR 860-014-0050.

Staff also asserts that USWC incorrectly used a higher budgeted estimate of expense as a basis for its adjustment in USWC Exhibit 72. That exhibit shows an expense of \$7,625,782 (the sum of columns 7 and 8 on line 16). Staff Exhibit 96 shows that figure to be the total sum requested for 1996 for the Frame Relay project. USWC argues that although the figure appears in the column headed "requested," and the figure in the column headed "funded" is much lower, the \$7.6 million represents actual expenditures. That figure includes the \$6.56 million employee related costs.

Finally, Staff contends that USWC miscalculated the amount for "average total plant in service" (ATPIS) on USWC Exhibit 72. The methodology to calculate ATPIS is to calculate a monthly average for the TPIS and then average the months to determine the annual average. Staff argues that a comparison with confidential Staff Exhibit 96 reveals that this amount has not been averaged, but rather represents the entire funded amount. Staff contends that the average amount should be about one half the amount USWC uses. The effect, according to Staff, is to overstate the average rate base adjustment by almost \$4 million.

Staff argues that Mr. Ball's approach avoids the errors that USWC commits. Mr. Ball shows a slight positive net adjustment to revenues of \$159,084 for filing 16. Staff's conclusion, it argues, is consistent with the position it took at the April 2, 1996, public meeting and is consistent with the comments by the company's representative at that same meeting. Rather than front loading expenses, as USWC did, Staff contends that it normalized total revenues, expenses, and capital costs over the five year life of the contract. Therefore, Staff believes its estimates represent the average revenue, average cost, and average margin over the life of the agreement.

*Disposition.* We find that for filing 16, USWC has not shown that its costs are reasonable and has not reconciled its statement at the April 2, 1996, public meeting about the number of employees involved in the Frame Relay contract with the \$6.56 million figure on confidential Staff Exhibit 96. On the record before us we cannot find that the \$6.5 million are reasonable costs. We also find its calculation of ATPIS flawed, as Staff has argued. We conclude that USWC has front loaded its contract expenses into the first year of the contract. As Staff argues, it would be inappropriate to include more than annualized



expenses for the contract in the test year. Staff's adjustment, on the other hand, is reasonable and should be accepted.

**Conclusion.** Staff's adjustments to the 26 filings involved in Issue 6c are reasonable and are adopted.

**Issue 7, Employee Benefits.** The discussion at pages 68-72 of Order No. 97-171 is readopted.

#### ISSUE 7: EMPLOYEE BENEFITS

##### *Completely Settled Issues:*

- *Issue 7b, AT&T Unfunded Postretirement Benefits Cost Sharing (Adjustment 33).* Staff and USWC agree to restate expenses to include annual reimbursements from AT&T, which were recorded in December 1995. See Appendix B, First Stipulation, Paragraph 15.
- *Issue 7c, Disability Pension Payment Trueup (Adjustment 34).* Staff agrees with USWC's proposal to remove a duplicate accrual. See Appendix B, First Stipulation, Paragraph 16.
- *Issue 7d, Pension Accounting (Adjustment 35).* Staff and USWC agree to leave the negative pension costs in operating expense, leave the related accumulated deferred taxes in the rate base, and add the pension asset to the rate base. See Appendix C, Second Stipulation, Paragraph 4.
- *Issue 7e, End of Compensated Absences Accrual (Adjustment 36).* Staff and USWC agree to normalize expenses to reflect an accrual that will end in December 1997. See Appendix C, Second Stipulation, Paragraph 5.

**Disputed Issues:**

- *Issue 7a(1), Statement of Financial Accounting Standards (SFAS) 106 Postretirement Benefits (Adjustment 32).* Staff opposes USWC's proposal to add a nonrecurring December 1995 accrual for a curtailment loss associated with restructuring and recommends continued amortization. The final amount depends on whose adjustment the Commission adopts. See Issue 1a(1), Test Year. See also Appendix C, Second Stipulation, Paragraph 4.
- *Issue 7a(2), Statement of Financial Accounting Standards (SFAS) 106 Postretirement Benefits (Adjustment 32a).* Staff and USWC agree that the rate base should reflect unfunded postretirement benefits but disagree about the amount. The final amount depends on whose adjustment the Commission adopts. See Issue 1a(1), Test Year.

**Issue 7a(1): SFAS 106 Postretirement Benefits**  
 USWC and Staff have agreed on the amounts for this adjustment but not on how the amounts should be treated for ratemaking purposes.

In the past, USWC, like most companies, recognized the costs of providing postretirement benefits when they actually made the payments. This pay as you go approach was considered to meet generally accepted accounting principles when health care costs were not considered material. As health care costs increased, the Financial Accounting Standards Board (FASB) reconsidered how to account for postretirement benefits, benefits other than pensions (PBOPs), and other postemployment benefits. FASB concluded that companies should begin to accrue retiree postemployment benefits just as they accrue pensions. In December 1990, FASB issued SFAS 106, "Employers' Accounting for Postretirement Benefits other than Pensions."

SFAS 106 required USWC to recognize the accumulated obligation for PBOPs not recorded during prior periods. SFAS 106 permitted this obligation, called the Transition Benefit Obligation (TBO), to be amortized over 20 years or

less. For regulatory monitoring reports, USWC has been amortizing the TBO over 17.3 years (from January 1, 1992 through March 31, 2009). For financial reporting, USWC made a one time writeoff of part of the TBO in 1992. USWC's 1995 results of operations include PBOPs expenses, both current period and the TBO amortization.

USWC's reengineering program caused the termination of around 9,000 employees who had been included in calculating the TBO's 17.3 year amortization. SFAS 106 requires USWC to recognize the remaining TBO of these employees as a one time curtailment loss. That is, USWC is to expense the curtailment loss when it becomes known. In December 1995, USWC recorded the curtailment loss for regulatory accounting purposes, in compliance with SFAS 106. As a result of expensing the curtailment loss due to reengineering program terminations, the remaining amount of the TBO to be amortized is reduced. Staff estimates that the 1995 curtailment loss will reduce the recurring TBO amortization by \$.586 million per year.

Staff considered three options for the ratemaking treatment of the curtailment expense:

1. Treat the curtailment loss as a recurring expense (USWC's proposal);
2. Amortize the curtailment loss over the remaining life of the TBO (Staff's proposal); or
3. Remove all the effects of the curtailment loss from the test year.

*Option 1— Treat the curtailment loss as a recurring expense.* USWC argues that the curtailment expense is one of several expenses that will recur during the period Staff expects rates to be in effect, but not over the entire period. Others such expenses are compensated absences (Issue 7e), PUC fee (Issue 8n), and the Western Electric side record (Issue 1c(2)(a)). For those costs, USWC argues that Staff sums the expenses that will occur and spreads them over the entire period when rates will be in effect.

For the current issue, USWC alleges that Staff proposes to disallow the entire amount. USWC asserts that it is unreasonable to assume, as Staff does, that reengineering and curtailment expenses were never incurred. USWC also asserts that it is arbitrary to treat the curtailment

expense differently from the other expenses listed above. USWC recommends that the curtailment expenses be spread over the period of rates, just as Staff has done with the above costs.

USWC argues that it will record curtailment expenses in 1996 and 1997. The company is on record with the Securities and Exchange Commission (SEC) that the reengineering program, to which curtailment expenses are related, will continue through 1997. USWC informed the SEC that a \$210 million total curtailment expense will be recognized. The FCC required USWC to record the \$210 million as a below the line expense in account 7360 and to bring that amount above the line as employees leave the company before the end of 1997. As of the end of 1995, \$140.4 million of the \$210 million had been recognized. The remaining amount will be recognized in 1996 and 1997. Applying Staff's method to this remaining amount, USWC believes that the test year adjustment should be an increase in expense of \$1.7 million.

USWC argues that the TBO must also be restated in Staff's adjustment. According to USWC, if Staff restates the test year as if reengineering never happened, then the 1994 curtailment expense also never happened. Reengineering is a multi year program that began before the 1995 test year. In turning back the clock to the time before this program, the 1994 TBO amortization should be reflected in the test year. The 1994 TBO is \$.4 million higher than the 1995 TBO. This amount, USWC contends, should be added to the test year if the Commission adopts Staff's recommendation.

USWC proposes that for the purpose of determining a refund and assuming the Commission uses 1995 financial data, the full amount of 1995 curtailment expenses, about \$5.6 million, should be added to the test year. Otherwise, USWC would be required to refund earnings it did not achieve. For the purpose of setting going forward rates, the spreading over the period for rates should be adjusted accordingly. In the alternative, USWC proposes to use 1996 and 1997 actual levels for the test year expense.

Staff points out that USWC has not adjusted the test year payroll costs for the curtailed employees. If USWC does plan to cut an additional 9,000 employees during 1996-1998, the test year should be adjusted to reduce the amortization of the TBO and to reduce payroll costs.

Staff argues that curtailment losses of this magnitude--involving 9,000 employees--are unlikely to recur each year during 1996, 1997, and 1998, when rates from this docket will be in effect. Probably reengineering will take place through most of 1996 and into 1997 (see Issue 9a below). The curtailment cost will not recur in all the months when rates from this docket will be in effect. Therefore, Staff argues, it would be inappropriate to include the curtailment loss in the test year.

*Option 2-- Amortize the curtailment loss.* Staff's recommendation is to amortize the curtailment loss over the remaining 13.3 years of the TBO for ratemaking purposes. This has no revenue requirement effect. Rates from this docket would be set to allow USWC to recover the curtailment loss through continued amortization.

Staff points out that if USWC experiences additional curtailment losses of any size in the future, this option would leave the TBO amortization expense unaffected and would normalize expenses. Staff argues that this treatment of the curtailment loss is consistent with its treatment of the compensated absences, Western Electric Side Record, and PUC fee issues. That is, Staff spread those expenses over the period rates from this docket will likely be in effect. Here, Staff spreads the loss over the remaining life of the TBO.

*Option 3-- Remove the curtailment loss.* Under Option 3, the curtailment loss would be treated as a one time nonrecurring expense to be removed from the test year. The 1995 curtailment loss will reduce the TBO recurring amortization expense for total regulated Oregon operations subject to separations by \$.6 million beginning in 1996. Option 3 would reflect this recurring expense level and reduce total Oregon operation expenses in the test year by \$.6 million.

*Disposition.* USWC proposes to include the curtailment expense related to termination of approximately 9,000 employees in the test year. Staff proposes to amortize the curtailment expense. We find USWC's proposal unfair to ratepayers and Option 3 unfair to USWC. We elect Staff's option of amortizing the remaining expense. This option recognizes the expense and

allows USWC to recover it without revenue requirement consequences.

**Issue 7a(2): Unfunded SFAS 106 Postretirement Benefits**

In this adjustment, Staff proposes to reduce rate base for unfunded postretirement benefits. Staff notes that the Commission has determined to treat accumulated unfunded balances in postretirement benefits obligation accounts as rate base credits. See Order No. 91-186 (UE 79) and Order No. 91-1786 (UT 101).

USWC proposed a rate base adjustment for SFAS 106- to use the average 1995 unfunded balance. Staff adjusted USWC's rate base to reflect an average level during the period to be covered by the new rates from this docket. Staff calculated the average balance during the period rates are likely to be in effect. With expense and funding levels staying constant indefinitely, the unfunded total regulated Oregon operations subject to separations rate base reduction will continue to grow by \$418,600 per year indefinitely.

USWC responds that the issue is whether the Commission should reduce the rate base by a forecast of the September unfunded benefits. This issue relates to test year construction. If the Commission does not adopt Staff's forecasted adjustments that restate the test year to August 1997, it should also reject this adjustment.

*Disposition.* We have decided in principle to accept Staff's forecasted adjustments that restate the test year to August 1997. We find this proposed adjustment consistent with those adjustments and conclude that it should be accepted.

*Issue 8, Operating Expenses and Taxes.* The discussion at pages 72-83 of Order No. 97-171 is readopted except as modified with respect to Issue 8f and Issue 8n.

*Issue 8f, ORS 291.349 Income Tax Refund:* In the companion order to the current order, Order No. 00-190, Staff modified adjustments at Issues 3 and 9 that affected taxable income. The Issue 8f discussion at pages 72-73 of Order No. 97-171 is here readopted, but the amounts in Column 42 of Appendix A to Order No. 97-171 are amended as shown in Appendix B to Order No. 00-190, Column 42.

*Issue 8n, PUC Fee Increase:* The discussion at page 83 of Order No. 97-171 is readopted, but the amounts in Appendix A, Column 49a, are amended as shown in Appendix B to Order No. 00-190, Column 50.

#### ISSUE 8: EXPENSES AND TAXES

##### *Completely Settled Issues:*

- *Issue 8b(1), 1996 Occupational Wage Increases (Adjustment 38).* Staff and USWC agree to include 1996 occupational wage increases. See Appendix B, First Stipulation, Paragraph 17.
- *Issue 8b(2), Other Payroll Changes (Adjustment 38c).* Staff and USWC agree to include 1996 payroll tax changes. See Appendix C, Second Stipulation, Paragraph 7.
- *Issues 8c-d, Changes in Accounting—SFAS 109 and 112 (Adjustments 39-40).* Staff supports USWC's requests to adopt SFAS 109 and SFAS 112. SFAS 109 required changes in accounting for income taxes by 1993. SFAS 112 required changes in accounting for the employer's obligation to provide postemployment benefits for former or inactive employees, their beneficiaries, and their covered dependents by 1994. See Appendix B, First Stipulation, Paragraphs 18-19.
- *Issue 8e, Ballot Measure 5 Property Tax Savings (Adjustment 41).* Staff and USWC agree to restate property tax expenses to reflect a full year at the final year's tax rates (1995/96). If the Commission orders a refund based on the revenue requirement established in this docket, Staff recommends that USWC's Measure 5 savings refund for May and June 1996 be used to reduce the amount of the UT 125 refund. See Appendix B, First Stipulation, Paragraph 20.

- *Issue 8g, Docket UM 767 Oregon Depreciation Represcription (Adjustment 43)*. Order No. 96-117 approved new depreciation rates retroactive to January 1, 1995. Staff and USWC agree to restate the test year to include one year's effect of the revised depreciation rates on expenses and average rate base. See Appendix B, First Stipulation, Paragraph 21.
- *Issues 8h-i, Aircraft and Advertising (Adjustments 44-45)*. Staff and USWC agree that aircraft and advertising expenses in the test year are reasonable and should not be adjusted. See First Stipulation, Paragraphs 22-23.
- *Issue 8m, Purchase Rebates (Adjustment 49)*. Staff and USWC agree to restate the test year to remove the effects of prior period rebates. See Appendix B, First Stipulation, Paragraph 24.

**Significantly Undisputed Issue:**

- *Issue 8f, Oregon Revised Statute (ORS) 291.349 Income Tax Refund (Adjustment 42)*. Staff and USWC agree to normalize the test year to reflect periodic state income tax refunds received by USWC under ORS 291.349. The final amount depends on the resolution of disputed issues. See Appendix C, Second Stipulation, Paragraph 8.

**Disputed Issues:**

- *Issue 8a, Team Performance Awards and Officers' Incentives (Adjustment 37)*. In compliance with Commission policy, Staff removed bonuses based on corporate cash flow and earnings. USWC disagrees with Staff's adjustment. USWC contends that Staff



has the burden to prove its proposed disallowance is justified and reasonable. Staff believes that the company has the burden to show that its costs are reasonable.

- *Issue 8b(2), Other Payroll Changes (Adjustments 38a, 38e, and 38f).*
- *Adjustment 38a.* Staff added 1996 management salary increases and 1997 occupational wage and management salary increases. USWC agrees with the mechanics of Staff's adjustment but disagrees about the need for pro forma adjustments. The final amount depends on whose adjustment the Commission adopts as well as the resolution of Issue 4f, Headquarters Allocations.
- *Adjustments 38e-38f.* Staff modified the wage and salary bases to remove the nonrecurring wages related to reengineering. USWC agrees with the mechanics of Staff's adjustments but disagrees about the need for the adjustments. See Issue 8a and Issue 9a, Reengineering. The final amounts depend on whose adjustments the Commission adopts and the resolution of Issue 4f, Headquarters Allocations.
- *Issue 8j, Average Growth in Access Lines (Adjustment 46).* Staff adjusted the test year to recognize that local revenues per access line have been relatively constant and that access lines are growing. Staff increased local revenues by 3 percent to reflect the average level during the period when rates from this docket will be in effect. USWC disagrees about the need for pro forma adjustments. If the Commission includes Staff's adjustment in the test year, the final amount depends on the resolution of Issue 6c, Tariff, Price, and Contract Changes Made after January 1, 1995.

- *Issue 8k, Marketing Accrual Reversal (Adjustment 47)*. In its preannualization adjustments, USWC identified a reversal entry that is part of a series of accrual entries and actual claims paid for carrier accidents and damages.
- *Issue 8l, Information Management Systems (Adjustment 48)*. Staff normalized costs by including the ongoing expense savings for two recently implemented information management projects (SAVER and bill reformatting). USWC disagrees about the need for normalizing adjustments.
- *Issue 8n, PUC Fee (Adjustment 49a)*.<sup>\*</sup> Staff expects the PUC fee to increase from .20 percent to .25 percent for assessments due on and after April 1, 1997. USWC disagrees about the need for pro forma adjustments. USWC also disagrees that the change is probable.

#### Issue 8a: Incentive Plans (Bonuses)

USWC proposes to include in the test year \$4 million in bonuses that were paid to its management and executive employees in 1995 under three incentives programs: (1) Team Performance Award Plan (TPA); (2) Executive Short Term Incentive Plan (STIP), and (3) Executive Long Term Incentive Plan (LTIP).

Bonuses paid under these plans were based on the achievement of certain financial, business, and corporate goals. The 1995 TPA bonuses were paid for meeting or exceeding goals regarding (1) Earnings before Interest, Taxes, Depreciation, and Amortization (EBITDA); (2) USWC Net Income; and (3) Business Unit Results & Strategic Measures, and Customer Service. The 1995 STIP bonuses were paid for meeting or exceeding goals regarding (1) Financial Performance (new product development, net income, EBIDTA); (2) Reengineering Benefits; and (3) Customer Loyalty. The 1995 LTIP bonuses were paid for meeting or exceeding goals regarding (1) increase in the price of USWC stock; and (2) stock dividend growth.

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<sup>\*</sup> Issue 8n is now Adjustment 50 of Appendix B to Order No. 00-190.

Staff takes the position that these bonuses should be excluded from the test year because the financial, business, and corporate goals on which the bonuses were based primarily benefited USWC's shareholders. Therefore, Staff reasons, the shareholders should pay for the bonuses.

Staff notes that in the past, the Commission has not allowed a utility's revenue requirement to include employee bonuses that were based on the utility's financial results of operations. See, e.g., *Pacific Northwest Bell Telephone Company*, UT 43, Order No. 87-406 at 42, where we stated:

Only expenditures necessary for furnishing utility service should be reflected in rates. *Portland General Electric*, UF 3218, Order No. 76-601 at 13; *Cascade Natural Gas*, UF 3246, Order No. 77-125 at 10.

Staff contends that USWC's base salaries for management and executive employees are reasonable, but maintains that USWC has not shown that the goals on which the bonuses were based were justified by benefits to ratepayers. For instance, Staff notes that although quality of service deteriorated in 1995, the total TPA did not decline.

Staff concludes that the performance goals under USWC's management incentive plans were designed to benefit shareholders but were not in the ratepayers' interests. Staff argues that it is inappropriate for USWC's Oregon ratepayers to pay for bonuses for the utility's management and executive employees at a time when USWC's service quality problems in Oregon have increased significantly and when, as Staff believes, USWC is overearning by \$100 million. Including the bonuses in the revenue requirement in this situation, Staff argues, would add insult to injury for ratepayers.

Finally Staff notes that although it recommends excluding USWC's executive and management bonuses from the test year in this case, in future rate cases it would consider including employee incentive plans with goals that would benefit both ratepayers and shareholders.

USWC argues that its overall level of compensation, including bonuses, is not only reasonable but is below market. USWC argues that Staff is asking the Commission to preclude recovery of expenses that the record shows were

actually incurred by the company, and that are reasonable. USWC also argues that excluding bonuses would amount to micromanaging the company.<sup>37</sup> That is, the Commission would be deciding what form compensation of company management should take.

USWC further argues that paying market wage levels including incentive compensation is necessary for the provision of utility service. If bonuses were eliminated, USWC points out, salaries would have to be raised an equal amount to attract employees. Therefore, USWC argues, Staff's proposed disallowance is arbitrary, because it is based only on the manner in which compensation is administered.

USWC maintains that Staff has never previously challenged manager bonuses, and asserts that the facts in UT 43, the case on which Staff relies, are distinguishable from those in this case. USWC contends that use of incentive pay is common in the industry and encourages enhanced USWC employee performance toward ratepayers. If Staff's proposal is adopted, USWC maintains, it will send a signal to the company that it should not try to provide financial incentives for employee performance.

Finally, USWC argues that the Commission should allow recovery of bonuses to prevent discriminatory treatment of USWC in a competitive environment. USWC notes that its major competitors rely on incentive pay to compensate their employees. According to USWC, this indicates both that the practice of offering incentive pay is widespread and that the Commission should allow USWC's bonuses because to do so would be competitively neutral.

**Disposition.** The record shows that USWC's base salaries before bonuses are within a reasonable range, as is USWC's compensation including

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<sup>37</sup> USWC argues that most commissions follow the principle that "managers of a utility have broad discretion in conducting their business affairs and in incurring costs necessary to provide services to their customers," including compensation decisions. *Violet v. FERC*, 800 F2d 280, 282 (1<sup>st</sup> Cir. 1986). USWC also cites two California cases that advocate leaving the allocation of compensation between salaries and incentives to the utility's discretion. *In re Pacific Gas and Electric Co.*, 1992 WL 438101 slip op at 46 (Cal. PUC); *In re Southern California Edison Co.*, 130 PUR 4<sup>th</sup> 97, 126 (1991) ("The Commission's duty is to authorize reasonable expenses for employee compensation as a whole, without micromanaging the distribution of employee salaries, wages, and benefits.").

bonuses. Because its compensation is reasonable compared to the market, USWC concludes that its expense for management and executive bonuses is reasonable. USWC conflates two separate issues. The level of overall compensation is reasonable compared to the market. That does not determine whether it is reasonable to ask ratepayers to fund bonuses with the declared goals of USWC's incentive plans.

USWC is correct in stating that Order No. 87-406 (UT 43) does not preclude recovery of incentive pay linked to financial performance. The disallowance in that case occurred because the proposed compensation was based on the performance of the utility's parent, not the utility itself. Still, the principle that Staff quotes from that order is our policy: "Only expenditures necessary for furnishing utility service should be reflected in rates." Order No. 87-406 at 42.

We disagree that submitting USWC compensation expenditures to scrutiny is micromanaging; rather, it is our role as regulators to determine the reasonableness of USWC's claimed expenses. On review of the stated goals for the incentive programs at issue, we note that some of the goals on which bonuses were awarded deal with earnings, net income, financial performance, reengineering benefits, and stock prices and dividend growth. These goals benefit shareholders rather than ratepayers.

Two of the goals deal with customer service and customer loyalty. In view of the problems USWC has had with customer service (see discussion at Issue 9c below), we agree with Staff that it is inappropriate to award bonuses for performance in this area.<sup>38</sup> We point out that here our decision deals with bonuses for management and supervisory personnel. We do not mean our comments to reflect negatively on front line employees, who have done well under a difficult set of circumstances.

Under the circumstances of this case, we conclude that USWC has not shown that its incentive plans are reasonable expenses for the provision of utility service. We note that our disallowance is not based on the manner in which compensation is administered but on the purpose for which the

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<sup>38</sup> USWC appears to argue that Staff raises the argument of disallowance based on service quality issues for the first time in its brief. This is incorrect. See Revised Staff/1 Lambeth/65.

bonuses are awarded. We also note that this conclusion does not prevent USWC from paying bonuses; it merely dictates that bonuses be paid from funds that would go to shareholders, not from funds provided by ratepayers. Therefore, we do not believe that the resolution of this issue places USWC at a competitive disadvantage.

We limit the findings on this issue to the facts before us. If in a future rate case USWC submits employee incentive plans with goals that would benefit both ratepayers and shareholders, we will include those expenditures in revenue requirement.

#### Issue 8b(2): Other Payroll Changes

In this adjustment, Staff proposes to add the effects of wage rate changes for 1996 and 1997 to the 1995 test year. USWC agrees with the mechanics of Staff's adjustment but disagrees about the need for pro forma adjustments. See discussion at Issue 1a(1) above. The final amount of this adjustment depends on whose adjustment the Commission adopts as well as the resolution of Issue 4f, Headquarters Allocations.

USWC implies that Staff's adjustment treats reengineering as if it had not happened, while including the effects of wage rate changes. Staff responds that its adjustment is to eliminate from wage and salary bases nonrecurring wages related to reengineering. It has calculated its pay increases on a wage base that excludes wages related to reengineering and extraordinary expense. Terminated jobs will not be replaced. Therefore, wage adjustments should not be computed for nonexistent employees.

We have determined that pro forma adjustments are appropriate to cause the test year to represent the period for which rates from this docket will be in effect. We are persuaded by Staff's argument that its adjustment makes the test year more representative of that period than it would be without the adjustment. Therefore, we accept Staff's adjustment for the effects of wage rate changes for 1996 and 1997.

#### Issue 8e(2): Ballot Measure 5 Property Tax Savings

This issue is addressed by the First Stipulation, Paragraph 20. Staff and USWC agree that if we order a refund in this docket, the refund should

be reduced by the Measure 5 refund for May and June 1996. We adopt this recommendation.

**Issue 8j: Average Growth in Access Lines**

At issue here is a pro forma adjustment (see discussion of Staff's proposed adjustments at Issue 1a(1) above). As we stated previously, the purpose of a test year is to represent the period in which rates will be in effect. Therefore, to avoid overearning or underearning by USWC during that period, we add to the revenue requirement recurring increases in revenues and expenses that are reasonably certain to occur, and exclude nonrecurring revenues and expenses. *Pacific Northwest Bell Telephone Co.*, UT 43, Order No. 87-406 at 11.

Staff proposes to adjust the test year to recognize USWC's continued access line growth and the associated growth in revenues. Staff has increased USWC's revenues by 3% per year to reflect growth in access lines.

*USWC's Position.* USWC argues that Staff's adjustment is for growth in revenue per access line. USWC contends that Staff has not carried the burden of showing that this adjustment is "known and measurable." USWC argues that Staff's sole evidence of an increasing trend in Oregon intrastate local revenue per line is a graph of monthly revenues per line for the period January 1994 to September 1995 (Staff Exhibit 36, Morrison 3). The graph for that short period showed a slightly increasing slope. USWC contends that the data are deceptive, because Staff witness Ed Morrison selected a small time period, excluding later as well as earlier data that refute his hypothesis. USWC charges that Staff had earlier and later data on revenue per access line, which it ignored and which would break Staff's upward trend in per line revenue growth. USWC's position is that 1995 local revenue per line is approximately the same as it was in 1992. USWC concludes that per line revenues are, at best, flat.

USWC maintains that its evidence also shows that local revenue per line would be declining significantly without USWC's new promotions and services. USWC also notes that over the next several years there will likely be downward pressure on revenue per line, given resale. The Telecommunications Act of 1996 and the Commission's certification of local service providers are causing great changes in the telecommunications industry, according to USWC, making USWC's revenue highly uncertain. USWC charges that Staff considered none of these factors in developing its revenue forecast adjustment.

USWC also argues against Staff's claim that expense per line is declining. USWC contends that Staff's sole evidence of decreasing expense per line is Mr. Morrison's graph (Staff 36, Morrison 3). This chart, USWC points out, is based on normalized data. If one includes depreciation, access expense paid to independent telephone companies, and property taxes, it is clear that expenses per line are not decreasing. USWC asserts that Staff achieves its declining expense trend by normalizing depreciation expense without justification, continuing access expense reductions and Ballot Measure 5 property tax reductions, which have been fully reflected in the test year and which have ended. USWC argues that intrastate expense has, in fact, been increasingly slightly on a per line basis.

USWC also argues that Staff could not describe any steps to ensure that it balanced expenses and revenues associated with its proposed adjustment. Staff also made no effort to show that the cumulative effect of its adjustments is reasonable and does not distort the test year. USWC asserts that it provided positive evidence that Staff's proposed adjustments overlap and create test year distortion.

Since revenue per line is flat, USWC contends, Staff's proposed adjustment 8j to increase local revenue per line overlaps with Issue 6c. According to USWC, given Staff's failure to prove that expense per line is declining, Staff's adjustments in Issues 8l, 9a and 9b, and 5a create a distorted test year by causing test year expense per line to decline significantly below the historic trend.

USWC cites the overall result of Staff's proposed adjustment to underscore how unreasonable Staff's proposed adjustment is. According to USWC, Staff



forecasts that between 1995 and 1997, USWC's revenues will grow by \$37.7 million while expenses will decline by \$30.5 million. This results in a net revenue gain of \$68.2 million, a profit margin of 18.4%, or a 50% improvement over 1995. According to USWC, Staff also projects that during the same period, access lines will increase by approximately 74,000 lines and that increase will come at a negative incremental cost.

Finally, USWC argues that Staff fails to include a comparable adjustment for forecasted changes in toll and access revenues, where revenue per line has been declining. For the two year period from 1993 to 1995, USWC contends, toll and access revenue declined by approximately \$15 per line. If the Commission were to adopt forecasted local revenue growth, it should also adopt an offsetting adjustment for forecasted decreases in toll and access revenues. An expense adjustment related to access line growth would also be warranted, as would an adjustment for the effects of competitive entry.

*Staff's Position.* Staff responds that USWC has mischaracterized the nature of Staff's adjustment. The adjustment is for average growth in access lines, not revenue growth per line. Staff notes that this misunderstanding explains why USWC asserts that Staff's revenue adjustments in Issues 8j and 6c overlap. Staff's revenue adjustment in Issue 8j is based on the quantity of USWC access lines. The adjustment in Issue 6c is based on revenue; that is, it reflects changes in USWC's tariffs, prices, and contracts. Staff asserts that these adjustments do not double count revenues. Mr. Morrison testified that he did not make an adjustment for the growth in revenues per line, because revenues associated with new filings were covered by Mr. Ball in Issue 6c.

Staff's revenue adjustment to the annualized test year consists of approximately \$24 million. The adjustment recognizes USWC's continued access line growth and the associated revenues. Staff proposed its adjustment because USWC's Oregon intrastate access lines have grown steadily in number since 1988. Staff believes that its estimate of continued average growth of 3% per year while rates from this docket are in effect is conservative.

Staff notes that Oregon is one of the ten fastest growing states in the nation in terms of population. USWC provides 1.2 million access lines

in Oregon. As of February 1996, USWC was receiving nearly 36,000 service requests monthly from customers wanting new or additional lines. Staff points out that that USWC also introduces new services and products, which expands the local telecommunications markets. USWC's 1996 revenues from services such as Caller ID, Call Waiting, and data networking services increased 50% or more over 1995. There is also a growing customer demand for existing services, such as second residential lines. Staff cites the record to show that USWC experienced a growth rate of more than 30% in additional residential access lines for the 12 months ending in September 1996.

In response to USWC's contention that the Telecommunications Act of 1996 jeopardizes the stability of USWC's local revenue per access line, Staff notes that current growth figures set out above belie that argument. Staff also points to the following data in the record:

- In 1995, USWC experienced a 4.2% increase in access lines and a 6.8% increase in local service revenues over 1994.
- For first quarter 1996, USWC experienced a 4.8% increase in access lines and a 9% increase in local service revenues over the same period in 1995.
- For second quarter 1996, USWC experienced a 4.9% increase in access lines and a 9.6% increase in local service revenues over the preceding 12 months.
- For third quarter 1996, USWC experienced a 5.1% increase in access lines and a 9.3% increase in local service revenues over the preceding 12 months.
- USWC is also generating strong growth in revenues from value added services such as Caller ID, Call Waiting, Voice Messaging, and data networking services.

Staff points out that its proposed 3% growth rate is substantially less than the increases noted above. Staff also notes that because USWC's local

service revenues are increasing at a higher rate than its access lines, its local service revenues per line are also increasing.

USWC has argued that, because of emerging competition, Staff's revenue adjustment for access line growth should be offset by reductions of \$8.4 million in its local Oregon service revenues and \$2.3 million in toll revenues. Staff argues that these forecasted revenue reductions are based on incorrect assumptions. USWC assumes that it will lose 9 percent market share to resale competition in 1997. That is, access lines that would be sold at retail to end users will become wholesale access lines sold to resellers. USWC projects a confidential percent of those lines to be residential access lines. Staff argues that this assumption is dubious. Staff argues that few, if any, competitors have plans to market local exchange services to residential customers in the near future. Therefore, Staff contends, USWC's forecasts about the impact of competition on its revenues during the period when rates will be in effect are greatly overstated.

Staff asserts that USWC's revenue reduction forecasts also contain other incorrect assumptions. For instance, USWC used \$12 as the monthly rate for its unbundled local loop (also called the basic network access channel, or NAC). By Order No. 96-283, however, the Commission revised the monthly rate for USWC's basic NAC from \$11.95 to \$16. Order No. 96-283 at 10-11; Appendix C at 1. Staff notes that USWC also used a 25% wholesale discount for its retail services and products, whereas USWC has neither given nor offered that large a discount to any competitor in Oregon.

*Disposition.* USWC's misunderstanding of this issue has led the company to argue against a position that Staff has not taken. Trends in average revenue per access line and average expense per access line are not at issue in this adjustment. At issue is whether the number of USWC access lines is growing at a rate that justifies an adjustment to revenue requirement to recognize that growth.

The record contains strong evidence that USWC access lines are growing at a rate well above the 3% adjustment Staff proposes. It is reasonably certain that this growth rate will continue during

the time rates from this docket are in effect.  
<sup>39</sup>The record also shows that USWC revenues from local access are increasing at a rate above the access line growth rate.

We are also persuaded by Staff's argument that the competition USWC foresees will be slow to develop. We cite UM 351, Order No. 96-283 at 6:

As we have previously stated, the revenue loss scenarios advanced by the [local exchange carriers] incorporate numerous assumptions regarding the timing and rate of competitive entry, the number and type of product offerings, customer willingness to change carriers, and changes in the overall market demand for telecommunications services. We do not think it is productive to engage in such speculation, especially when competition for many services has not even begun in the event of a significant impact on revenues, a [local exchange carrier] may seek immediate revenue relief in the form of an interim rate increase.

Finally, we agree with Staff that USWC's projections with respect to the cost of the unbundled NAC and the discount rate for wholesale services and products are mistaken. We are also satisfied that Staff has refuted USWC's argument about double counting and overlap between Issue 8j and Issue 6c.

We conclude that Staff's pro forma adjustment to recognize USWC's continuing growth in access lines is reasonable to keep USWC from overearning and should be accepted.

#### Issue 8k: Marketing Accrual Reversal

Staff reviewed accident and damage claims accrued and paid by USWC and recommended a \$529,375 decrease in total Oregon operating expenses. Staff's adjustment represents the actual level of claims paid during the historical period, January through September 1995, annualized.

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<sup>39</sup> USWC again asserts that the standard for accepting adjustments to the test year is that the changes be "known and measurable." As we discussed at Issue 1a(1) above, the correct standard for these adjustments is that they be reasonably certain. That standard is met here.

USWC maintains a reserve account to recognize the accident and damage claims that will likely be filed against the company. During the test period, USWC accrued \$833,000 per month to the account for a nine month total of \$7,497,000. The company paid out \$2,743,000 from the reserve for the same period. Staff adjusted for annualization, for Oregon's share, and for the disparity between the amounts being accrued and the actual amounts paid.

USWC objects to Staff's adjustment and requests that the amount of claims paid for the last three months of 1995 be included. These months show an additional claims paid amount of \$6,582,000. USWC argues that its analyst erred in the first response to Staff's data request, and asks that the Commission consider the entire year's data on accruals and cash payments.

Staff responds that USWC previously indicated that the January to September 1995 level of paid claims is representative of the ongoing level of claims. Staff also contends that the data offered by USWC for claims paid for the last three months of 1995 are highly inconsistent with confidential claims paid data for 1994 and 1996. Therefore, Staff considers USWC's data for the last three months of 1995 unreliable or unrepresentative of claims likely to be paid in the future.

We conclude that the additional claims paid amount of \$6,582,000 is not representative of claims likely to be paid during the time rates from this docket are in effect. We accept Staff's adjustment.

#### Issue 81: Information Management Systems

This issue concerns two adjustments to USWC's revenue requirement to reflect the reduced expenses due to two recently completed information management projects: (1) SAVER time reporting and (2) bill reformatting. Staff proposes a decrease of \$1,185,365 in total Oregon operating expense to account for these savings.

*SAVER Time Reporting.* This is a project that now allows certain USWC outside plant personnel to spend less time completing work time reporting cards. The project was implemented in Oregon during the fourth quarter of 1995. Staff included the savings achieved by this project, although it was implemented after the historical test period, because that was consistent with Staff's

methodology of recognizing such events. Staff calculated its adjustment of \$492,827 from information provided by USWC.

USWC argues that Staff's adjustment double counts expense reductions and distorts the test year. First, USWC charges that Staff makes no test year adjustments for increased expenses, and then, when Staff proposes to adjust the test year for specific productivity improvements, it counts expense reductions again. USWC argues that Staff proposes no adjustment to operating expenses due to growth. USWC contends that 1996 maintenance expenses increased rather than decreasing. Maintenance expense, which SAVER would impact, was higher in 1996, the time period when SAVER was in effect.

Staff responds that USWC failed to recognize that SAVER (like bill reformatting) was implemented before the time rates are likely to be in effect. Therefore, it is appropriate to recognize this historical productivity improvement. Staff notes that it has allowed USWC a reasonable level of ongoing expense to make further information management productivity improvements.

*Disposition.* We conclude that Staff is correct in its response to USWC's double counting argument. Because SAVER was implemented before the time rates from this docket became effective, it is a historical event that will reduce expense during the rate period. If maintenance expense is increasing, as USWC alleges, that is due to factors other than SAVER. Staff's adjustment is appropriate and should be adopted.

*Bill Reformatting.* This adjustment concerns postage savings. USWC estimates that changes to its billing statement will result in postage savings of seven cents per residential bill. The billing project was implemented in the second quarter of 1996. Staff argues that the effect of this program is known and measurable. Staff contends that it should be recognized as an adjustment to the test year. Staff calculates the Oregon portion of this savings to be \$692,538.

USWC objects to this adjustment because it is based on an estimate. USWC proposes an adjustment of \$156,420 instead, asserting that Staff's adjustment is too high.

Staff responds that the estimate is specific to bill reformatting and that it comes from the company. Staff points out that USWC's recommended adjustment is also an estimate. It is based on total company postage expense that has been allocated to Oregon and is not specific to bill reformatting. USWC's analysis reflects other causes for expense changes, such as the weight of bill inserts. Further, the amounts included in USWC's analysis represent more than just savings attributable to residential bills. Moreover, USWC's analysis fails to account for the fact that the bill reformatting project was implemented in different states during different times, because it relies on total company amounts.

*Disposition.* We conclude that Staff's adjustment should be adopted. It accounts for reasonably certain reductions in expense arising from USWC's bill reformatting project. The amount underlying the adjustment comes from USWC, so the company should not be heard to complain of its reliability.

#### Issue 8n: PUC Fee Increase

In the adjustment, Staff proposes to add the effects of a projected 1997 increase in the PUC fee. Whether this adjustment is accepted or not depends on whether we adopt Staff's forecast adjustments that restate the test year to August 1997. We do adopt Staff's forecast adjustments; therefore, this adjustment should be accepted.

*Issue 9, Service Quality and Reengineering.* The findings regarding Issue 9a, 9b, and 9c at pages 83-93 of Order No. 97-171 are readopted.

*Issue 9c, Service Quality.* Staff added Issue 9d, New Plant Investments and Related Costs, for settlement purposes; see the companion to this order, Order No. 00-190. That addition changed the effect of Issue 9c on USWC's revenue requirement. The discussion at pages 93-101 of Order No. 97-171 is readopted, but the amounts shown in Appendix A, Column 52, are amended to include the Issue 9d effects on the service quality adjustment. The new amount is shown in Appendix B to Order No. 00-190, Column 53.

## ISSUE 9: SERVICE QUALITY AND REENGINEERING

*Disputed Issues:*

- *Issue 9a, Service Reengineering Costs (Adjustment 50<sup>\*</sup>)*. The recorded data include large service reengineering costs. Staff normalized the test year as if service reengineering had not occurred. USWC disagrees about the need for this adjustment, claiming that it is a disallowance. Staff believes these are nonrecurring costs that should be normalized to properly state USWC's ongoing cost structure. See Issue 1a(1), Test Year.
- *Issue 9b, Extraordinary Expenses (Adjustment 51<sup>#</sup>)*. Staff removed extraordinary customer service, cable and wire facilities, reported trouble testing, and pole maintenance expenses that will not be part of USWC's ongoing cost structure. Staff has excluded accelerated pole testing expenses from this adjustment. USWC disagrees about the need for normalizing and pro forma adjustments. See discussion at Issue 1a(1) above.
- *Issue 9c, Service Quality (Adjustment 52<sup>†</sup>)*. Due to continuing service problems, with no quick solutions in sight, Staff recommends using the low end of the return on equity range (10.2%). USWC disagrees with Staff's adjustment.

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<sup>\*</sup> Issue 9a is now Adjustment 51 of Appendix B to Order No. 00-190.

<sup>#</sup> Issue 9b is now Adjustment 52 of Appendix B to Order No. 00-190.

<sup>†</sup> Issue 9c is now Adjustment 53 of Appendix B to Order No. 00-190.



**Issue 9a: Service Reengineering Costs**

*Background.* USWC's reengineering program officially began in September 1993. It was scheduled to end three years later but was extended and will now end in 1997. U S WEST Communications Group described the reengineering plan recently as follows:<sup>40</sup>

The Communications Group's 1993 results reflected an \$880 million restructuring charge (pretax). The related restructuring plan (the "Restructuring Plan") is designed to provide faster, more responsive customer services while reducing the costs of providing these services. . . . The Communications Group has consolidated its 560 customer service centers into 26 centers in 10 cities and plans on reducing its work force by approximately 10,000 employees. All service centers are operational and supported by new systems and enhanced system functionality.

The Restructuring Plan is expected to be substantially complete by the end of 1997. Implementation of the Restructuring Plan has been impacted by the growth in the business and related service issues, new business opportunities, revisions to system delivery schedules, and productivity issues caused by the major rearrangement of resources due to restructuring. These issues will continue to affect the timing of employee separations.

The Communications Group estimates that full implementation of the 1993 Restructuring Plan will reduce employee related expenses by approximately \$400 million per year.

The consolidation involved in USWC's reengineering program included customer service upgrades (also termed resystematization by several witnesses); employee effects such as termination, relocation,

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<sup>40</sup> Source: U S WEST Communications Group, 1995 Financials, Management's Discussion and Analysis of Financial Condition and Results of Operations, p. 6. In this passage, the reengineering plan is called the restructuring plan.

hiring, and increased overtime; and real estate transactions.

As the passage from the Communications Group Financials above indicates, USWC established an \$880 million reserve account for the reengineering program expenses and charged such expenses to the reserve under the SEC's guidance. The company also set up an internal governance committee to administer the actual financial accrual for SEC purposes. The committee was created to ensure that only reengineering program expenses, as defined by accounting rules, were charged to the reserve. When the reengineering program was implemented, USWC's employees were instructed to charge certain expenses to the reserve. To help track these charges, USWC made a change to the indicator in the responsibility code to identify the reengineering program costs. USWC instructed its employees to charge nonrecurring expenses, not ongoing expenses, to the reserve. USWC wanted to separate business as usual costs from reengineering program costs so that reengineering costs could be audited (Staff Exhibit 76).

*Staff's Proposed Adjustment.* Staff argues that for the period January through September 1995, USWC's costs were substantially higher than for a normal period. That period coincides with the peak of the reengineering implementation period. The costs in the reengineering period included a) nonrecurring costs to implement reengineering (Issue 9a) and b) extraordinary expenses resulting from the movement of work functions, the introduction of new work processes, and the work disruption caused by reengineering implementation activities (Issue 9b).

Staff proposes a \$33,840,141 decrease in USWC's total Oregon operating expense due to USWC's service reengineering program. This amounts to a decrease of \$25.6 million in intrastate revenue requirement. The costs involved in this adjustment are the costs USWC incurred to implement reengineering (e.g., system development, employee related costs, and support costs). Staff asserts that reengineering is a unique change in USWC's business practices that entails large nonrecurring costs and equally large forecasted future savings. Staff argues that it is unlikely that USWC will undertake another reengineering plan of this type in the foreseeable future. Therefore, Staff argues that these are nonrecurring costs and should be removed from the test year.

*Staff's Method.* To calculate the effects of the reengineering program on the ongoing cost structure of the company, Staff reviewed USWC's results of operations. As detailed above, USWC had implemented procedures to identify and separate reengineering expenditures from business as usual expenditures. Staff calculated its service reengineering cost adjustment amount by removing nonrecurring costs to establish an appropriate recurring cost level. To do so, Staff normalized the historical period to appear as if USWC had not undertaken its reengineering efforts. Staff removed the reengineering costs incurred during the historical test period.

Staff used the information recorded by functional category under the Uniform System of Accounts, codified at 47 C.F.R. 32, to understand the type of expenses being charged to the reserve and to ensure that USWC's remaining expenses represented a reasonable ongoing level.

Staff would have recommended removing any reengineering related savings realized during that period. However, Staff believes that USWC did not realize such savings during the historical period. To deal with future savings in calculating the service reengineering cost adjustment, Staff recommends an offset. Staff argues that during the historic test period, USWC made reengineering related capital investments in anticipation of savings. To establish the cost level that would have occurred in the absence of reengineering, Staff exactly offset the reengineering capital costs in the test period with a portion of future savings.

The portion of future savings involved in the offset is relatively minor compared to anticipated savings from the program. USWC estimates that 1998 reengineering savings will be \$400 million (see the Communications Group Financials, above). Staff figures the Oregon allocation of that amount at a conservative 8 percent or \$32 million. Staff points out that apart from the portion allocated to offset capital costs, USWC shareholders will receive the remaining future savings until rates are reset.

Staff maintains that its exclusion of reengineering expenses from the test year results of operations leaves USWC with a reasonable level of ongoing expense. To check the reasonableness of the ongoing level of expense for the company after Staff's reengineering adjustment, Staff reviewed

the expense trend for the five accounts with the most significant reengineering expense during the test period. These five accounts represent over 75 percent of the reengineering expense that was removed from the historical period. Staff then compared the account balances for these five representative accounts from prior years to the same five accounts for the test year. These comparisons showed that USWC still had a reasonable level of ongoing expense after the reengineering program adjustment.

*USWC's Position.* USWC opposes this adjustment, arguing that the reengineering costs are recurring and that reengineering is a generic, ongoing program. USWC also argues that there is no basis in law or fact to disallow its prudently incurred expenses and investment related to restructuring to improve efficiency. USWC alleges that Staff has not proved that the expenses it recommends disallowing are nonrecurring, and has not proved that they amount to \$33 million.

USWC asserts that uncontradicted evidence shows that test year levels of expense and investment for the costs at issue are representative of historic trends and are expected to continue. USWC argues that Staff bases its proposed disallowance on accounting documents, yet concedes that accounting documents cannot prove that an expense is nonrecurring.

USWC points out that the expenses at issue consist primarily of two major items, employee separations and systems development and upgrade. Many of these costs were incurred to improve existing systems and processes. USWC argues that it has a long history of incurring expense to upgrade its systems, consolidate operations, and downsize work force. These same expenses were ongoing at approximately the same levels before the present reengineering program was announced. USWC contends that it submitted substantial evidence that restructuring efforts will continue to be a significant ongoing expense, although they will not always be called reengineering.

USWC also argues that its consolidation and systems development efforts are not completed. USWC cannot maintain service or compete in the market place without continuing systems development. Thus, the company argues, these expenses will recur. Further, historic data demonstrate that downsizing the work force does not result in expense reductions, because of wage

increases and new hires in other areas. In addition, the company argues that reduced expenses achieved by reengineering are offset by inflation and changes in other areas of operations.

Moreover, USWC contends that process improvements, systems development, and consolidation of business offices have improved operations to benefit Oregon ratepayers. For instance, business office access has improved.

Finally, USWC argues that Staff's testimony in other areas of the case contradicts its position on this issue. In Issue 8f, Income Tax Refund, Staff relied on historic trends to support its contention that an event was recurring. USWC asserts that for that issue, the historic trend was substantially less supportive of a recurrent event than the historic trend of expenses associated with restructuring. USWC accuses Staff of being result oriented and using historic trends when it would reduce revenue requirement but ignoring them when it would increase revenue requirement.

USWC proposes headcount data--that is, data regarding the number of people it employs at particular time periods--rather than accounting data to indicate the appropriate expense levels. USWC uses this argument in three ways:

- 1) USWC argues that Staff's overall projected decline in expenses is tantamount to the departure of 1,600 Oregon employees (when there were only 3,786 Oregon equivalent employees at the end of December 1995);
- 2) the levels of employee paid exits under the reengineering program are the same as prior to the reengineering program, showing that the reengineering program is recurring; and
- 3) employee levels did not increase in 1994 and 1995 during the reengineering program period.

**Disposition.** We conclude that USWC's service reengineering program represents a fundamental change in the way USWC delivers service. The program involves substantial consolidation and movement of employees as well as development and implementation of computer systems. USWC has consolidated 560 service centers into 26 and is

reducing its work force by approximately 10,000 employees. This is a major and unique program that is not likely to recur. We base our conclusion on the Communications Group Financials passage above, the statements of several USWC witnesses that the program will end in 1997, and the fact that USWC maintained its accounting records to separate reengineering charges from business as usual. We also note that the record contains these comments from pp. 24-25 of USWC's booklet of comments to the 1995 NARUC Summer Committee Meetings in San Francisco:

As announced in September 1993, the company expects a total of 9,000 jobs to be eliminated by 1997. . . . We anticipate that by August, 1995, about 95 percent of the people with jobs in the new reengineered centers will be working in them. . . . We're on target for completion of reengineering in 1997. All of the 26 reengineered centers are open.

We find USWC's attempt to downplay the importance and reliability of its accounting information unpersuasive. USWC was required by federal law to accurately maintain the information Staff used to isolate reengineering expenses. Staff properly relied on USWC's accounting data and information from its investigation to determine that the reengineering costs were nonrecurring and to calculate the amount of the disallowance.

Staff's adjustment does not ignore the reengineering program, as USWC charges, but removes the nonrecurring costs from revenue requirement. However, Staff allows USWC to offset the removed costs by retaining virtually all the savings the company estimated would arise from the reengineering program. This is a generous approach. In the past (Order No. 92-1562), the Commission approved a settlement agreement that removed the nonrecurring implementation costs and included all savings arising from that nonrecurring event.

USWC argues that the reengineering program will not result in expense reductions because of wage increases and new hires in other areas, inflation, and changes in operations. These factors are not specific to reengineering but are costs that face any company. Staff's adjustment does not affect cost increases not associated with the reengineering program. We note that USWC projects \$400 million of savings in 1998 associated with

the reengineering program (see Communications Group Financials passage above).

USWC argues that Staff took a different position with regard to recurring and nonrecurring events in Issue 8f. We disagree. The income tax refund involved in that issue is an intermittent event, not a one time occurrence such as the reengineering program.

USWC argues that we should rely on its historical headcount data rather than on its accounting records to judge the costs involved in the reengineering program. Headcount data is a poor substitute for accounting data, for the following reasons. First, USWC is not able to account for changes in employee levels, leaving a residual of 2,051 unexplained employees in 1995. Second, headcount analyses are difficult to make because of changing employee status (full time to part time and back). Third, they are suspect because USWC recently has been required to use extensive overtime and contract labor. USWC also relies on a data systems organization headcount that is subject to change from reorganizations, such as the dismantling of its technologies division. And fourth, headcount information does not reflect the separation of regulated and nonregulated expenses under Part 64.

Staff gives an example of why it considers headcount information unreliable. USWC claims that Staff's projected decline in expenses is tantamount to the departure of 1600 Oregon employees. That figure is calculated using the comparison of expense per line shown in USWC Exhibit 64. USWC fails to consider that substantial operating expenses underlying its exhibit do not relate to headcount.

We conclude that the reengineering program is a one time event, not an ongoing effort as USWC asserts. The consolidation of 560 service centers into 26 centers will not take place again. Staff's adjustment follows the Commission policy of removing nonrecurring costs from the test year to establish an appropriate recurring cost level.

We are persuaded that Staff's reliance on the reengineering accounting data that USWC kept pursuant to federal law was reasonable. USWC's alternative headcount data are unpersuasive.

Staff is correct in stating that savings from the reengineering program affect the recurring cost level. Staff took the conservative approach of recognizing only the future savings that offset the capital costs in its adjustment. Staff based its recognition on savings estimates provided by USWC. We are satisfied that Staff's adjustment leaves USWC a reasonable ongoing level of expense during the time rates will be in effect. We find Staff's adjustment reasonable and adopt it.

**Issue 9b: Extraordinary Reengineering Related  
Costs**

Issue 9b addresses the extraordinary expenses incurred by employee groups that experienced work disruption during the implementation period. The groups include employees that charge the following expense accounts: customer services operations and customer accounting operations (customer services), cable and wire facilities, and reported trouble testing. It also addresses the extraordinary expenses associated with the correction of pole safety violations. Staff recommends reducing USWC's total Oregon operating expense by \$8,995,203 to account for these extraordinary expenses, because these costs will not recur at the same high level during the time rates set in this case will be in effect. That results in an intrastate Oregon revenue requirement reduction of \$6.6 million.

Unlike the reengineering program expenses (Issue 9a), USWC did not track these extraordinary expenses to specified accounts. Staff reviewed USWC financial statements to determine that reengineering implementation resulted in extraordinary expenses. Staff then compared USWC expenses in prior periods with those from the test period. USWC's financial records show higher costs during the reengineering implementation period. Staff assessed information concerning implementation issues that USWC faced during the historical period, such as resolving computer system errors, dealing with shortages of employees in megacenters that resulted in technician hold time, trying new procedures and then reverting to prior procedures, revising procedures, and extending the length of the implementation period. This information provided specific examples of the causes of higher costs during the historical period.



Staff stresses that the problems USWC encountered in implementing the reengineering program were not due to rank and file employees. Instead, USWC's front line employees have performed admirably in a difficult work environment. The problems stem in large part from decisions made at the corporate level by USWC executives.

Staff contends that the expenses recorded during the historical period January through September 1995 were affected by activities that will not be a part of USWC's ongoing cost structure, particularly reengineering implementation expenses and pole maintenance expenses that are higher due to USWC's response to safety concerns. Staff normalized those costs based on a more representative period, to reflect USWC's ongoing cost structure. USWC's financial information supports the view that the test period includes nonrecurring expenses associated with reengineering implementation. In the latter part of 1994, reengineering implementation began to accelerate. As outside plant technicians were affected by reengineering implementation, cable and wire facilities expenses began to increase, and USWC's service quality experienced a further decline.

Staff points out that reengineering caused a decline in productivity, including computer errors, shortages of employees in megacenters that resulted in technician hold time, and changes in procedures. USWC also lost expertise when approximately 1,000 employees decided not to relocate. USWC underestimated how many people would choose to leave the company. USWC transferred or terminated locally based engineers. USWC field technicians have been required to work substantial amounts of overtime. USWC has deployed substantial numbers of out of state and contract personnel who may be unfamiliar with USWC's Oregon outside plant. Staff believes that the field technicians have performed admirably under difficult situations. However, it is normal that such situations, particularly prolonged periods of overtime, result in lowered productivity.

The productivity issues related to reengineering directly affected customer services, cable and wire facilities, and reported trouble testing expense. Staff believes that other work functions such as plant administration and engineering were also affected by reengineering implementation activities. The accounts associated with the latter two work functions were more difficult to

analyze than the others, because of the clearing of capitalized amounts from those accounts and the level of nonrecurring reengineering implementation expenses in the account balances. Staff therefore elected a conservative approach and limited its adjustment to customer services, cable and wire facilities, and reported trouble testing expenses.

Staff obtained USWC's records for the three categories of customer services, cable and wire facilities, and reported trouble testing expenses. Staff first selected a period (January through June 1994) as representative of ongoing expense levels. This was a period during which work functions were not affected by implementation of the reengineering program. Staff then normalized the January through June 1994 expenses to recognize an August 1994 wage increase and line growth between this period and the period of January through September 1995. Staff compared the normalized 1994 data with the 1995 data to determine extraordinary 1995 wage and other expense amounts and then calculated benefit effects based on extraordinary wages. Finally, Staff removed the abnormally high expenses from the test period.

Staff believes that the allowance for wage and line growth increases is more than adequate for expected cost changes. Staff did not try to adjust the allowance downward for expected factors such as productivity increases and the level of fixed expenses (those that do not vary with changes in line volume). Staff allowed for a large increase even though expenses in general, depending on type and circumstances, may be level or even declining.

Staff considers the nature of the expense increase to be temporary. The additional expenses are primarily overtime and contract labor, not permanent employees. USWC is trying to modify systems and relocate personnel at the same time. It is usual for costs to be higher during this type of implementation period and then return to normal levels. According to Staff, the problems USWC is experiencing can be corrected, and it appears that USWC is taking measures to correct them. The higher costs are related to decisions and reengineering implementation activities directed at the corporate level rather than being related to an increase in the number of USWC permanent Oregon employees or the performance of Oregon employees.

As with Issue 9a, Staff performed a reasonableness check to determine whether its adjustment for extraordinary expenses left USWC with an appropriate ongoing expense level. Staff determined that its adjustment allows a reasonable upward increase in the adjusted categories.

Staff also asked USWC to explain the sharply increasing expenses. USWC argues that its increasing expense trend is due to USWC's response to service quality problems. Staff does not credit this argument. Staff attributed the trend to reengineering implementation, which it considers the underlying cause, as opposed to a decline in service quality and USWC's response to it, the symptoms. Staff points out that the increase in service complaints the Commission received from USWC customers coincided with the implementation of reengineering during the latter half of 1994. Service quality did not improve over the course of the historical period.

USWC gave Staff two explanations for the expense increase that, according to Staff, merited further consideration. First, USWC indicated that "customer services other expenses" was increasing due to an increase in postage costs. Staff lowered its adjustment to account for the recurring nature of the postage cost increase. Second, USWC made an accounting change in the second half of 1994 to classify certain locating costs associated with construction activities as expense rather than as capital. Staff did not attempt to normalize for this accounting change because of some uncertainties. That is, unless prior capitalized charges were reclassified from capital to expense, ratepayers are incurring capital costs for prior locating as well as expenses for current locating. Also, due to the effects of reengineering and the lack of financial data, Staff had trouble determining a proper ongoing level of expense associated with this change.

Staff argues that USWC incurred extraordinary expenses during January through September 1995 to address pole safety issues. In March 1994 the Commission approved an agreement between USWC and Staff to eliminate pole safety violations (UM 640). During 1995, USWC continued to correct these safety violations. USWC conducted a public safety inspection of all USWC poles in the state and accelerated the detailed inspection and pole strength testing to 20 percent per year rather than the normal 10 percent per year. Staff recommends excluding the extraordinary pole

maintenance costs associated with USWC's correction of pole safety violations.

To calculate the adjustment associated with pole safety issues, Staff excluded expenses associated with the one time public safety inspection of all USWC poles in the state and reduced detailed inspection and pole strength testing expenses from the accelerated rate of 20 percent per year to the normal rate of 10 percent per year. Staff also amended its adjustment to reflect the partial settlement of the pole safety violation issue. See Staff Exhibit 84.

USWC asserts that Staff has presented no evidence to support its proposed adjustment, while USWC has produced substantial evidence to disprove Staff's claims. Expense levels for 1996 demonstrate that ongoing levels of maintenance expense are substantially higher than test year levels. The increase is due in part to the increased number of network technicians since the end of the test year, a 26% increase from 898 technicians employed in Oregon in September 1995 to 1,134 in August 1996. USWC notes that it has added these technicians in response to Commission concerns about adequate service in Oregon. USWC also uses its new network technical data as an argument against Staff's service quality adjustment (Issue 9c).

USWC also charges that Staff failed to present evidence demonstrating that reengineering had the dollar effect on expenses that Staff claims. USWC points out that Staff's proposed adjustment is tantamount to removing 180 network technicians from the payroll. USWC also argues that Staff's adjustment distorts the test year.

Staff responds that USWC has not shown that its recent employment of over 200 network technicians justifies increasing the overall cost level in the rate case. Staff argues that the Commission should not rely on headcount data; it is unreliable and subject to misuse (see discussion at Issue 9a above). Staff also notes that these data were introduced for the first time in USWC's reply testimony. The data are unverified, and Staff asserts that verification would be difficult and time consuming. Moreover, the relevant inquiry is how the new hires impact overall expense levels. Staff notes that in its brief, USWC claims that all these technicians are employed in Oregon, but USWC witness Carl Inouye does not make that claim in his testimony. Thus, Staff argues, the record

does not establish that all or any of these technicians are working in Oregon. The duties of these network technicians are also unclear. If they are involved in construction, their cost is a capital item, not an operating expense. Nor is there evidence in the record as to how long these employees will stay in Oregon. Staff notes that USWC has deployed out of state employees in the past.

*Disposition.* For the reasons given above, at Issue 9a, we reject USWC's headcount arguments. We conclude that USWC's network technician figures are unverified and therefore do not accept them to refute Staff's argument.

We find that Staff's adjustment properly removed extraordinary nonrecurring expenses associated with problems in implementing the reengineering program. We find that the adjustment was reasonably calculated and leaves USWC an appropriate level of ongoing expenses. We also find Staff's adjustment with respect to pole safety violation corrections reasonable. We conclude that Staff's adjustment should be adopted.

#### Issue 9c: Reduced Service Quality

As we stated in Order No. 96-107, at 1:

During the past four years, U S WEST has experienced a severe increase in service quality problems, relating to both customer service and technical service.

The deterioration in USWC's service quality began during the time when USWC was operating under an AFOR approved by the Commission in Order No. 91-1598. The AFOR was an incentive based plan designed to give USWC pricing flexibility and an opportunity to earn higher rates of return within a broad range. The Commission approved the AFOR plan "contingent upon USWC's compliance with the quality of service standards as of April 1, 1991." Order No. 91-1598 at 22. Staff certified that USWC satisfied that requirement. *Ibid.*

USWC represented, and we expected,

that [this] incentive-based regulatory approach adopted in this order should motivate USWC to improve efficiency, modernize its infrastructure, and provide services which meet the challenges of the

changing telecommunications environment. These benefits will be achieved without sacrificing . . . the quality of service that Oregonians have come to rely on. Indeed, the new regulatory framework will benefit customers by providing rate stability for essential services, the potential for revenue sharing, improved service quality, and continued access to state-of-the-art telecommunications services.

Order No. 91-1598 at 1, 30.

Our expectations have not been met. Between April 1991 and October 1995, trouble report rates increased in 66 of USWC's 77 Oregon wire centers. In some instances, these trouble reports more than doubled. Further, trouble report rates in 49 of USWC's Oregon wire centers increased from October 1995 levels in 1996 (average of March, April, and May 1996). USWC held orders for primary lines in Oregon have risen from an average of 66 per month in 1991 to 172 in 1995 and to 261 in July 1996. USWC's primary held orders delayed more than 30 days have risen from an average of 23 per month in 1994 to 35 per month in 1995 to 107 in July 1996. USWC has also experienced problems with other measures of service quality the Commission uses. These are detailed in the Staff report attached as Appendix A to Order No. 96-107 terminating USWC's AFOR. Finally, the number of complaints received by the PUC Consumer Services Division regarding USWC's service has increased by a factor of ten, from an average of 23 per month in 1991 to 228 per month during the first six months of 1996.

USWC Oregon Vice President Chuck Lenard indicated to the Commission at the March 27, 1996, special public meeting that USWC is unlikely to be able to restore its service quality to the pre-AFOR levels soon. Service quality improvement will take considerable time. Mr. Lenard also indicated that USWC's service quality problems were due in large part to the condition of USWC's network infrastructure. Moreover, Mr. Lenard told the Commission that USWC has capacity problems in Oregon because the company underestimated the demand for USWC services.

Staff believes that it is unlikely that USWC will be able to remedy its service quality problems during the time when rates from this docket will be in effect. Staff therefore recommends that we adopt the low end of Staff witness John Thornton's

return on equity range to reflect the reduced level of USWC's telecommunications service quality. Staff notes that if USWC restores its service quality to April 1991 levels, it would be appropriate to use the midpoint of Staff's return on equity range to determine USWC's revenue requirement.<sup>41</sup> Staff argues that this condition is reasonable, because the highly reliable digital technology in USWC's network today makes it easier for USWC to provide the level of service it provided in April 1991.

Staff recommends that the Commission take the following actions with respect to Issue 9c:

1. Use the low end of Staff's reasonable return on equity range in determining USWC's revenue requirement.
2. Order USWC to restore service to April 1991 levels.
3. Order USWC to continue providing monthly service reports specified in the AFOR agreement until its service has been restored to April 1991 levels.
4. Adopt USWC's April 1991 service levels as the reference points for the levels of service that would justify using the midpoint of Staff's return on equity range in determining USWC's revenue requirement.

USWC opposes Staff's proposed adjustment. USWC maintains that it has been investing at record levels and has added service technicians to meet the new service requirements. USWC also claims that it has improved service levels in Oregon. To illustrate this claim, USWC points out that 80% of calls into customer centers have consistently been answered within 20 seconds since October 1995. USWC also notes that access to repair centers has improved, the percentage of missed commitments has declined, and repair cycle times are down.

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<sup>41</sup> We recently adopted new service quality standards for Oregon's local exchange companies (Order No. 96-332, amending OAR 860-023-0055). In light of these new standards, Staff recommends that the Commission use the middle of its return on equity range in determining USWC's revenue requirement in the future, if the utility's service meets or exceeds the standards in the amended rule.

USWC argues that Staff's reliance on the April 1991 service quality standards is misplaced. Those standards, USWC argues, were relevant only as benchmarks in Order No. 91-1598 establishing the AFOR. Therefore, USWC contends, the limited purpose for which the April 1991 performance levels are relevant is no longer applicable. USWC maintains that it has already been penalized for falling below the April 1991 service quality levels by termination of the AFOR, which cost it its pricing flexibility and the ability to earn at higher levels. USWC argues that if the Commission adopts Staff's recommendation, it will be penalized again and will continue to be penalized as long as rates from this docket are in effect.

USWC also believes that Staff has unfairly singled out USWC for the requirement that service be kept at April 1991 levels. USWC contends that this selective creation and application of the law only to USWC is akin to a bill of attainder, US Const. Art. I, §10, and violates USWC's right to equal protection of the law.

Moreover, USWC contends that the April 1991 performance levels were the highest ever achieved by the company, and are therefore not a reasonable basis for evaluating current and future service quality. USWC argues that there is no evidence that the April 1991 levels produce an appropriate level of service. Staff also proposes service levels that must be achieved in nine categories before USWC will be allowed to earn at the midpoint of the return on equity range. Currently, USWC notes that there is no standard as to five of the nine categories. The levels are defined only as those achieved in April 1991. Four of the nine measurements were not reported to the Commission in April 1991, however, so there was no basis to conclude that USWC met them then. As to those measurements that were recorded, USWC did not achieve them in April 1991. In almost all instances, the levels of service described by Staff are higher than USWC was actually achieving in 1991.

USWC argues that Staff proposes to adopt in this proceeding the standards by which to measure the company's performance and to apply those standards retroactively so as to penalize the company for failing to achieve them. USWC considers this an obvious example of an ex post facto action, which is prohibited by Article I, § 10 of the U.S. Constitution. USWC also argues that there is no competent evidence on which to assess a rate of



return penalty. USWC argues that there is no suggestion in the record that USWC failed to meet the service standards set forth in the Commission's rule. USWC also asserts that the Commission may not impose a penalty for service quality without a known service quality standard. *State ex rel. Utilities Comm'n v. Carolina Water Serv., Inc.*, 439 S.E.2d 127 (N.C. 1994).

USWC also maintains that the Commission has no statutory authorization to penalize a utility by denying it a rate of return which Staff would otherwise find appropriate. Staff has recommended an 11.6% rate of return but for service quality considerations. USWC cites several cases that hold that quality of service cannot lawfully be used as a factor to reduce a utility's rate of return.<sup>42</sup>

USWC contends that specific measures are already in place to address any service quality problems. Order No. 96-107, which terminated the AFOR, prescribed the specific measures that USWC must undertake to improve service quality. These measures include implementation of USWC's cellular telephone loaner program and an out of service credit. Those provisions, USWC believes, address the specific service quality issues and provide focused relief to affected customers. USWC has offered to make the existing program permanent until the next rate case. USWC argues that penalties should directly benefit those who have been inconvenienced, as USWC's current plan does. USWC also argues that Staff's proposed penalty would deprive the company of the financial resources it needs to achieve further service quality improvements.

Finally, USWC argues that Staff has shown no relationship between the amount of the recommended penalty and the nature of service quality concerns. USWC cites *South Central Bell Telephone Company v. Utility Regulatory Commission*, 637 S.W.2d 649, 653 (Ky. 1982) for the proposition that it is arbitrary and subjective to impose a penalty grossly disproportionate to documented service deficiencies. Here, USWC contends that Staff has identified technical noncompliance only in three small exchanges. USWC also contends that

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<sup>42</sup> *South Central Bell Telephone Co. v. Utility Regulatory Commission*, 637 S.W. 2d 649, 654 (Ky. 1982); *Florida Telephone Corp. v. Carter*, Fla., 70 So.2d 508, 510 (Fla. 1954); *In re General Telephone Co.*, 652 P2d 1200 (N.M. 1982).

customer calling volumes do not correlate with service quality. USWC argues that the proposed adjustment is based on complaints by only 1% of its customers. USWC recommends that we reject Staff's proposed service quality penalties.

**Disposition.** ORS 759.035 provides:

Every telecommunications utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited.

ORS 756.040 empowers the Commission in part as follows:

(1) . . . [T]he commission shall represent the customers of any public utility or telecommunications utility and the public generally in all controversies respecting the rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.

(2) The commission is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.

As these provisions make clear, we have authority to set service levels and establish reasonable rates for that service. We also have authority to set rates to reflect the level of service a utility provides. As the Oregon Court of Appeals held in *Garrison v. Pacific Northwest Bell*, 45 Or App 523, 531 (1980), "[r]ates, service levels, and the remedy for . . . service failures are inseparable." See also *West Coast Tel. Co.*, 27 PUR 3d 489, 497 (OPUC 1958) (OPUC held that a telephone company's inadequate service justified a rate of return "in the lower range of the zone of reasonableness").

USWC claims that its service substantially meets the standards in OAR 860-023-0055 (1995). Therefore, USWC argues, no rate of return adjustment should be made based on service considerations. We disagree. Our service quality rule was based largely on technical standards. Customer service problems are at the heart of USWC's current service quality problems. We amended the rule by Order No. 96-332, because some of the technical standards in it were outdated and because it did not contain important customer service standards.

Our service quality rule is not our only redress for poor utility service, however. As the statutory provisions above and the Garrison case make clear, the reasonableness of rates depends in part on the quality of service that the utility provides. We find that USWC's revenue requirement should reflect the lower level of service the utility is currently providing.

USWC argues that it is inappropriate to hold the company to the April 1991 standard for service. USWC argues that the only relevance of the service quality as of that date is to measure service quality in terms of the AFOR. Again, we disagree. We approved the AFOR plan because we expected it to result in long range benefits to ratepayers: improved efficiency, modernized infrastructure, and the provision of services that meet the challenges of the changing telecommunications environment. We expected those benefits to accrue without sacrificing service quality. Order No. 91-1598 at 1, 30. As a condition for granting the AFOR, we asked USWC to maintain the quality of service it was providing in April 1991.

Instead, Oregon ratepayers are now worse off than they were in 1991, and perceive themselves to be worse off than they were in 1994. That is an unreasonable outcome. Technology has improved in the meantime. We consider it a reasonable condition to ask USWC to bring service quality to the level of April 1991 in order to use the midpoint of Staff's return on equity range in determining USWC's revenue requirement.

USWC claims that there have been material improvements in its service quality. USWC cites improved access to customer and repair centers, fewer missed commitments, and shorter repair cycle times. We commend USWC for these improvements, but

note that other indicators of service quality are dismaying. We quote from Order No. 96-339 at 1-2:

Order No. 96-107 terminated USWC's alternative form of regulation (AFOR) plan, and the order also adopted a stipulation that addresses USWC's service quality problems regarding held orders for primary and additional access lines, and delays in restoring access line service to customers.

There has been no substantial improvement in USWC's service quality in these regards since the date Order No. 96-107 was entered (April 24, 1996), based upon customer complaint information received by the Commission. Complaints from USWC customers continue to come to the Commission's Consumer Services Division at an alarming rate. Commission records show that USWC customers are as dissatisfied with the company's service now as they were in April 1996, that the customers are less happy with USWC service now than they were during calendar year 1994, and that USWC service is perceived to be significantly worse than that provided by other utilities regulated by the Commission.

USWC has entirely too many held orders. In April 1996, the company had 283 primary held orders. In October, the primary held order figure rose to 366.

For the second and third quarters of 1996, USWC was clearing approximately 80 percent of its out of service reports within 48 hours. In recent weeks, the figure has been 50 to 70 percent. Historically, the percentage of reports cleared has dropped when Oregon's rainy season begins because of wet cables cracking, which may explain the most recent drop. Commission Staff believes that the service restoral standard should be that at least 95 percent of all reports are to be cleared within 48 hours. Because of the cable problem described above, USWC is unlikely to be close to compliance with that standard for at least several months.

USWC mentions that it is unnecessary for the Commission to "penalize" it by choosing a return on equity at the low end of the range, because the Commission has service quality remedies in place. See Order No. 96-339. We respond that the measures in that order are remedial. USWC has had ample notice that we expect its service quality to improve, not merely that we require it to provide redress for the symptoms associated with its poor service.

USWC cites several cases holding that a commission may not impose a penalty for poor service in a rate case. See Footnote 45 above. In *South Central Bell*, the Kentucky Commission was enjoined from reducing the utility's rate of return because of alleged poor service. The Kentucky Supreme Court found that a reduction in what was originally determined to be an adequate rate constituted a penalty beyond the scope of the Commission's authority. This holding is similar to the holding in the *Florida* case and the *General Telephone* case.

The present case is distinguishable on three grounds. First, the cases cited are state court cases. In our state, the Oregon Court of Appeals has reached a different conclusion about the relationship between rates and service, as the language from *Garrison* quoted at the beginning of this section shows.<sup>43</sup> Second, in the present case Staff has recommended a point within a reasonable range of return on equity. Any rate within the range is adequate to allow USWC to earn a reasonable return on equity. Therefore, USWC's arguments that the low end of the range will not permit it sufficient funds to improve its network are groundless.

Third, the choice of the low end of the reasonable range is not a penalty. It is not punishment for failure to meet service expectations in the past. As USWC noted, early termination of the AFOR was the consequence of USWC's failure to meet the April 1991 service quality standards. That issue is resolved. Ratemaking, however, is prospective in nature. See, e.g., Order No. 87-407 at 11-12. Staff's proposed adjustment is also prospective.

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<sup>43</sup> USWC argues that this case is not on point because the court found that the utility had not violated the "adequate service" statute. The point is, however, that the court, in making its determination, articulated the principle that rates and service are interrelated.

Staff determined that "USWC is unlikely to restore its service quality to pre-AFOR levels during the period in which rates resulting from this proceeding will be in effect." Staff/7, Birko/1, 3, 6-7, ; Staff/8, Birko/4-5; Staff/42 and 43; Mr. Lenard's comments at the March 27, 1996, PUC special public meeting (officially noticed Tr 15-16.) Our reduction in the return on equity is based on our understanding that USWC's service during the period when rates will be in effect will be less satisfactory than it was six years ago.

USWC argues that we cannot choose the low point in the range of reasonable return on equity because there is no known standard below which USWC's service quality has fallen. *Carolina Water Serv., Inc., supra*. Throughout the term of the AFOR, we held up USWC's own April 1991 service quality achievement as the standard which it must meet. In Order No. 96-107 terminating the AFOR, we again stressed to USWC the importance of improving its quality of service. That order specifically directed the company to continue to file the monthly technical service quality reports that it had filed under the AFOR. That order originally foresaw continuing the reports until OAR 860-023-0055 was amended, but the Commission subsequently extended the period of time during which USWC must file the reports required indefinitely (see Order No. 96-338 at 4, Ordering Paragraph 4).

We believe this is a reasonable and known standard to continue to apply. It is reasonable because USWC had already met that standard before the AFOR was implemented.<sup>44</sup> It is known because we have repeatedly held it up as the standard of service USWC must meet, both during and since the AFOR. USWC's ex post facto argument therefore fails.

As to USWC's equal protection argument, the company has not shown that other, similarly situated companies have received different treatment. USWC argues that it is subject to a standard that is not applied to other telecommunications utilities, the April 1991 standards. The history that led to approval of

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<sup>44</sup> USWC argues that it did not actually meet the April 1991 service quality standards. Staff certified that it did meet those standards. See Order No. 91-1598. USWC's assertion that the certification was false is a collateral attack on that order and is inappropriate in this forum.

USWC's AFOR, development of the service quality standards under the AFOR, termination of the AFOR, and continued imposition of the AFOR service quality standards is unique. As we state below, in future rate cases, USWC will be held to the same set of standards that govern service for all telecommunications utilities, those set forth in OAR 860-023-0055. For purposes of this rate case, we look to the April 1991 standards to assess USWC's performance because of the AFOR and USWC's agreement to that set of standards under the AFOR.

USWC contends that Staff's proposed adjustment is grossly disproportionate to the consequences, because it is based on complaints by 1% of the company's customers. USWC's argument misses the point. First, we have no way of knowing how many customers who receive inadequate service fail to complain of it. Second, and more importantly, the complaints indicate problems with USWC's telecommunications system and delivery of service that may adversely affect the system as a whole and Oregon's infrastructure. Cost cutting, employee reductions, and USWC's reengineering program have reduced USWC's ability to maintain 1991 service levels at a time when the utility is experiencing rapid growth in the demand for its telecommunications services. USWC's ratepayers, present and potential, can expect to be adversely affected by delays in providing access lines or service repairs.

We conclude that Staff's proposed adjustment in the return on equity to 10.2% is reasonable. The adjustment reflects USWC's reduced quality of service, which is not likely to be remedied while rates from this docket are in effect. Staff also asks us to order USWC to restore service to April 1991 levels and order USWC to continue providing monthly service reports specified in the AFOR agreement until its service has been restored to April 1991 levels. Under Order No. 96-339, USWC is already required to provide those service reports for an indefinite period. It would be redundant to include such a mandate in this order.

Further, Staff requests that we adopt USWC's April 1991 service levels as the reference point for the level of service that would justify using the midpoint of Staff's return on equity range to determine USWC's revenue requirement. We decline to do so. The 1991 service levels are an appropriate measure in this rate case for USWC's failure to provide adequate service. In future rate cases, however, we will judge USWC's service

quality by amended OAR 860-023-0055 (see Order No. 96-332). If USWC meets the standards in the new rule, we will find it appropriate to choose the midpoint of a reasonable range for USWC's return on equity.

*Issue 10, Final Test Year Separation Factors.* The discussion at page 101 of Order No. 97-171 is readopted, but the amounts shown in Appendix A, Column 53, are amended as shown in Appendix B, Column 56, Order No. 00-190.

**ISSUE 10: FINAL TEST YEAR SEPARATION FACTORS**  
*Significantly Undisputed Issue:*

- *Adjustment 53\**. Staff and USWC agree that the intrastate separation factors used to initially separate the test year should be modified to include the effects of the sale of exchanges to PTI and the EAS conversions. The final factors depend on the resolution of all disputed expense adjustments. See Appendix B, First Stipulation, Paragraph 25.

*Issue 11, Refund Procedures.* The discussion at pages 101-107 of Order No. 97-171 is readopted except: 1) the interest rate is revised to 8.77 percent; 2) the refund eligibility date is updated from May 19, 1997, to reflect the provisions of the Stipulation adopted as modified in Order No. 00-190 (see Appendix A to that order); 3) we update the date when the refund will begin, in accordance with the Stipulation, *supra*; 4) we allow refunds to former customers; and 5) we allow temporary rate reductions and bill credits as provided in the Stipulation, *supra*.

*Amount of Refund:* The discussion on pages 101-107 of Order No. 97-171 is readopted, but we revise the conclusions to allow refunds to be based on an amount lower than the adjusted test year revenue requirement. See Appendix A to Order No. 00-190.

**ISSUE 11: REFUND PROCEDURES - PROCESS**

*Disputed Issue:*

Staff believes that USWC should make one time, lump sum credits on customers' bills. USWC should not make refunds for toll usage, but the company should make refunds to access service customers. USWC wants to phase the refund into rates and make no refund to access service customers.

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\* Issue 10 is now Adjustment 56 of Appendix B to Order No. 00-190.



Staff and USWC have not agreed on the refund procedures or on how to calculate the refund. If the Commission orders a refund based on the revenue requirement established in this docket, Staff recommends that USWC's Measure 5 savings for May and June 1996 be used to reduce the amount of the UT 125 refund. These savings were included in the refund USWC made to customers in January 1996.

**ISSUE 11: REFUND PROCEDURES - BASIS OF REFUND**

[Deleted text not readopted.]

***Completely Settled Issue:***

Staff and USWC agree that the refund should be reduced by the Measure 5 refund that related to May and June 1996. (\$.9 million, Issue 8e, Ballot Measure 5 Property Taxes)

***Disputed Adjustments (which Staff would include but USWC would exclude):***

Staff and USWC disagree about the basis of the refund. Staff believes the refund should follow Commission Order No. 96-183. Therefore, it should be based on the total revenue requirement established in this docket,<sup>45</sup> except for the Ballot Measure 5 refunds for May and June 1996.

USWC argues that the refund should follow Order No. 91-1598 and be based on actual earnings. USWC agrees that some adjustments should be made to the test year before calculating the refund but three types of adjustments should generally be excluded: estimates and forecasts, imputations, and disallowances of recorded data.

*Estimates and Forecasts.* Many adjustments in this proceeding are based on estimated revenues and expenses that Staff expects USWC to achieve during the period when rates are in effect. USWC claims that estimates and forecasts should be ignored in a refund calculation. However, the stipulated test

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<sup>45</sup> In Order No. 96-183 at 4, the Commission concluded that "the amount subject to refund by USWC is equal to the difference between the permanent rate level established in pending docket UT 125 and the current interim level, assuming that the latter amount of revenues is greater than the former."

year includes three months of estimates, which the company would include in calculating a refund. USWC would also include the estimated effects of pending sales of exchanges on allocation factors (Issue 4f) and the estimated effects of docket UM 351. [Deleted text not readopted.]

*Imputations.* According to USWC, these adjustments [deleted text not readopted] remove or add imputed amounts and, therefore, should be ignored in the refund calculation. However, the company does not exclude US WEST Direct directory revenues (Issue 3a) from the refund calculation. The company agreed to the imputation of Yellow Pages revenue in Order No. 91-1598, UT 80.

*Disallowances of Recorded Data.* According to USWC, these adjustments [deleted text not readopted] would impose retroactive ratemaking if they are included in calculating the refund. USWC does not exclude the floor space adjustment (included in Issue 4a) from the calculation.

*Total Adjustments to Include in the Refund Calculation (where the amounts depend on whose adjustments are adopted):* [Deleted text not readopted.] The amounts depend on whose adjustments are adopted in Issues 1 through 10 and 14.

If we order a refund in this proceeding, Staff recommends that we implement it as follows:

1. The refund should be made within 60 days after the Commission issues an order directing USWC to make a refund.
2. The refund should be made as a one time, lump sum credit on customers' bills.
3. The refund should be made to customers of USWC as of the refund date.
4. There should be no refund for toll service.
5. Interexchange carriers (IXCs) who are access service customers of USWC should receive refunds based on the immediately preceding the refund date. In the aggregate, the portion of the total refund that should be distributed to IXCs should be calculated using the ratio of USWC's Oregon intrastate

access revenues to total intrastate revenues subject to refund, as determined in this proceeding.

6. The rest of the refund should be distributed to local service customers, on a per line basis, in the following ratios:

<u>Group</u>	<u>Current Rate</u>	<u>Ratio**</u>	
Residential	\$12.80	1.00	All residential service lines
Bus. Simple	\$30.87	2.40	Business simple lines and business measured lines
Bus. Complex	\$34.77	2.70	Other business, switched service lines, including complex, DID trunks, ISDN, PAL, semipublic
Centrex	varies	1.00	All Centrex type lines
Private Line	\$9.80 (basic)	0.75	Refund per NAC

\*\*Each ratio is approximately equal to the ratio of the current rate for the service to the rate for the residential group.

USWC generally agrees with Staff's recommendations. However, USWC argues that no refunds should go to the IXCs because they have already received permanent rate reductions over the past four years.

Staff disagrees with USWC's position on refunds to IXCs. Staff recommends that any refund be divided among groups of customers approximately in proportion to the total revenue USWC receives from each group. The IXCs' proportionate share would reflect the rates they paid over the 12 months preceding the refund. Further, despite periodic rate adjustments for access service, the IXCs may still be paying higher rates than what the Commission ultimately determines is reasonable.

USWC contends that Order No. 91-1598 requires the consideration of "actual earnings" in determining refunds. The order discusses the refund procedures to be followed or the rates to be charged by USWC

in the event the AFOR is terminated prematurely.<sup>46</sup> The Commission prematurely terminated USWC's AFOR by Order No. 96-107. That order provided that "U S WEST's rates for services [from May 1, 1996] shall be considered interim rates subject to refund with interest." *Id.* at 3.

USWC filed a Petition for Clarification and Request for Ruling on May 31, 1996, asking the Commission to clarify that any refund would be calculated using USWC's actual earnings during the interim rate period. On July 16, 1996, the Commission issued Order No. 96-183, which concluded that the amount subject to refund would be "equal to the difference between the permanent rate level established in pending docket UT 125, and the current interim level, assuming that the latter amount of revenues is greater than the former." *Id.* at 4. The Commission stated that the refund procedure would be similar to that used in ORS 757.215(4) and 759.185(4). *Id.* On September 16, 1996, USWC filed a Petition for Reconsideration, which was denied in Order No. 96-86. USWC has filed a judicial appeal of this order and of Order No. 96-183. USWC argues that the Commission erred in its application of Order No. 91-1598 by determining that the refund would not be based on what USWC is actually earning.

USWC also argues that because Staff has used forecasts in its proposed adjustments, the adjustments bring future revenues into the current time period as if they were being earned now. USWC argues that the forecasted adjustments distort the refund amount because a refund will be based on a forecast, as opposed to actual earnings as specifically contemplated in Order No. 91-1598; and because some or all of the earnings are not forecasted to occur until after the period that rates are interim, they are not subject to refund.

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<sup>46</sup> The order provides, at 28-29:

Subparagraph (3) specifies that the rates in effect from the date the plan is terminated until the date new permanent rates are set shall be interim rates subject to refund. A refund will take place only where USWC is determined to have been overearning. The amount of any refund will equal the difference between the amount USWC is actually earning and the amount subsequently found to be reasonable. Any refunds will accrue interest at USWC's authorized rate of return on rate base.

According to USWC, using forecasted adjustments means that the Commission has no way of knowing if earnings are ever actually achieved. The presumption of Staff's forecast adjustment is that USWC would pay ratepayers the refund now for future revenue growth or expense reduction, and over the period of rates would "earn" the refund back. USWC argues that this is inaccurate. Under Staff's approach, the refund would be paid on earnings projected to occur after rates are no longer interim and subject to refund. The Commission has no assurance that Staff's forecasts will come about. Additionally, USWC argues, ratepayers would receive interest on the refund of earnings that USWC would be presumed to achieve. This interest would never be earned back. USWC argues that this is unreasonable.

USWC also argues that imputed amounts are amounts not actually earned and that they should also be excluded from the refund calculation. Moreover, USWC contends that including disallowed recorded data in the refund calculation constitutes retroactive ratemaking.

USWC proposes that the Commission should handle any refund amounts that may be due to customers in the form of phasing in rates. If the Commission adopts its proposal, USWC argues that interest should cease to accrue as of the date of the Commission's order in this phase of the docket.

*Disposition.* [Deleted text not readopted.]

We reviewed each estimate and forecast that we adopted to ensure that it was reasonably certain to occur. Our reasons for adopting adjustments of this sort to the test year are discussed under Issue 1a(1) above. In brief, these reasonably certain adjustments serve to make the test year representative of the period during which rates from this docket are likely to be in effect. Moreover, we note that USWC has proposed forecasted adjustments of its own: the proposed depreciation expense adjustment and the adjustment for the future adverse effects of the orders in Commission docket UM 351.

In Issue 7e, Staff Adjustment 36, Staff removed part of an accrual that will end soon after rates in this proceeding go into effect. Staff considers this a normalizing adjustment, but USWC argues that it is an imputation. We consider this a normalizing adjustment designed to make the test year representative of the period when rates from

this docket will likely be in effect. USWC also argues against the imputation involving Part 64 Still Regulated services (Issue 4g(2)). We consider it fair to order a refund of imputed revenues in this case for the same reason we consider the imputation fair. The imputation makes these services revenue requirement neutral and prevents subsidies flowing from regulated services to those that are subject to competition and underearning.

USWC contends that including disallowances of actual expenses in the refund amount constitutes retroactive ratemaking. USWC's argument is not well taken. As the Oregon Court of Appeals recently stated:

Retroactive ratemaking occurs when past profits or losses are incorporated in setting future rates. *Pacific Northwest Bell Telephone Co. v. Katz*, 116 Or App 302, 311 (1992).

In other words, retroactive ratemaking is a way of truing up faulty projections as to earnings or expenses. That is not the case here. We are dealing here with interim rates subject to refund. We have determined that USWC's revenues should be reduced by approximately \$[text deleted not adopted], on average, throughout the period when rates from this docket will be in effect. Until the rate design order in the case is entered, the refund mechanism will address the necessary revenue requirement reduction. Once the rate design order takes effect, rates will reflect that reduction. In both cases, we are making prospective reductions. We are not going back in time to capture past overearnings. USWC objects to including disallowances in the refund. Those amounts were included in the revenue requirement reduction. Once that determination was made, logically they should be included in the refund as well.

For the refund procedure, we adopt Staff's lump sum refund proposal. We believe that more of the ratepayers who contributed to USWC's overearning will receive a refund in that manner than if we phase the refund through rates. Interest on the refund will accrue until the refund is paid.

[Deleted text not readopted.]

We find it reasonable that IXCs receive a refund as well, for the reasons Staff gives. We also

adopt Staff's recommendation that any refund be divided among groups of customers approximately in proportion to the total revenue USWC receives from each group.

[Deleted text not readopted.]

We adopt Staff's proposed distribution of the refund on a per line basis, set out above. If the refund amount should exceed a customer's bill in a given month, then the refund credit shall be carried forward into the next month.

*Issue 14, Effect of UM 351 on Access Revenues.* The discussion on page 114 of Order No. 97-171 is readopted.

**ISSUE 14: EFFECT OF UM 351 ON ACCESS REVENUES**

***Disputed Issue:***

- USWC argues that the effect of Order No. 96-188 (dated July 19, 1996, in docket UM 351) is a revenue requirement issue. Staff believes this is a rate design issue.

On November 1, 1996, the Commission issued Order No. 96-283 (UM 351), which revised certain aspects of an earlier order in that docket, Order No. 96-188. Under the revised rates in Order No. 96-283, Staff estimates that the UM 351 revenue impact on USWC is currently \$1.9 million. USWC agrees with this figure.

The revision to Order No. 96-188 dropped the estimated revenue impact from \$8.5 million to the current figure. The current revenue impact estimate may change further, due to new cost studies filed in compliance with Order No. 96-284 (UM 773, the cost study docket). Staff recommends that this revenue impact and any rate arbitrage issue be addressed in the rate design phase of UT 125.

***Disposition.*** We conclude that Issue 14 is an issue appropriate to the rate design phase of this case. We have adjusted the rate design phase of this proceeding to coordinate with new costs arising from UM 773. During rate design, Staff and USWC can address the UM 773 costs and align the rates so that any arbitrage issue is eliminated. At this point, the ultimate revenue impact is unknown, so

it would be premature to deal with the revenue impact issue here.

*Ordering Paragraph 4f: distribution of the refund.* This paragraph, at page 115 of Order No. 97-171, is readopted.

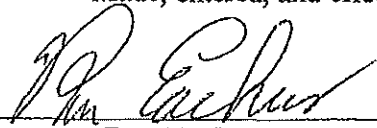
4. The revenue reduction [deleted text not readopted] shall be refunded as follows:

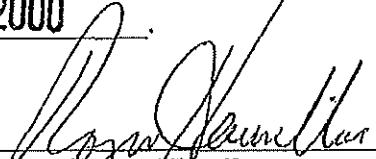
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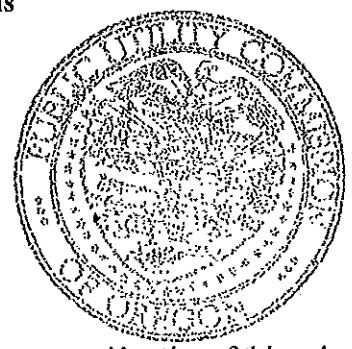
f. The remainder of the refund shall be distributed to local service customers, on a per line basis, in the following ratios:


<u>Group</u>	<u>Current Rate</u>	<u>Ratio**</u>	
Residential	\$12.80	1.00	All residential service lines
Bus. Simple	\$30.87	2.40	Business simple lines and business measured lines
Bus. Complex	\$34.77	2.70	Other business, switched service lines, including complex, DID trunks, ISDN, PAL, semipublic
Centrex	varies	1.00	All Centrex type lines
Private Line (basic)	\$9.80	0.75	Refund per NAC

Made, entered, and effective APR 14 2000

  
 \_\_\_\_\_  
 Ron Eachus  
 Chairman

  
 \_\_\_\_\_  
 Roger Hamilton  
 Commissioner



  
 \_\_\_\_\_  
 Joan H. Smith  
 Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.



**RESULTS OF OPERATIONS**

**INDEX**

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Docket UT 125  
U S WEST Communications, Inc.  
SUMMARY OF INTRASTATE TEST YEAR  
(\$000's)

Line No.	Annualized 1995 Test Year (a)	Adjustments (b)	Adjusted Test Year (c)	Revenue Requirements (d)	Adjusted Intrastate Results of Operations (e)
1 Local Service & EAS	348,109.0	42,621.4	390,730.4		
2 Toll & Access	154,466.0	(2,054.0)	152,412.0		
3 Directory & Other	17,735.0				
4 TOTAL OPERATING REVENUES	<u>520,310.0</u>				
5 Plant Specific	84,151.0				
6 Depreciation & Amortization	93,169.0				
7 Other Operating Expenses	224,249.0				
8 Operating Taxes	52,015.0				
9 TOTAL OPERATING EXPENSES & TAXES	<u>453,584.0</u>				
10 NET OPERATING INCOME	<u>66,726.0</u>				
11 Telecommunications Plant in Service	1,477,856.0				
12 Accumulated Depreciation	(576,115.0)				
13 Other Rate Base	(183,598.0)				
14 NET AVERAGE RATE BASE	<u>718,143.0</u>				
15 RETURN ON RATE BASE	9.29%				8.77%
16 RETURN ON EQUITY	11.15%				10.20%

ORDER NO. 00-191

Docket UT 125  
 U S WEST Communications, Inc.  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	ISSUES 1a-b Company's Annualized Test Year Before Side Records	Issue 1c(1a) Annualized Side Record for Interest During Construction (Pre-1)	Issue 1c(2a) Annualized Side Record for Western Electric Affil. Interest (Pre-2)	Issue 1c(3) Annualized Side Record for Interstate Depreciation Represcription (Pre-3)	Issue 1c(4) Annualized Side Record for Property Held for Future Use (Pre-4)	Company's Annualized Test Year Exhibit USW/3, Inouye/3	Issue 1c(1b) Adjust Interest During Construction	Issue 1c(2b) Adjust Western Electric Affiliated Interest	Issue 1d Remove Annualized Caller ID (Pre-6)
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	Local Service & EAS	348,109.000					348,109.000			
2	Network Access	62,537.000					62,537.000			
3	Long Distance	91,929.000					91,929.000			
4	Directory	3,819.000					3,819.000			
5	Billing & Collection	2,476.000					2,476.000			
6	Miscellaneous	15,559.000					15,559.000			
7	Uncollectibles	(4,119.000)					(4,119.000)			
8	<b>TOTAL OPERATING REVENUES</b>	<b>520,310.000</b>					<b>520,310.000</b>			
9	Plant Specific	84,151.000					84,151.000			
10	Depreciation & Amortization	109,278.599	1,068.109	(316.272)	(16,861.436)		93,169.000	316.272		
11	Plant Nonspecific	43,695.000					43,695.000			
12	Access (interstate)	0.000					0.000			
13	Access (intrastate)	27,201.000					27,201.000			
14	Customer Operations (ex. B&C)	80,564.000					80,564.000			593.412
15	Billing & Collection	5,255.000					5,255.000			
16	Corporate Operations	67,783.000					67,783.000			
17	Other Gains & Losses	(249.000)					(249.000)			
18	<b>TOTAL OPERATING EXPENSES</b>	<b>417,678.599</b>	<b>1,068.109</b>	<b>(316.272)</b>	<b>(16,861.436)</b>		<b>401,569.000</b>	<b>316.272</b>		<b>593.412</b>
19	Net State & Local Income Taxes	4,207.333			1,078.667		5,286.000	(12.817)		(39.165)
20	Net Federal Income Tax	15,232.387			5,630.613		20,863.000	(47.488)		(194.249)
21	Other Taxes	25,866.000					25,866.000			
22	<b>TOTAL OPERATING TAXES</b>	<b>45,305.720</b>			<b>6,709.280</b>		<b>52,015.000</b>	<b>(60.305)</b>		<b>(233.414)</b>
23	<b>NET OPERATING INCOME</b>	<b>57,325.681</b>	<b>(1,068.109)</b>	<b>316.272</b>	<b>10,152.156</b>		<b>66,726.000</b>	<b>60.305</b>	<b>(316.272)</b>	<b>(359.998)</b>
24	Telecommunications Plant in Service	1,468,449.343	13,919.881	(4,513.224)			1,477,856.000	80.262		
25	Plant Adjustment	1,877.000					1,877.000			
26	Materials & Supplies	14,292.000					14,292.000			
27	Accumulated Depreciation	(689,740.956)	(4,365.415)	3,682.995	14,272.000	36.376	(576,115.000)	(46.520)	830.229	
28	Accumulated Amortization	(8,794.000)					(8,794.000)			
29	Accumulated Deferred Taxes	(185,297.000)			(5,676.000)		(190,973.000)	(626.772)		
30	<b>NET AVERAGE RATE BASE</b>	<b>700,786.387</b>	<b>9,554.466</b>	<b>(830.229)</b>	<b>8,596.000</b>	<b>36.376</b>	<b>718,143.000</b>	<b>(593.030)</b>	<b>830.229</b>	
31	RETURN ON RATE BASE	8.18%	-0.27%	0.05%	1.29%		9.29%	0.02%	-0.05%	-0.05%
32	RETURN ON EQUITY	9.14%	-0.49%	0.09%	2.32%	-0.00%	11.15%	0.04%	-0.09%	-0.09%
33	REVENUE REQUIREMENT (local)	16,106.777	3,345.988	(668.445)	(15,773.391)	5.866	3,016.794	(197.554)	668.445	608.479

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APPENDIX A  
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Docket UT 125  
 U S WEST Communications, Inc.  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	<i>Issue 1e</i>	<i>Issue 1f</i>	<i>Issue 1g</i>	<i>Issues 1h-n</i>	Annualized Test Year as Stipulated  <i>Columns 6 through 13</i>	<i>Issue 1m</i>	<i>Issue 2d</i>	<i>Issue 3a</i>	<i>Issue 3b</i>
		Remove Annualized UP 96 Sale of Exchanges to PTI (Pre-11) <i>(10)</i>	Remove Annualized 1996 Wage Increases (Pre-16) <i>(11)</i>	Different Operating Tax Annualization Methods <i>(12)</i>	Separations & Other Annualization Methods <i>(13)</i>		Switching Assets <i>(14a)</i>	Interest Coordination (Fixed Charges) (Post-2) <i>(15)</i>	U S WEST Direct Directory Imputation (Post-13) <i>(16)</i>	U S WEST Direct Directory Growth <i>(16a)</i>
1	Local Service & EAS	4,077,347			876,250	353,062,597				
2	Network Access	2,669,665			(6,218)	65,200,447				
3	Long Distance				1,066,221	92,995,221				
4	Directory	33,285			69,584	3,921,869				
5	Billing & Collection					2,476,000				
6	Miscellaneous	76,281			(760,957)	14,874,324				
7	Uncollectibles	(55,299)			280,790	(3,893,509)				
8	<b>TOTAL OPERATING REVENUES</b>	<b>6,801,279</b>			<b>1,525,670</b>	<b>528,636,949</b>				
9	Plant Specific	104,244	(1,720,341)		197,528	82,732,431				
10	Depreciation & Amortization	3,545,348			(59,227)	96,971,393				
11	Plant Nonspecific		(886,531)		317,612	43,126,081				
12	Access (interstate)					0,000				
13	Access (intrastate)	(3,790,000)			(0,417)	23,410,583				
14	Customer Operations (ex. B&C)		(1,362,792)		(368,253)	79,426,367				
15	Billing & Collection	(432,000)			(16,918)	4,806,082				
16	Corporate Operations		(191,132)		123,485	67,715,353				
17	Other Gains & Losses				0,343	(248,657)				
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(572,408)</b>	<b>(4,160,796)</b>		<b>194,153</b>	<b>397,939,633</b>				
19	Net State & Local Income Taxes	471,680	274,613	280,732	102,173	6,363,216	9,001	56,073		
20	Net Federal Income Tax	2,361,593	1,362,002	(1,244,334)	538,350	23,638,874	44,580	277,734		
21	Other Taxes	159,229		358,555	18,145	26,401,929				
22	<b>TOTAL OPERATING TAXES</b>	<b>2,992,502</b>	<b>1,636,615</b>	<b>(605,047)</b>	<b>658,668</b>	<b>56,404,019</b>	<b>53,581</b>	<b>333,807</b>		
23	<b>NET OPERATING INCOME</b>	<b>4,381,185</b>	<b>2,524,181</b>	<b>605,047</b>	<b>672,849</b>	<b>74,293,297</b>	<b>(53,581)</b>	<b>(333,807)</b>		
24	Telecommunications Plant in Service	62,667,250			5,045,570	1,545,649,082	(172,669)			
25	Plant Adjustment				7,420	1,884,420				
26	Materials & Supplies				109,037	14,401,037				
27	Accumulated Depreciation	(20,190,645)			(7,503,436)	(603,025,372)	(4,217,810)			
28	Accumulated Amortization				5,515	(8,788,485)				
29	Accumulated Deferred Taxes	(6,231,371)		(718,022)		(198,549,165)				
30	<b>NET AVERAGE RATE BASE</b>	<b>36,245,234</b>		<b>(718,022)</b>	<b>(2,335,894)</b>	<b>751,571,517</b>	<b>(4,390,479)</b>			
31	RETURN ON RATE BASE	0.13%	0.35%	0.09%	0.12%	9.89%	0.05%	-0.05%		
32	RETURN ON EQUITY	0.23%	0.63%	0.16%	0.22%	12.21%	0.09%	-0.09%		
33	REVENUE REQUIREMENT (local)	(1,560,741)	(4,266,446)	(1,138,448)	(1,513,928)	(4,383,399)	(617,391)	564,211		

ORDER NO.

00-191

EXHIBIT 12/27/97

Docket UT 125  
 U S WEST Communications, Inc.  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	Issue 4a Rent Compensation Study (Post-1) (17)	Issue 4b UM 753 Affiliate & Certain Leases (18)	Issue 4c Strategic Marketing (19)	Issue 4d(1) Fax Services (20)	Issue 4d(2) Growth in Fax Services (20a)	Issue 4d(3) Affiliated Interest Charges (Post-3) (20b)	Issue 4d(4) FCC License (20c)	Issue 4e Affiliated Interest Return Component (21)	Issue 4f Headquarters Allocations (22)
1	Local Service & EAS									
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous				116,766	686,905				
7	Uncollectibles									
8	<b>TOTAL OPERATING REVENUES</b>				116,766	686,905				
9	Plant Specific	3,840,342	(62,255)							(110,783)
10	Depreciation & Amortization	13,093,153								(198,081)
11	Plant Nonspecific									(214,130)
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)									(564,000)
15	Billing & Collection									
16	Corporate Operations			(105,310)			(164,497)		(101,163)	
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	16,933,495	(62,255)	(105,310)			(164,497)		(101,163)	(1,086,994)
19	Net State & Local Income Taxes	(1,174,473)	4,109	6,950	7,691	45,245	10,857		6,677	71,742
20	Net Federal Income Tax	(5,817,199)	20,351	34,426	38,095	224,100	53,774		33,070	355,338
21	Other Taxes	15,066			0,234	1,374				
22	<b>TOTAL OPERATING TAXES</b>	(6,976,606)	24,460	41,376	46,020	270,719	64,631		39,747	427,080
23	<b>NET OPERATING INCOME</b>	(9,956,889)	37,795	63,934	70,748	416,186	99,866		61,416	659,914
24	Telecommunications Plant in Service	44,051,963								
25	Plant Adjustment									
26	Materials & Supplies	(2,406,075)								
27	Accumulated Depreciation	(13,638,862)								
28	Accumulated Amortization									
29	Accumulated Deferred Taxes	(754,817)								
30	<b>NET AVERAGE RATE BASE</b>	27,252,209								
31	RETURN ON RATE BASE	-1.68%	0.01%	0.01%	0.01%	0.06%	0.01%		0.01%	0.09%
32	RETURN ON EQUITY	-3.03%	0.02%	0.02%	0.02%	0.11%	0.02%		0.02%	0.16%
33	REVENUE REQUIREMENT (local)	21,223,795	(63,882)	(108,063)	(119,580)	(703,450)	(168,797)	0,000	(103,807)	(1,115,406)

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Docket UT 125  
 U S WEST Communications, Inc.  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	Issue 4g(1) Part 64 Still Regulated (Post-10) (23)	Issue 4g(2) Revenue Requirement Part 64 Still Regulated (23a1) (23a1)	Issue 4g(2) VMS Promotional Offerings (23a2) (23a2)	Issue 4h Non-regulated Costs in Columns 18 through 21 (23b) (23b)	Issue 5a UP 96 Sale of Exchanges to PTI (Pre-11) (24) (24)	Issue 5b UP 96 Stipulation (Post-4) (25) (25)	Issue 5c UP 96 Effect on Property Taxes (26) (26)	Issue 6a 1995 EAS Conversion (Post-7) (27) (27)	Issue 6b 1996 EAS Conversion (28) (28)
1	Local Service & EAS					(3,755,138)			136,001	1,129,882
2	Network Access					(943,971)				
3	Long Distance								(867,284)	(2,578,245)
4	Directory					(31,317)				
5	Billing & Collection					(29,000)				
6	Miscellaneous	3,372,176	3,472,397	(94,538)		(71,917)				
7	Uncollectibles	(19,371)				34,960			5,035	8,503
8	<b>TOTAL OPERATING REVENUES</b>	<b>3,352,805</b>	<b>3,472,397</b>	<b>(94,538)</b>		<b>(4,796,383)</b>			<b>(726,248)</b>	<b>(1,439,860)</b>
9	Plant Specific	1,022,523			3,003	(1,773,143)				
10	Depreciation & Amortization	800,241				(3,643,500)				
11	Plant Nonspecific	1,080,844				(95,491)				
12	Access (interstate)									
13	Access (intrastate)					2,822,032			(296,903)	(538,090)
14	Customer Operations (ex. B&C)	2,455,105				(173,308)				
15	Billing & Collection					339,724				
16	Corporate Operations	898,144			8,348	(154,217)				
17	Other Gains & Losses	81,702								
18	<b>TOTAL OPERATING EXPENSES</b>	<b>6,338,559</b>			<b>11,351</b>	<b>(2,677,903)</b>			<b>(296,903)</b>	<b>(538,090)</b>
19	Net State & Local Income Taxes	(210,407)	228,720	(6,227)	(0,749)	(57,513)	27,878	25,283	(28,441)	(60,738)
20	Net Federal Income Tax	(1,049,274)	1,132,856	(30,843)	(3,711)	(284,862)	138,083	125,227	(140,869)	(300,838)
21	Other Taxes	74,127	6,945	(0,189)		(83,541)		(383,074)	1,578	18,506
22	<b>TOTAL OPERATING TAXES</b>	<b>(1,185,554)</b>	<b>1,368,521</b>	<b>(37,259)</b>	<b>(4,460)</b>	<b>(425,916)</b>	<b>165,961</b>	<b>(232,564)</b>	<b>(167,732)</b>	<b>(343,070)</b>
23	<b>NET OPERATING INCOME</b>	<b>(1,800,200)</b>	<b>2,103,876</b>	<b>(57,279)</b>	<b>(6,891)</b>	<b>(1,692,564)</b>	<b>(165,961)</b>	<b>232,564</b>	<b>(261,613)</b>	<b>(558,700)</b>
24	Telecommunications Plant in Service	6,190,268				(64,125,841)				
25	Plant Adjustment	6,939								
26	Materials & Supplies	68,802								
27	Accumulated Depreciation	(2,418,681)				20,889,539	(22,400,000)			
28	Accumulated Amortization									
29	Accumulated Deferred Taxes	(664,142)				5,776,617	8,800,960			
30	<b>NET AVERAGE RATE BASE</b>	<b>3,183,186</b>				<b>(37,459,685)</b>	<b>(13,599,040)</b>			
31	RETURN ON RATE BASE	-0.29%	0.29%	-0.01%		0.26%	0.16%	0.03%	-0.04%	-0.08%
32	RETURN ON EQUITY	-0.52%	0.52%	-0.02%		0.47%	0.29%	0.05%	-0.07%	-0.14%
33	REVENUE REQUIREMENT (local)	3,556,034	(3,556,034)	96,815	11,647	(3,179,475)	(1,912,305)	(393,087)	442,186	944,332

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APPENDIX A  
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Docket UT 125  
 U S WEST Communications, Inc.  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	Issue 6c Tariff, Price & Contract Changes Made After Jan. 1, 1995 (29)	Issue 6d Switched Access Filing (Post-11) (30)	(not used) (31)	Issue 7a(1) Current SFAS 106 Post- retirement Benefits (Post-5) (32)	Issue 7a(2) Unfunded SFAS 106 Post- retirement Benefits (Post-5) (32a)	Issue 7b AT&T Post- retirement Benefits Cost-Sharing Agreement (33)	Issue 7c Disability Pension Payment True-up (Post-8) (34)	Issue 7d Pension Accounting (Post-9, 12) (35)	Issue 7e End of Compensated Absences Accrual (36)
1	Local Service & EAS	15,937.304								
2	Network Access		(1,582.542)							
3	Long Distance	153.895								
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles	(143.126)	2.511							
8	<b>TOTAL OPERATING REVENUES</b>	<b>15,948.073</b>	<b>(1,580.031)</b>							
9	Plant Specific				161.834					
10	Depreciation & Amortization									
11	Plant Nonspecific				80.495					
12	Access (interstate)									
13	Access (intrastate)		(1,910.499)							
14	Customer Operations (ex. B&C)	6,516.087			134.170					
15	Billing & Collection									
16	Corporate Operations				28.679		(365.339)	(203.911)		(297.969)
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	<b>6,516.087</b>	<b>(1,910.499)</b>		<b>405.178</b>		<b>(365.339)</b>	<b>(203.911)</b>		<b>(297.969)</b>
19	Net State & Local Income Taxes	601.464	21.768		(26.742)	7.075	24.112	13.458	(79.457)	19.666
20	Net Federal Income Tax	2,979.070	107.815		(132.453)	35.042	119.429	66.659	(393.553)	97.406
21	Other Taxes	318.894	0.656							
22	<b>TOTAL OPERATING TAXES</b>	<b>3,899.428</b>	<b>130.239</b>		<b>(159.195)</b>	<b>42.117</b>	<b>143.541</b>	<b>80.117</b>	<b>(473.010)</b>	<b>117.072</b>
23	<b>NET OPERATING INCOME</b>	<b>5,532.558</b>	<b>200.229</b>		<b>(245.983)</b>	<b>(42.117)</b>	<b>221.798</b>	<b>123.794</b>	<b>473.010</b>	<b>180.897</b>
24	Telecommunications Plant in Service					(3,451.113)		38,758.976		
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation									
28	Accumulated Amortization									
29	Accumulated Deferred Taxes									
30	<b>NET AVERAGE RATE BASE</b>					<b>(3,451.113)</b>		<b>38,758.976</b>		
31	RETURN ON RATE BASE	0.77%	0.03%		-0.03%	0.04%	0.03%	0.02%	-0.41%	0.03%
32	RETURN ON EQUITY	1.39%	0.05%		-0.05%	0.07%	0.05%	0.04%	-0.74%	0.05%
33	REVENUE REQUIREMENT (local)	(9,351.296)	(338.433)	0.000	415.768	(485.297)	(374.890)	(209.240)	5,450.309	(305.758)

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Line No.	Description	Issue 8a Team Performance Awards & Officers' Incentives (Bonuses) (37)	Issue 8b(1) 1996 Occupational Wage Increases (Pre-16) (38)	Issue 8b(2) 1996-1997 Wage & Salary Increases (38a)	Issue 8b(2) (not used) (38b)	Issue 8b(2) Payroll Tax Increases (38c)	Issue 8b(2) (not used) (38d)	Issue 8b(2) [Issue 8a] Bonuses Included in Wage Base (38e)	Issue 8b(2) [Issue 9a] Wage Base Related to Reengin'g (38f)	Issue 8c SFAS 109 Accounting for Income Taxes (39)
1	Local Service & EAS									
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles									
8	<b>TOTAL OPERATING REVENUES</b>									
9	Plant Specific	(141.818)	1,863.240	1,153.030		33.252		(42.181)	(112.351)	
10	Depreciation & Amortization									
11	Plant Nonspecific	(1,964.115)	957.898	1,665.306		48.003		(60.921)	(162.268)	
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)	(1,019.739)	1,426.360	2,471.697		71.328		(90.421)	(240.843)	
15	Billing & Collection									
16	Corporate Operations	(780.602)	199.503	2,418.265		69.761		(88.466)	(235.637)	
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(3,906.274)</b>	<b>4,447.001</b>	<b>7,708.298</b>		<b>222.344</b>		<b>(281.989)</b>	<b>(751.099)</b>	
19	Net State & Local Income Taxes	257.814	(293.502)	(508.748)		(14.675)		18.611	49.573	
20	Net Federal Income Tax	1,276.961	(1,453.725)	(2,519.843)		(72.684)		92.182	245.534	
21	Other Taxes									
22	<b>TOTAL OPERATING TAXES</b>	<b>1,534.775</b>	<b>(1,747.227)</b>	<b>(3,028.591)</b>		<b>(87.359)</b>		<b>110.793</b>	<b>295.107</b>	
23	<b>NET OPERATING INCOME</b>	<b>2,371.499</b>	<b>(2,699.774)</b>	<b>(4,679.707)</b>		<b>(134.985)</b>		<b>171.196</b>	<b>455.992</b>	
24	Telecommunications Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation									
28	Accumulated Amortization									
29	Accumulated Deferred Taxes									
30	<b>NET AVERAGE RATE BASE</b>									
31	RETURN ON RATE BASE	0.33%	-0.38%	-0.65%		-0.02%		0.02%	0.06%	
32	RETURN ON EQUITY	0.59%	-0.69%	-1.17%		-0.04%		0.04%	0.11%	
33	REVENUE REQUIREMENT (local)	(4,008.379)	4,563.239	7,909.781	0.000	228.156	0.000	(289.361)	(770.731)	0.000

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Line No.	Description	Issue 8d SFAS 112 Accounting for Post- employment Benefits (40)	Issue 8e Ballot Measure 5 Property Taxes (Post-6) (41)	Issue 8f ORS 291.349 Income Tax Refund (42)	Issue 8g UM 767 Oregon Depreciation Repre- scription (Post-14) (43)	Issue 8h Aircraft (44)	Issue 8i Advertising (45)	Issue 8j Average Growth in Access Lines (46)	Issue 8k Marketing Accrual Reversal (Pre-10) (47)	Issue 8l Information Management Systems (48)
1	Local Service & EAS							24,219.789		
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles							(215.823)		
8	<b>TOTAL OPERATING REVENUES</b>							24,003.966		
9	Plant Specific									(353.938)
10	Depreciation & Amortization				20,325.655					
11	Plant Nonspecific									
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)									(550.082)
15	Billing & Collection									
16	Corporate Operations								(392.870)	
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>				20,325.655				(392.870)	(904.020)
19	Net State & Local Income Taxes		169.768		(1,328.844)			1,552.308	25.929	59.665
20	Net Federal Income Tax		840.868		(6,581.808)			7,688.626	128.429	295.524
21	Other Taxes		(2,572.248)					484.154		
22	<b>TOTAL OPERATING TAXES</b>		(1,561.612)		(7,910.652)			9,725.088	154.358	355.189
23	<b>NET OPERATING INCOME</b>		1,561.612		(12,415.003)			14,278.878	238.512	548.831
24	Telecommunications Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation				(10,163.000)					
28	Accumulated Amortization									
29	Accumulated Deferred Taxes				3,993.043					
30	<b>NET AVERAGE RATE BASE</b>				(6,169.957)					
31	RETURN ON RATE BASE		0.22%		-1.66%			1.99%	0.03%	0.08%
32	RETURN ON EQUITY		0.40%		-2.99%			3.59%	0.05%	0.14%
33	REVENUE REQUIREMENT (local)	0.000	(2,639.483)		19,989.318	0.000	0.000	(24,134.588)	(403.140)	(927.651)

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Line No.	Description	Issue 8m	Issue 8n	Issue 9a	Issue 9b	Issue 9c	Issue 10	TOTAL ADJS.	ADJUSTED TEST YEAR
		Purchase Rebates	PUC Fee	Service Reengineering Costs	Extraordinary Expenses	Service Quality	Effects of Adjustments on Intrastate Separations	Columns 7 - 13 and 15 - 53	Columns 6 + 54
		(49)	(49a)	(50)	(51)	(52)	(53)	(54)	(55)
1	Local Service & EAS							42,621,435	390,730,435
2	Network Access							136,934	62,673,934
3	Long Distance						34,446	(2,190,967)	89,738,033
4	Directory								
5	Billing & Collection							(29,000)	2,447,000
6	Miscellaneous						(355,451)	6,441,664	22,000,664
7	Uncollectibles						(0,248)	(102,068)	(4,221,068)
8	<b>TOTAL OPERATING REVENUES</b>						(321,253)		
9	Plant Specific	(343,179)		(7,334,996)	(4,684,707)				
10	Depreciation & Amortization								
11	Plant Nonspecific	(26,524)		(6,250,879)	(1,357,703)		(14,227)	(6,866,582)	36,828,418
12	Access (interstate)								0,000
13	Access (intrastate)							(3,713,877)	23,487,123
14	Customer Operations (ex. B&C)			(5,303,184)	(438,239)		(340,736)	3,566,432	84,130,432
15	Billing & Collection						(457,442)	(566,636)	4,688,354
16	Corporate Operations	(189,072)		(6,017,658)			91,915	(6,013,742)	61,769,258
17	Other Gains & Losses								
18	<b>TOTAL OPERATING EXPENSES</b>	(558,775)		(24,906,717)	(6,480,649)				
19	Net State & Local Income Taxes	36,879		1,643,843	427,723				
20	Net Federal Income Tax	182,664		8,142,006	2,118,524				
21	Other Taxes						135,109		
22	<b>TOTAL OPERATING TAXES</b>	219,543		9,785,849	2,546,247				
23	<b>NET OPERATING INCOME</b>	339,232		15,120,868	3,934,402				
24	Telecommunications Plant in Service								
25	Plant Adjustment						2,013	16,372	1,893,372
26	Materials & Supplies								
27	Accumulated Depreciation								
28	Accumulated Amortization						(12,219)	(6,704)	(8,800,704)
29	Accumulated Deferred Taxes								
30	<b>NET AVERAGE RATE BASE</b>								
31	RETURN ON RATE BASE	0.05%	-0.02%	2.11%	0.55%				
32	RETURN ON EQUITY	0.09%	-0.04%	3.80%	0.99%				
33	REVENUE REQUIREMENT (local)	(573,380)		(25,557,745)	(6,650,044)				

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APPENDIX A  
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Line No.	Description	ISSUES 1a-b Annualized Test Year Before Side Records	Issue 1c(1a) Annualized Side Record for Interest During Construction (Pre-1)	Issue 1c(2a) Annualized Side Record for Western Electric Affil. Interest (Pre-2)	Issue 1c(3) Annualized Side Record for Interstate Depreciation Represcription (Pre-3)	Issue 1c(4) Annualized Side Record for Property Held for Future Use (Pre-4)	Company's Annualized Test Year	ISSUE 1c(1b) Adjust Interest During Construction	Issue 1c(2b) Adjust Western Electric Affiliated Interest	Issue 1d Remove Annualized Caller ID (Pre-6)
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	Local Service & EAS	348,109.143					348,109.143			
2	Network Access	248,399.363					248,399.363			
3	Long Distance	112,528.408					112,528.408			
4	Directory	3,818.935					3,818.935			
5	Billing & Collection	8,386.560					8,386.560			
6	Miscellaneous	18,096.792					18,096.792			
7	Uncollectibles	(5,811.267)					(5,811.267)			
8	<b>TOTAL OPERATING REVENUES</b>	<b>733,527.934</b>					<b>733,527.934</b>			
9	Plant Specific	117,634.532					117,634.532			
10	Depreciation & Amortization	154,827.489	1,543.287	(456.974)	(24,371.895)		131,541.907	456.974		
11	Plant Nonspecific	62,355.959					62,355.959			
12	Access (interstate)	3,926.760					3,926.760			
13	Access (intrastate)	27,200.583					27,200.583			
14	Customer Operations (ex. B&C)	101,009.361					101,009.361			781.937
15	Billing & Collection	7,092.521					7,092.521			
16	Corporate Operations	91,512.189					91,512.189			
17	Other Gains & Losses	(352.385)					(352.385)			
18	<b>TOTAL OPERATING EXPENSES</b>	<b>565,207.009</b>	<b>1,543.287</b>	<b>(456.974)</b>	<b>(24,371.895)</b>		<b>541,921.427</b>	<b>456.974</b>		<b>781.937</b>
19	Net State & Local Income Taxes	8,189.645			1,559.353		9,748.998	(18.519)		(51.608)
20	Net Federal Income Tax	29,111.402			8,134.701		37,246.103	(68.615)		(255.961)
21	Other Taxes	31,946.981					31,946.981			
22	<b>TOTAL OPERATING TAXES</b>	<b>69,248.028</b>			<b>9,694.054</b>		<b>78,942.082</b>	<b>(87.134)</b>		<b>(307.569)</b>
23	<b>NET OPERATING INCOME</b>	<b>99,072.897</b>	<b>(1,543.287)</b>	<b>456.974</b>	<b>14,677.841</b>		<b>112,664.425</b>	<b>87.134</b>	<b>(456.974)</b>	<b>(474.368)</b>
24	Telecommunications Plant in Service	2,079,782.815	19,854.345	(6,437.347)			2,093,199.813	114.480		
25	Plant Adjustment	2,649.594					2,649.594			
26	Materials & Supplies	19,944.722					19,944.722			
27	Accumulated Depreciation	(840,540.617)	(6,266.746)	5,287.102	20,761.994	51.343	(820,706.924)	(66.782)	1,150.245	
28	Accumulated Amortization	(11,909.855)					(11,909.855)			
29	Accumulated Deferred Taxes	(261,445.502)			(8,075.117)		(269,520.619)	(880.000)		
30	<b>NET AVERAGE RATE BASE</b>	<b>988,481.157</b>	<b>13,587.599</b>	<b>(1,150.245)</b>	<b>12,686.877</b>	<b>51.343</b>	<b>1,013,656.731</b>	<b>(832.802)</b>	<b>1,150.245</b>	

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Line No.	Description	Issue 1e Remove Annualized UP 96 Sale of Exchanges to PTI (Pre-11) (10)	Issue 1f Remove Annualized 1996 Wage Increases (Pre-16) (11)	Issue 1g Different Operating Tax Annualization Methods (12)	Issues 1h-n Other Different Annualization Methods (13)	Annualized Test Year as Stipulated  Columns 6 through 13 (14)	Issue 1m Switching Assets (14a)	Issue 2d Interest Coordination (Fixed Charges) (Post-2) (15)	Issue 3a U S WEST Direct Directory Imputation (Post-13) (16)	Issue 3b U S WEST Direct Directory Growth (16a)
1	Local Service & EAS	4,077,347			876,107	353,062,597				
2	Network Access	9,001,528			(784,766)	256,616,125				
3	Long Distance				1,305,329	113,833,737				
4	Directory	33,285			69,649	3,921,869				
5	Billing & Collection					8,386,560				
6	Miscellaneous	87,089			(708,841)	17,477,040				
7	Uncollectibles	(107,194)			1,571,075	(4,347,386)				
8	<b>TOTAL OPERATING REVENUES</b>	<b>13,092,055</b>			<b>2,330,553</b>	<b>748,950,542</b>				
9	Plant Specific	157,207	(2,594,392)			115,197,347				
10	Depreciation & Amortization	5,122,595				137,121,476				
11	Plant Nonspecific		(1,354,929)			61,001,030				
12	Access (interstate)	(25,000)				3,901,760				
13	Access (intrastate)	(3,790,000)				23,410,583				
14	Customer Operations (ex. B&C)		(1,795,746)			99,995,552				
15	Billing & Collection	(439,000)			(31,283)	6,622,238				
16	Corporate Operations		(268,821)			91,243,368				
17	Other Gains & Losses					(352,385)				
18	<b>TOTAL OPERATING EXPENSES</b>	<b>1,025,802</b>	<b>(6,013,888)</b>		<b>(31,283)</b>	<b>538,140,969</b>				
19	Net State & Local Income Taxes	769,536	396,917	1,269	152,105	10,998,698	12,872	46,237		
20	Net Federal Income Tax	3,848,750	1,968,596	12,776	769,105	43,520,754	62,766	229,011		
21	Other Taxes	308,662		(38,542)	17,203	32,234,304				
22	<b>TOTAL OPERATING TAXES</b>	<b>4,926,948</b>	<b>2,365,513</b>	<b>(24,497)</b>	<b>938,413</b>	<b>86,753,756</b>	<b>75,438</b>	<b>275,248</b>		
23	<b>NET OPERATING INCOME</b>	<b>7,139,305</b>	<b>3,648,375</b>	<b>24,497</b>	<b>1,423,423</b>	<b>124,055,817</b>	<b>(75,438)</b>	<b>(275,248)</b>		
24	Telecommunications Plant in Service	89,381,330			(8,328,031)	2,174,367,592	(242,864)			
25	Plant Adjustment					2,649,594				
26	Materials & Supplies					19,944,722				
27	Accumulated Depreciation	(28,984,561)			188,553	(848,419,469)	(5,938,595)			
28	Accumulated Amortization					(11,909,855)				
29	Accumulated Deferred Taxes	(8,865,231)		393,116		(278,872,734)				
30	<b>NET AVERAGE RATE BASE</b>	<b>51,531,536</b>		<b>393,116</b>	<b>(8,139,478)</b>	<b>1,057,759,850</b>	<b>(6,181,479)</b>			

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Line No.	Description	Issue 4a Rent Compensation Study (Post-1) (17)	Issue 4b UM 753 Affiliate & Certain Leases (18)	Issue 4c Strategic Marketing (19)	Issue 4d(1) Fax Services (20)	Issue 4d(2) Growth in Fax Services (20a)	Issue 4d(3) Affiliated Interest Charges (Post-3) (20b)	Issue 4d(4) FCC License (20c)	Issue 4e Affiliated Interest Return Component (21)	Issue 4f Headquarters Allocations (22)
1	Local Service & EAS									
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous				137,200	807,100				
7	Uncollectibles									
8	<b>TOTAL OPERATING REVENUES</b>				137,200	807,100				
9	Plant Specific	5,347,325	(86,684)							(154,255)
10	Depreciation & Amortization	18,615,019								(280,182)
11	Plant Nonspecific									
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)									(269,584)
15	Billing & Collection									
16	Corporate Operations			(141,900)			(221,652)	(136,312)		(759,965)
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	23,962,344	(86,684)	(141,900)			(221,652)	(136,312)		(1,463,986)
19	Net State & Local Income Taxes	(1,661,573)	5,721	9,365	9,037	53,162	14,629	8,997		96,623
20	Net Federal Income Tax	(8,229,821)	28,337	46,387	44,761	263,313	72,458	44,560		478,577
21	Other Taxes	21,183			0,274	1,614				
22	<b>TOTAL OPERATING TAXES</b>	(9,870,211)	34,058	55,752	54,072	318,089	87,087	53,557		575,200
23	<b>NET OPERATING INCOME</b>	(14,092,133)	52,626	86,148	83,128	489,011	134,565	82,755		888,786
24	Telecommunications Plant in Service	61,965,510								
25	Plant Adjustment									
26	Materials & Supplies	(3,332,196)								
27	Accumulated Depreciation	(19,203,254)								
28	Accumulated Amortization									
29	Accumulated Deferred Taxes	(1,059,777)								
30	<b>NET AVERAGE RATE BASE</b>	38,370,283								

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Line No.	Description	Issue 4g(1) Part 64 Still Regulated (Post-10) (23)	Issue 4g(2) Revenue Requirement Part 64 Still Regulated (23a1)	Issue 4g(2) VMS Promotional Offerings (23a2)	Issue 4h Non- regulated Costs in Columns 18 through 21 (23b)	Issue 5a UP 96 Sale of Exchanges to PTI (Pre-11) (24)	Issue 5b UP 96 Stipulation (Post-4) (25)	Issue 5c UP 96 Effect on Property Taxes (26)	Issue 6a 1995 EAS Conversion (Post-7) (27)	Issue 6b 1996 EAS Conversion (28)
1	Local Service & EAS					(3,755,138)			136,001	1,129,882
2	Network Access					(2,921,022)				
3	Long Distance								(867,284)	(2,578,245)
4	Directory					(31,317)				
5	Billing & Collection					(88,000)				
6	Miscellaneous	4,517,316	3,472,397	(94,538)		(82,106)				
7	Uncollectibles	(25,949)				48,918			5,035	8,503
8	<b>TOTAL OPERATING REVENUES</b>	<b>4,491,367</b>	<b>3,472,397</b>	<b>(94,538)</b>		<b>(6,828,665)</b>			<b>(726,248)</b>	<b>(1,439,860)</b>
9	Plant Specific	1,423,770			4,182	(2,468,940)				
10	Depreciation & Amortization	1,137,732				(5,180,098)				
11	Plant Nonspecific	1,528,833				(135,070)				
12	Access (interstate)					49,441				
13	Access (intrastate)					2,822,032		(296,903)		(538,090)
14	Customer Operations (ex. B&C)	3,090,908				(218,190)				
15	Billing & Collection					345,566				
16	Corporate Operations	1,210,208			11,248	(207,800)				
17	Other Gains & Losses	115,784								
18	<b>TOTAL OPERATING EXPENSES</b>	<b>8,507,235</b>			<b>15,430</b>	<b>(4,993,059)</b>			<b>(296,903)</b>	<b>(538,090)</b>
19	Net State & Local Income Taxes	(283,781)			(1,018)	(7,364)	39,539	35,546	(28,441)	(60,738)
20	Net Federal Income Tax	(1,415,592)			(5,044)	(36,474)	195,836	176,063	(140,869)	(300,838)
21	Other Taxes	103,819	6,945	(0,189)		(87,744)		(538,582)	1,578	18,506
22	<b>TOTAL OPERATING TAXES</b>	<b>(1,595,554)</b>			<b>(6,062)</b>	<b>(131,582)</b>	<b>285,375</b>	<b>(326,973)</b>	<b>(167,732)</b>	<b>(343,070)</b>
23	<b>NET OPERATING INCOME</b>	<b>(2,420,314)</b>			<b>(9,368)</b>	<b>(1,704,024)</b>	<b>(235,375)</b>	<b>326,973</b>	<b>(261,613)</b>	<b>(558,700)</b>
24	Telecommunications Plant in Service	8,707,515				(90,202,348)				
25	Plant Adjustment	9,756								
26	Materials & Supplies	95,285								
27	Accumulated Depreciation	(3,405,456)				29,412,068	(31,631,984)			
28	Accumulated Amortization									
29	Accumulated Deferred Taxes	(932,468)				8,110,481	12,345,086			
30	<b>NET AVERAGE RATE BASE</b>	<b>4,474,632</b>				<b>(52,679,799)</b>	<b>(19,286,898)</b>			

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 U S WEST Communications, Inc.  
 Total Oregon Subject to Separations  
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Line No.	Description	Issue 6c Tariff, Price & Contract Changes Made After Jan. 1, 1995 (29)	Issue 6d Switched Access Filing (Post-11) (30)	(not used) (31)	Issue 7a(1) SFAS 106 Post- retirement Benefits (Post-5) (32)	Issue 7a(2) Unfunded SFAS 106 Post- retirement Benefits (Post-5) (32a)	Issue 7b AT&T Post- retirement Benefits Cost-Sharing Agreement (33)	Issue 7c Disability Pension Payment True-up (Post-8) (34)	Issue 7d Pension Accounting (Post-9, 12) (35)	Issue 7e End of Compensated Absences Accrual (36)
1	Local Service & EAS	15,937.304								
2	Network Access		(2,526.514)							
3	Long Distance	153.895								
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles	(143.126)	4.010							
8	<b>TOTAL OPERATING REVENUES</b>	<b>15,948.073</b>	<b>(2,522.504)</b>							
9	Plant Specific				225.339					
10	Depreciation & Amortization									
11	Plant Nonspecific				113.858					
12	Access (interstate)									
13	Access (intrastate)		(1,910.499)							
14	Customer Operations (ex. B&C)	8,203.569			168.916					
15	Billing & Collection									
16	Corporate Operations				38.644		(492.278)	(274.761)		(401.500)
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	<b>8,203.569</b>	<b>(1,910.499)</b>		<b>546.757</b>		<b>(492.278)</b>	<b>(274.761)</b>		<b>(401.500)</b>
19	Net State & Local Income Taxes	490.090	(40.311)		(36.086)	9.952	32.490	18.134	(111.768)	26.499
20	Net Federal Income Tax	2,427.432	(199.662)		(178.735)	49.292	180.926	89.819	(553.589)	131.250
21	Other Taxes	318.894	(1.232)							
22	<b>TOTAL OPERATING TAXES</b>	<b>3,236.416</b>	<b>(241.205)</b>		<b>(214.821)</b>	<b>59.244</b>	<b>193.416</b>	<b>107.953</b>	<b>(665.357)</b>	<b>157.749</b>
23	<b>NET OPERATING INCOME</b>	<b>4,508.088</b>	<b>(370.800)</b>		<b>(331.936)</b>	<b>(59.244)</b>	<b>298.862</b>	<b>166.808</b>	<b>665.357</b>	<b>243.751</b>
24	Telecommunications Plant in Service					(4,854.494)		54,520.152		
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation									
28	Accumulated Amortization									
29	Accumulated Deferred Taxes									
30	<b>NET AVERAGE RATE BASE</b>					<b>(4,854.494)</b>		<b>54,520.152</b>		

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 U S WEST Communications, Inc.  
 Total Oregon Subject to Separations  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	Issue 8a Team Performance Awards & Officers' Incentives (Bonuses) (37)	Issue 8b(1) 1996 Occupational Wage Increases (Pre-16) (38)	Issue 8b(2) 1996-1997 Wage & Salary Increases (38a)	Issue 8b(2) (not used) (38b)	Payroll Tax Increases (38c)	Issue 8b(2) (not used) (38d)	Issue 8b(2) [Issue 8a] Bonuses Included in Wage Base (38e)	Issue 8b(2) [Issue 9a] Wage Base Related to Reengin'g (38f)	Issue 8c SFAS 109 Accounting for Income Taxes (39)
1	Local Service & EAS									
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles									
8	<b>TOTAL OPERATING REVENUES</b>									
9	Plant Specific	(197,468)	2,594,391	1,605,489		46,300		(58,733)	(156,439)	
10	Depreciation & Amortization									
11	Plant Nonspecific	(2,778,204)	1,354,929	2,355,544		67,900		(86,172)	(229,525)	
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)	(1,283,823)	1,795,747	3,111,797		89,800		(113,837)	(303,214)	
15	Billing & Collection									
16	Corporate Operations	(1,051,826)	268,821	3,258,502		94,000		(119,204)	(317,510)	
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	(5,311,321)	6,013,888	10,331,332		298,000		(377,946)	(1,006,688)	
19	Net State & Local Income Taxes	350,547	(396,917)	(681,868)		(19,668)		24,944	66,441	
20	Net Federal Income Tax	1,736,271	(1,965,940)	(3,377,312)		(97,416)		123,551	329,086	
21	Other Taxes									
22	<b>TOTAL OPERATING TAXES</b>	2,086,818	(2,362,857)	(4,059,180)		(117,084)		148,495	395,527	
23	<b>NET OPERATING INCOME</b>	3,224,503	(3,651,031)	(6,272,152)		(180,916)		229,451	611,161	
24	Telecommunications Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation									
28	Accumulated Amortization									
29	Accumulated Deferred Taxes									
30	<b>NET AVERAGE RATE BASE</b>									

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 Total Oregon Subject to Separations  
 Adjustments to Annualized Test Year  
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Line No.	Description	Issue 8d SFAS 112 Accounting for Post- employment Benefits (40)	Issue 8e Ballot Measure 5 Property Taxes (Post-6) (41)	Issue 8f ORS 291.349 Income Tax Refund (42)	Issue 8g UM 767 Oregon Depreciation Repre- scription (Post-14) (43)	Issue 8h Aircraft (44)	Issue 8i Advertising (45)	Issue 8j Average Growth in Access Lines (46)	Issue 8k Marketing Accrual Reversal (Pre-10) (47)	Issue 8l Information Management Systems (48)
1	Local Service & EAS							24,219.789		
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles							(215,823)		
8	<b>TOTAL OPERATING REVENUES</b>							24,003.966		
9	Plant Specific									(492,827)
10	Depreciation & Amortization				28,897.735					
11	Plant Nonspecific									
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)									(692,538)
15	Billing & Collection									
16	Corporate Operations								(529,375)	
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>				28,897.735				(529,375)	(1,185,365)
19	Net State & Local Income Taxes		222.064		(1,889,268)			1,552,308	34,939	78,234
20	Net Federal Income Tax		1,099,892		(9,357,601)			7,688,626	173,053	387,496
21	Other Taxes		(3,364,612)					484,154		
22	<b>TOTAL OPERATING TAXES</b>		(2,042,656)		(11,246,869)			9,725,088	207,992	465,730
23	<b>NET OPERATING INCOME</b>		2,042.656		(17,650,866)			14,278,878	321,383	719,635
24	Telecommunications Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation				(14,448,868)					
28	Accumulated Amortization									
29	Accumulated Deferred Taxes				5,676,960					
30	<b>NET AVERAGE RATE BASE</b>				(8,771,908)					

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Docket UT 125  
 U S WEST Communications, Inc.  
 Total Oregon Subject to Separations  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	Issue 8m	Issue 8n	Issue 9a	Issue 9b	Issue 9c	Issue 10	TOTAL ADJS.
		Purchase Rebates	PUC Fee	Service Reengineering Costs	Extraordinary Expenses	Service Quality	Effects of Adjustments on Intrastate Separations	Columns 7 - 13 and 15 - 53
		(49)	(49a)	(50)	(51)	(52)	(53)	(54)
1	Local Service & EAS							42,621,292
2	Network Access							2,769,226
3	Long Distance							(1,986,305)
4	Directory							
5	Billing & Collection							(88,000)
6	Miscellaneous							8,137,617
7	Uncollectibles							1,145,449
8	<b>TOTAL OPERATING REVENUES</b>							
9	Plant Specific	(477,846)		(10,213,311)	(6,523,026)			
10	Depreciation & Amortization							(10,242,731)
11	Plant Nonspecific	(37,517)		(8,841,750)	(1,920,446)			24,441
12	Access (interstate)							(3,713,460)
13	Access (intrastate)							5,337,452
14	Customer Operations (ex. B&C)			(6,676,559)	(551,731)			(124,717)
15	Billing & Collection							(8,404,768)
16	Corporate Operations	(254,766)		(8,108,521)				
17	Other Gains & Losses							
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(770,129)</b>		<b>(33,840,141)</b>	<b>(8,995,203)</b>			
19	Net State & Local Income Taxes	50,829		2,233,449	593,683			
20	Net Federal Income Tax	251,755		11,062,342	2,940,532			
21	Other Taxes							
22	<b>TOTAL OPERATING TAXES</b>	<b>302,584</b>		<b>13,295,791</b>	<b>3,534,215</b>			
23	<b>NET OPERATING INCOME</b>	<b>467,545</b>		<b>20,544,350</b>	<b>5,460,988</b>			
24	Telecommunications Plant in Service							9,756
25	Plant Adjustment							
26	Materials & Supplies							
27	Accumulated Depreciation							
28	Accumulated Amortization							
29	Accumulated Deferred Taxes							
30	<b>NET AVERAGE RATE BASE</b>							

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Docket UT 125  
 U S WEST Communications, Inc.  
 Total Oregon Subject to Separations  
 Adjustments to Annualized Test Year  
 (\$000's)

Comparison of Total Oregon and Intrastate Data

Line No.	Description	TOTAL OREGON	SEPARATIONS FACTORS	INTRASTATE
		column 6 plus Column 54	Exhibit Revised Staff/3, Lambeth/5, Column e	
		(55)	(56)	(57)
1	Local Service & EAS	390,730.435	100.0000%	390,730.435
2	Network Access	251,168.589	24.9529%	62,673.934
3	Long Distance	110,542.103	81.1872%	89,738.033
4	Directory		100.0000%	
5	Billing & Collection	8,298.560	29.4870%	2,447.000
6	Miscellaneous	26,234.409	85.7780%	22,000.664
7	Uncollectibles	(4,665.818)	calculated	(4,221.068)
8	<b>TOTAL OPERATING REVENUES</b>		74%	
9	Plant Specific		71.9046%	
10	Depreciation & Amortization		70.5557%	
11	Plant Nonspecific	52,113.228	70.6700%	36,828.418
12	Access (interstate)	3,951.201	0.0000%	0.000
13	Access (intrastate)	23,487.123	100.0000%	23,487.123
14	Customer Operations (ex. B&C)	106,348.813	79.1095%	84,130.432
15	Billing & Collection	6,967.804	67.2861%	4,688.364
16	Corporate Operations	83,107.421	74.3246%	61,769.258
17	Other Gains & Losses		70.5640%	
18	<b>TOTAL OPERATING EXPENSES</b>		74%	
19	Net State & Local Income Taxes		calculated	
20	Net Federal Income Tax		calculated	
21	Other Taxes		calculated	
22	<b>TOTAL OPERATING TAXES</b>		77%	
23	<b>NET OPERATING INCOME</b>		73%	
24	Telecommunications Plant in Service		71.1624%	
25	Plant Adjustment	2,659.350	71.1968%	1,893.372
26	Materials & Supplies		72.1797%	
27	Accumulated Depreciation		70.8144%	
28	Accumulated Amortization	(11,909.855)	73.8943%	(8,800.704)
29	Accumulated Deferred Taxes		71.2912%	
30	<b>NET AVERAGE RATE BASE</b>		71%	

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U S WEST Communications, Inc.  
 SEPARATIONS FACTORS

Line No.		FINAL FACTORS (a)
<b>Revenues:</b>		
1	Local Service & EAS	100.0000%
2	Network Access	24.9629%
3	Long Distance	81.1872%
4	Directory	100.0000%
5	Billing & Collection	28.4870%
6	Miscellaneous	85.7780%
7	Uncollectibles	calculated
<b>Expenses:</b>		
8	Plant Specific	71.9046%
9	Depreciation & Amortization	70.5557%
10	Plant Nonspecific	70.6700%
11	Access (interstate)	0.0000%
12	Access (intrastate)	100.0000%
13	Customer Operations (ex. B&C)	79.1095%
14	Billing & Collection	67.2861%
15	Corporate Operations	74.3246%
16	Other Gains & Losses	70.5640%
17	Average Expenses	sum
<b>Rate Base:</b>		
18	Telecommunications Plant in Service	71.1624%
19	Plant Adjustment	71.1968%
20	Materials & Supplies	72.1797%
21	Accumulated Depreciation	70.8144%
22	Accumulated Amortization	73.8943%
23	Accumulated Deferred Taxes	71.2912%
24	Average Rate Base	sum
<b>Other Taxes:</b>		
25	PUC Fee	calculated
26	Based on Book Cost (Property Taxes)	calculated
27	Franchise Fees	100.0000%
28	Portland License & Permit	100.0000%
29	FCC Fee	0.0000%
30	Other Operating Taxes	71.2971%
31	Average Other Taxes	sum
<b>State Income Tax:</b>		
32	Net Deferred Depreciation & Leases	70.5557%
33	Depreciation on side records	70.5557%
34	Interest	calculated
35	Net Other Additions (Deductions)	71.2971%
36	Calculated State Income Tax	calculated
37	Prior Deferred State Income Tax	70.0702%
38	Current State Income Tax	sum
39	Net Portland Income Taxes	71.2971%
39	Current Deferred State Income Tax	70.0702%
40	Average State Income Tax	sum
<b>Federal Income Tax:</b>		
41	Net Deferred Depreciation & Leases	70.5557%
42	Depreciation on side records	70.5557%
43	Current State Income Tax	calculated
44	Current Portland Income Taxes	71.2971%
45	Interest	calculated
46	Net Other Additions (Deductions)	71.2971%
47	Calculated Federal Income Tax	calculated
48	Prior Deferred Federal Income Tax	70.0702%
49	Current Federal Income Tax	sum
50	Current Deferred Federal Income Tax	70.0702%
61	Investment Tax Credits	71.1652%
52	Average Federal Income Tax	sum

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Docket UT 125  
U S WEST Communications, Inc.  
NET-TO-GROSS FACTORS

Line No.	Local Service (a)	Network Access (b)	Long Distance (c)
1	Base Year	100.0000%	100.0000%
	Uncollectibles:		
2	Local	0.8911%	--
3	Access	--	0.1587%
4	Long Distance	--	0.7203%
5	Directory	--	--
6	Billing & Collection	--	--
7	Other	--	--
8	Net Intrastate Uncollectibles	0.8911%	0.7203%
9	Franchise Fees	1.7990%	--
10	PUC Fee	0.2000%	0.2000%
11	State Income Tax (SIT) Base	97.1099%	99.6413%
12	SIT Statutory Rate	6.2700%	6.2700%
13	SIT Effective Rate	6.0888%	6.2475%
14	Federal Income Tax (FIT) Base	91.0211%	93.3938%
15	FIT Statutory Rate	35.0000%	35.0000%
16	FIT Effective Rate	31.8574%	32.6878%
17	NET-TO-GROSS MULTIPLIER	169.0230%	165.6620%

CASE: UT 125  
WITNESS: Terry J. Lambeth

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 2**

**Stipulation**

**August 8, 1996**

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UT 125

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In the Matter of the )  
Application of U S WEST ) STIPULATION  
Communications, Inc., )  
for an Increase in Revenues. )

I. PARTIES

The initial parties to this Stipulation are U S WEST Communications, Inc. (USWC) and Public Utility Commission of Oregon (staff). This stipulation will be made available to the other parties to this Docket, who may participate by signing and filing a copy of this Stipulation.

II. RECITALS

On December 18, 1995, USWC filed a petition for an increase in revenues pursuant to Order No. 91-1598. Staff subsequently conducted extensive discovery. Staff submitted a settlement offer to USWC. After exchanges of information and discussions, staff and USWC enter into this Stipulation for the purpose of partially resolving issues in the revenue requirement phase (Phase I) of this Docket. This stipulation represents only a partial settlement, and all issues not settled herein remain contested.

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///  
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## 1 III. STIPULATION

2 USWC and staff stipulate and agree as follows:

3 1. Issue No. 1 involves the Test Year and Annualization  
4 Methods.5 (a) In partial settlement of Issue No. 1, staff and USWC  
6 agree to the figures or amounts listed (i) in Column 14,  
7 "Annualized Test Year," in Schedule 1 (Intrastate Oregon)  
8 and Schedule 2 (Total Oregon Subject to Separations) (both  
9 schedules attached hereto) and (ii) in the column entitled  
10 "Factors Used in Columns 14-52" in Schedule 3 (Separations  
11 Factors) (schedule attached hereto). Staff and USWC  
12 specifically do not agree upon the figures or amounts found  
13 in column 14a, "Switching Assets," of Schedule 1 and  
14 Schedule 2;15 (b) Further, in partial settlement of Issue No. 1, staff and  
16 USWC agree to the figures or amounts listed in Schedule 4  
17 (Net to Gross Factors) (schedule attached). Staff and USWC  
18 specifically do not agree whether the factors in Schedule 4  
19 should be further modified to reflect Issue 8f, ORS 291.349.20 2. Issue No. 2 involves the Cost of Capital. In partial  
21 settlement of Issue 2, staff and USWC agree that for purposes of  
22 this case only:23 (a) USWC's capital structure is 44.5 percent debt and 55.5  
24 percent equity;

25 (b) USWC's cost of debt is 6.98 percent; and

26 ///

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APPENDIX B  
Page 3 of 20



1 (c) An interest coordination adjustment should be made using  
2 the weighted cost of debt of 3.1061 percent.

3 Staff and USWC specifically do not agree on the rate of return on  
4 equity.

5 3. Issue 4a involves the Rent Compensation Study portion of  
6 Issue 4 (Affiliated Interests and Corporate Allocations). In  
7 partial settlement of Issue 4a, staff and USWC agree:

8 (a) It is appropriate to use the corporate allocation  
9 factors that result from the resolution of Issue 4f  
10 (Corporate Allocations);

11 (b) The effects of Docket UM 753<sup>1</sup> on allocated leases  
12 covered in the rent compensation study should be included;  
13 and

14 (c) The nonregulated portions of the rent compensation study  
15 should be removed from the annualized test year.

16 USWC does not agree that any costs related to square footage per  
17 employee greater than 300 square feet should be disallowed.

18 4. Issue 4c involves the Strategic Marketing portion of  
19 Issue 4 (Affiliated Interests and Corporate Allocations). In  
20 settlement of Issue 4c, staff and USWC agree:

21 The annualized test year should be adjusted to remove  
22 several affiliated expenses, as shown in Schedules 1 and 2,  
23 Column 19.

24

25 <sup>1</sup> The agreement to include the effects of docket UM 753 is that  
26 which is ultimately determined after all court appeals, to the  
extent appeals are made.

PAGE 3 - STIPULATION

1 5. Issue 4d(3) involves the Affiliated Interest Charges  
2 portion of Issue 4 (Affiliated Interests and Corporate  
3 Allocations). In settlement of Issue 4d(3), staff and USWC  
4 agree:

5 The annualized test year should be adjusted to remove  
6 several affiliated expenses, as shown in Schedules 1 and 2,  
7 Column 20b.

8 6. Issue 4e involves the Affiliated Interest Return  
9 Component portion of Issue 4 (Affiliated Interests and Corporate  
10 Allocations). In settlement of Issue 4e, staff and USWC agree:

11 (a) The annualized test year should be adjusted to include  
12 the affiliated interests' rate of return (ROR) charged to  
USWC at USWC's authorized ROR; and

13 (b) The ROR used in this adjustment should be the rate  
14 authorized by the Commission in this docket.

15 7. Issue 4f involves the Headquarters Allocations portion  
16 of Issue 4 (Affiliated Interests and Corporate Allocations). In  
17 partial settlement of Issue 4f, staff and USWC agree:

18 (a) In determining the corporate allocation factors, it is  
19 appropriate to use the factors that became effective January  
20 1, 1996; and

21 (b) It is also appropriate to consider the effects of  
22 exchange sales that occurred after the development of the  
23 corporate allocation factors that became effective  
24 January 1, 1996.  
25

1 Staff and USWC do not agree on the amount of any resulting  
2 adjustment.

3 8. Issue 4g1 involves the Part 64 Still Regulated (Post-  
4 10) portion of Issue 4 (Affiliated Interests and Corporate  
5 Allocations). In disposition of Issue 4g1, staff and USWC agree:

6 The appropriate amounts for the total Oregon Part 64  
7 adjustment are listed in Column 23 of Schedule 2.

8 Staff and USWC do not agree on staff's contention that (1) reve-  
9 nues should be imputed to render certain services revenue neutral  
10 or (2) revenues and expenses of these services should be  
11 separated between intrastate and interstate operations.

12 9. Issue 5a involves the UP 96 Sale of Exchanges (Pre-11)  
13 portion of Issue 5 (Docket UP 96 Sale of Exchanges). In partial  
14 settlement of Issue 5a, staff and USWC agree:

15 (a) The annualized test year should be adjusted to include  
16 the effects of the PTI sale; and

17 (b) The amounts or figures listed in Line Nos. 1 through 7  
18 (Revenues), 10 (Depreciation), 12 and 13 (Access), 15  
19 (Billing & Collection), and 24, 27 and 29 (Rate Base) of  
20 Column 24 of Schedules 1 and Schedule 2 are appropriate  
21 adjustments.

22 Staff and USWC do not agree on the amount of the adjustments for  
23 Line Nos. 9 (Plant Specific), 11 (Plant nonspecific), 14  
24 (Customer Operations), and 16 (Corporate Operations) found in  
25 Column 24 of Schedules 1 and 2.

26 ///

PAGE 5 - STIPULATION

1 10. Issue 5b involves the UP 96 Stipulation (Post-4)  
2 portion of Issue 5 (Docket UP 96 Sale of Exchanges). In  
3 settlement of Issue 5b, staff and USWC agree:

4 The intrastate annualized test year should be adjusted to  
5 include the effects of the stipulation in Docket UP 96, as  
6 shown in Schedule 1, Column 25.

7 11. Issue 5c involves the UP 96 Effect on Property Taxes  
8 portion of Issue 5 (Docket UP 96 Sale of Exchanges). In  
9 settlement of Issue 5c, staff and USWC agree:

10 The annualized test year should be adjusted to include the  
11 property tax savings resulting from the sale of exchanges to  
12 PTI, as shown in Schedules 1 and 2, Column 26.

13 12. Issue 6a involves the 1995 EAS Conversion (Post-7)  
14 portion of Issue 6 (Operating Revenues). In settlement of Issue  
15 6a, staff and USWC agree:

16 The annualized test year should be adjusted to include the  
17 1995 EAS conversions, as shown in Schedules 1 and 2,  
18 Column 27.

19 13. Issue 6b involves the 1996 EAS Conversion portion of  
20 Issue 6 (Operating Revenues). In settlement of Issue 6b, staff  
21 and USWC agree:

22 The annualized test year should be adjusted to include the  
23 effects of the 1996 EAS conversions, as shown in Schedules 1  
24 and 2, Column 28.

25 ///

26 ///

PAGE 6 - STIPULATION

APPENDIX B  
Page 7 of 20

1 14. Issue 6d involves the Switched Access Filing (Post-11)  
2 portion of Issue 6 (Operating Revenues). In settlement of Issue  
3 6d, staff and USWC agree:

4 The annualized test year should be adjusted to include the  
5 switched access changes, as shown in Schedules 1 and 2,  
6 Column 30.

7 15. Issue 7b involves the AT&T Postretirement Benefit  
8 Sharing portion of Issue 7 (Employee Benefits). In settlement of  
9 Issue 7b, staff and USWC agree:

10 The annualized test year should be adjusted to include AT&T  
11 unfunded postretirement benefits cost-sharing, as shown in  
12 Schedules 1 and 2, Column 33.

13 16. Issue 7c involves the Disability Pension Payment  
14 True-Up (Post-8) portion of Issue 7 (Employee Benefits). In  
15 settlement of Issue 7c, staff and USWC agree:

16 The annualized test year should be adjusted to include a  
17 disability pension payment true-up, as shown in Schedules 1  
18 and 2, Column 34.

19 17. Issue 8b1 involves the 1996 Occupational Wage Increases  
20 (Pre-16) portion of Issue 8 (Operating Expenses and Taxes). In  
21 settlement of Issue 8b1, staff and USWC agree:

22 The annualized test year should be adjusted to include the  
23 January 1, 1996, occupational wage rate changes, as shown in  
24 Schedules 1 and 2, Column 38.

25 ///

26 ///

PAGE 7 - STIPULATION

1 18. Issue 8c involves the SFAS 109 Accounting for Income  
2 Taxes portion of Issue 8 (Operating Expenses and Taxes). In  
3 settlement of Issue 8c, staff and USWC agree:

4 Adoption of SFAS 109 has no revenue requirement effect for  
5 USWC, as shown in Schedules 1 and 2, Column 39.

6 19. Issue 8d involves the SFAS 112 Accounting for  
7 Postemployment benefits portion of Issue 8 (Operating Expenses  
8 and Taxes). In settlement of Issue 8d, staff and USWC agree:

9 Adoption of SFAS 112 has no revenue requirement effect for  
10 USWC, as shown in Schedules 1 and 2, Column 40.

11 20. Issue 8e involves Ballot Measure 5 Property Taxes  
12 (Post-6) portion of Issue 8 (Operating Expenses and Taxes). In  
settlement of 8e, staff and USWC agree:

14 The annualized test year should be adjusted to include the  
15 effects of Ballot Measure 5 property taxes, as shown in  
16 Schedules 1 and 2, Column 41.

17 21. Issue 8g involves the Oregon Depreciation  
18 Represcription (Post-14) portion of Issue 8 (Operating Expenses  
19 and Taxes). In settlement of Issue 8g, staff and USWC agree:

20 The annualized test year should be adjusted to include the  
21 new depreciation rates authorized in Docket UM 767, as shown  
22 in Schedules 1 and 2, Column 43.

23 22. Issue 8h involves the Aircraft portion of Issue 8  
24 (Operating Expenses and Taxes). In settlement of Issue 8h, staff  
25 and USWC agree:

26 ///

1 No aircraft adjustment should be made, as shown in  
2 Schedules 1 and 2, Column 44.

3 23. Issue 8i involves the Advertising portion of Issue 8  
4 (Operating Expenses and Taxes). In settlement of Issue 8i, staff  
5 and USWC agree:

6 No advertising adjustment should be made, as shown in  
7 Schedules 1 and 2, Column 45.

8 24. Issue 8m involves the Purchase Rebates portion of Issue  
9 8 (Operating Expenses and Taxes). In settlement of Issue 8m,  
10 staff and USWC agree:

11 The annualized test year should be adjusted to include  
12 purchase rebates, as shown in Schedules 1 and 2, Column 49.

13 25. Issue 10 involves Separations. In partial settlement  
14 of Issue 10, staff and USWC agree:

15 The intrastate separation factors used to initially separate  
16 the test year (as shown in Schedule 3) should be modified to  
17 include the effects of the sale of exchanges to PTI, the  
18 1995 EAS conversions, and the 1996 EAS conversions. The  
19 modified separations factors will be used to develop the  
20 adjustment for Issue 10 by taking the difference between the  
21 test year as initially separated and test year separated  
22 with the modified separations factors.

23 However, Staff and USWC do not agree on the expenses, rate base,  
24 and taxes which affect the final separations factors.

25 ///

26 ///

PAGE 9 - STIPULATION

1 26. This Stipulation covers only the issues listed herein  
2 and shall not preclude any party from litigating any issues not  
3 covered by this Stipulation.

4 27. The parties agree that the agreements reached in this  
5 Stipulation will not be cited in other proceedings as indicative  
6 of a party's position on the issues resolved or as any type of  
7 precedent for other cases.

8 28. Although the parties stipulate and agree herein to  
9 certain amounts or figures, such stipulations do not constitute  
10 any agreement or acquiescence by any party to the method or  
11 theories used by any other party in deciding to enter into this  
12 Stipulation. No party agrees that the method used by any other  
13 party in reaching this Stipulation is appropriate or superior.

14 29. The parties recommend that the Commission adopt this  
15 Stipulation in its entirety. The parties have negotiated this  
16 Stipulation as an integrated document. Accordingly, if the  
17 Commission rejects all or any part of this Stipulation, or adds  
18 elements to the Stipulation in any Order which are not  
19 contemplated by the Stipulation, each party reserves the right to  
20 withdraw from the Stipulation upon written notice to the  
21 Commission and the other parties within fifteen (15) days of  
22 rejection.

23 30. The parties agree that this Stipulation in no manner  
24 binds the Commission in ruling on this docket and does not  
25 restrict the Commission's exercise of its discretion in this or  
26 any other proceeding.



1 U S WEST Communications, Inc.

2 By: Molly K. Hastings

3 Title: Senior Attorney

4 Date: August 2, 1996

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6 Public Utility Commission Staff

7 By: Michael

8 Title: Attorney for staff

9 Date: 8/2/96

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PAGE 11 - STIPULATION

Docket UT 125  
 U S WEST Communications, Inc.  
 INTRASTATE OREGON  
 SCHEDULE 1  
 (\$000's)

Line No.	Description	Annualized Test Year (14)	Switching Assets (14a)	Interest Coordination (Fixed Charges) (Post-2) (15)	Strategic Marketing (19)	Affiliated Interest Charges (Post-3) (20b)	UP 96 Stipulation (Post-4) (25)	UP 96 Effect on Property Taxes (26)	1995 EAS Conversion (Post-7) (27)
1	Local Service & EAS	353,062,697							136,001
2	Network Access	65,200,447							
3	Long Distance	92,995,221							(867,284)
4	Directory	3,921,869							
5	Billing & Collection	2,476,000							
6	Miscellaneous	14,874,324							
7	Uncollectibles	(3,893,609)							5,035
8	<b>TOTAL OPERATING REVENUES</b>	<b>528,636,949</b>							<b>(726,248)</b>
9	Plant Specific	82,732,431							
10	Depreciation & Amortization	96,971,393							
11	Plant Nonspecific	43,126,081							
12	Access (Interstate)	0,000							
13	Access (Intrastate)	23,410,583							(296,903)
14	Customer Operations (ex. B&C)	79,426,367							
15	Billing & Collection	4,806,082							
16	Corporate Operations	57,715,353			(105,310)	(184,497)			
17	Other Gains & Losses	(248,657)							
18	<b>TOTAL OPERATING EXPENSES</b>	<b>397,939,633</b>			<b>(105,310)</b>	<b>(184,497)</b>			<b>(296,903)</b>
19	Net State & Local Income Taxes	6,363,216	10,316	66,073	6,950	10,857	27,878	25,283	(28,441)
20	Net Federal Income Tax	23,638,674	51,094	277,734	34,428	53,774	138,083	125,227	(140,869)
21	Other Taxes	26,401,929						(383,074)	1,578
22	<b>TOTAL OPERATING TAXES</b>	<b>56,404,019</b>	<b>61,410</b>	<b>333,807</b>	<b>41,378</b>	<b>64,631</b>	<b>165,961</b>	<b>(232,564)</b>	<b>(167,732)</b>
23	<b>NET OPERATING INCOME</b>	<b>74,293,297</b>	<b>(81,410)</b>	<b>(333,807)</b>	<b>63,934</b>	<b>99,866</b>	<b>(165,961)</b>	<b>232,564</b>	<b>(261,613)</b>
24	Plant in Service	1,545,849,082	(172,134)						
25	Plant Adjustment	1,884,420							
26	Materials & Supplies	14,401,037							
27	Accumulated Depreciation	(603,025,372)	(4,859,838)				(22,400,000)		
28	Accumulated Amortization	(8,788,485)							
29	Accumulated Deferred Taxes	(198,549,165)					8,800,960		
30	<b>NET AVERAGE RATE BASE</b>	<b>751,571,517</b>	<b>(5,031,972)</b>				<b>(13,599,040)</b>		

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Staff/2  
 Lambeth/12  
 Schedule 1  
 Page 1

APPENDIX B  
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Docket UT 125  
**U S WEST Communications, Inc.**  
**INTRASTATE OREGON**  
**SCHEDULE 1**  
(\$000's)

Line No.	Description	Issue 6b 1998 EAS Conversion (28)	Issue 6d Switched Access Filing (Post-11) (30)	Issue 7b AT&T Unfunded Postretirement Benefits Cost-Sharing Agreement (33)	Issue 7c Disability Pension Payment True-up (Post-8) (34)	Issue 8b(1) 1998 Occupational Wage Increases (Pre-18) (38)	Issue 8c SFAS 109- Accounting for Income Taxes (39)	Issue 8d SFAS 112 Accounting for Post- employment Benefits (40)	Issue 8e Ballot Measure 5 Property Taxes (Post-8) (41)	Issue 8g UM 767 Oregon Depreciation Repre- scription (Post-14) (43)
1	Local Service & EAS	1,129,882								
2	Network Access		(1,582,542)							
3	Long Distance	(2,578,245)								
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles	8,503	2,511							
8	<b>TOTAL OPERATING REVENUES</b>	<b>(1,439,880)</b>	<b>(1,580,031)</b>							
9	Plant Specific					1,863,240				
10	Depreciation & Amortization								20,325,655	
11	Plant Nonspecific					957,898				
12	Access (Interstate)									
13	Access (Intrastate)	(538,090)	(1,910,499)							
14	Customer Operations (ex. B&C)					1,426,360				
15	Billing & Collection									
16	Corporate Operations			(365,339)	(203,911)	199,503				
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(538,090)</b>	<b>(1,910,499)</b>	<b>(365,339)</b>	<b>(203,911)</b>	<b>4,447,001</b>				<b>20,325,655</b>
19	Net State & Local Income Taxes	(60,738)	21,768	24,112	13,458	(293,502)		169,768		(1,328,844)
20	Net Federal Income Tax	(300,838)	107,815	119,429	66,659	(1,453,725)		840,868		(6,581,808)
21	Other Taxes	18,508	0,656					(2,572,248)		
22	<b>TOTAL OPERATING TAXES</b>	<b>(343,070)</b>	<b>130,239</b>	<b>143,541</b>	<b>80,117</b>	<b>(1,747,227)</b>		<b>(1,561,612)</b>		<b>(7,910,652)</b>
23	<b>NET OPERATING INCOME</b>	<b>(558,700)</b>	<b>200,229</b>	<b>221,798</b>	<b>123,794</b>	<b>(2,699,774)</b>		<b>1,561,612</b>		<b>(12,415,003)</b>
24	Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation								(10,163,000)	
28	Accumulated Amortization									3,993,043
29	Accumulated Deferred Taxes									
30	<b>NET AVERAGE RATE BASE</b>									<b>(8,169,957)</b>

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Schedule 1  
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Docket UT 125  
 U S WEST Communications, Inc.  
 INTRASTATE OREGON  
 SCHEDULE 1  
 (\$000's)

Issue 8h      Issue 8i      Issue 8m

Line No.	Description	Aircraft (44)	Advertising (45)	Purchase Rebates (49)
1	Local Service & EAS			
2	Network Access			
3	Long Distance			
4	Directory			
5	Billing & Collection			
6	Miscellaneous			
7	Uncollectibles			
<b>8</b>	<b>TOTAL OPERATING REVENUES</b>			
9	Plant Specific			(343,179)
10	Depreciation & Amortization			
11	Plant Nonspecific			(26,524)
12	Access (interstate)			
13	Access (intrastate)			
14	Customer Operations (ex. B&C)			
15	Billing & Collection			
16	Corporate Operations			(189,072)
17	Other Gains & Losses			
<b>18</b>	<b>TOTAL OPERATING EXPENSES</b>			<b>(558,775)</b>
19	Net State & Local Income Taxes			38,879
20	Net Federal Income Tax			182,664
21	- Other Taxes			
<b>22</b>	<b>TOTAL OPERATING TAXES</b>			<b>219,543</b>
<b>23</b>	<b>NET OPERATING INCOME</b>			<b>339,232</b>
24	Plant in Service			
25	Plant Adjustment			
26	Materials & Supplies			
27	Accumulated Depreciation			
28	Accumulated Amortization			
29	Accumulated Deferred Taxes			
<b>30</b>	<b>NET AVERAGE RATE BASE</b>			

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**Docket UT 125**  
**U S WEST Communications, Inc.**  
**Total Oregon Subl. to Separations**  
**SCHEDULE 2**  
**(0000's)**

Line No.	Description	Annualized Test Year (14)	Switching Assets (14a)	Interest Coordination (Fixed Charges) (Post-2) (15)	Strategic Marketing (19)	Affiliated Interest Charges (Post-3) (20b)	Part 64 Still Regulated (Post-10) (23)	UP 98 Sale of Exchanges to PTI (Pre-11) (24)	UP 98 Effect on Property Taxes (25)	1995 EAS Conversion (Post-7) (27)
1	Local Service & EAS	353,062.597						(3,755.138)		136,001
2	Network Access	255,616.125						(2,921.022)		
3	Long Distance	113,833.737								(867.284)
4	Directory	3,921.859						(31.317)		
5	Billing & Collection	2,386.680						(88.000)		
6	Miscellaneous	17,477.040				4,517.316		(82.106)		
7	Uncollectibles	(4,347.385)				(25,949)		48.918		5,035
8	<b>TOTAL OPERATING REVENUES</b>	<b>748,950.542</b>				<b>4,491.367</b>		<b>(6,828.665)</b>		<b>(726.248)</b>
9	Plant Specific	115,197.347				1,423.770		(2,488.940)		
10	Depreciation & Amortization	137,121.476				1,137.732		(5,180.098)		
11	Plant Nonspecific	61,001.030				1,528.833		(135.070)		
12	Access (Interstate)	3,901.760						49.441		
13	Access (Intrastate)	23,410.583						2,822.032		(296.903)
14	Customer Operations (ex. B&C)	99,995.552					3,090.908	(218.190)		
15	Billing & Collection	6,522.238						345.566		
16	Corporate Operations	91,243.368			(141.900)	(221.852)	1,210.208	(207.800)		
17	Other Gains & Losses	(352.385)					115.784			
18	<b>TOTAL OPERATING EXPENSES</b>	<b>538,140.989</b>			<b>(141.900)</b>	<b>(221.852)</b>	<b>8,507.235</b>	<b>(4,993.059)</b>		<b>(296.903)</b>
19	Net State & Local Income Taxes	10,998.698	14.524	48.237	9.365	14.629	(283.781)	(7.364)	35.546	(28.441)
20	Net Federal Income Tax	43,520.754	71.937	229.011	46.387	72.458	(1,415.592)	(35.474)	178.063	(140.869)
21	Other Taxes	32,234.304					103.819	(87.744)	(538.582)	1.578
22	<b>TOTAL OPERATING TAXES</b>	<b>88,753.756</b>	<b>88.461</b>	<b>275.248</b>	<b>55.752</b>	<b>87.087</b>	<b>(1,595.654)</b>	<b>(131.582)</b>	<b>(328.973)</b>	<b>(187.732)</b>
23	<b>NET OPERATING INCOME</b>	<b>124,055.817</b>	<b>(86.461)</b>	<b>(275.248)</b>	<b>86.148</b>	<b>134.565</b>	<b>(2,420.314)</b>	<b>(1,704.024)</b>	<b>326.973</b>	<b>(261.613)</b>
24	Plant In Service	2,174,367.592	(242.131)				8,707.515	(90,202.348)		
25	Plant Adjustment	2,649.594					9.756			
26	Materials & Supplies	19,944.722					95.285			
27	Accumulated Depreciation	(848,419.469)	(6,842.558)				(3,405.456)	29,412.068		
28	Accumulated Amortization	(11,909.855)								
29	Accumulated Deferred Taxes	(278,872.734)					(932.468)	8,110.481		
30	<b>NET AVERAGE RATE BASE</b>	<b>1,057,759.850</b>	<b>(7,084.689)</b>				<b>4,474.632</b>	<b>(52,679.799)</b>		

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**Docket UT 125**  
**US WEST Communications, Inc.**  
**Total Oregon Subj. to Separations**  
**SCHEDULE 2**  
**(\$000's)**

*Issue 2h      Issue 8f      Issue 8m*

Line No.	Description	Aircraft (44)	Advertising (45)	Purchase Rebates (49)
1	Local Service & EAS			
2	Network Access			
3	Long Distance			
4	Directory			
5	Billing & Collection			
6	Miscellaneous			
7	Uncollectibles			
<hr/>				
8	<b>TOTAL OPERATING REVENUES</b>			
<hr/>				
9	Plant Specific			(477,848)
10	Depreciation & Amortization			
11	Plant Nonspecific			(37,517)
12	Access (Interstate)			
13	Access (Intrastate)			
14	Customer Operations (ex. B&C)			
15	Billing & Collection			
16	Corporate Operations			(254,768)
17	Other Gains & Losses			
18	<b>TOTAL OPERATING EXPENSES</b>			<b>(770,129)</b>
<hr/>				
19	Net State & Local Income Taxes			50,829
20	Net Federal Income Tax			251,755
21	Other Taxes			
22	<b>TOTAL OPERATING TAXES</b>			<b>302,584</b>
<hr/>				
23	<b>NET OPERATING INCOME</b>			<b>467,545</b>
<hr/>				
24	Plant In Service			
25	Plant Adjustment			
26	Materials & Supplies			
27	Accumulated Depreciation			
28	Accumulated Amortization			
29	Accumulated Deferred Taxes			
30	<b>NET AVERAGE RATE BASE</b>			

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**Docket UT 125**  
**U S WEST Communications, Inc.**  
**Total Oregon Subj. to Separations**  
**SCHEDULE 2**  
**(\$000's)**

Line No.	Description	Issue 6b 1996 EAS Conversion (28)	Issue 6d Switched Access Filing (Post-11) (30)	Issue 7b AT&T Unfunded Postretirement Benefits Cost-Sharing Agreement (33)	Issue 7c Disability Pension Payment True-up (Post-8) (34)	Issue 8b(1) 1996 Occupational Wage Increases (Pre-16) (38)	Issue 8c SFAS 109 Accounting for Income Taxes (39)	Issue 8d SFAS 112 Accounting for Post- employment Benefits (40)	Issue 8e Ballot Measure 5 Property Taxes (Post-6) (41)	Issue 8g UM 767 Oregon Depreciation Repre- scription (Post-14) (43)
1	Local Service & EAS	1,129,882								
2	Network Access		(2,528,514)							
3	Long Distance	(2,578,245)								
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles	8,503	4,010							
8	<b>TOTAL OPERATING REVENUES</b>	<b>(1,439,880)</b>	<b>(2,522,504)</b>							
9	Plant Specific					2,594,391				
10	Depreciation & Amortization								28,897,735	
11	Plant Nonspecific					1,354,929				
12	Access (Interstate)									
13	Access (Intrastate)	(538,090)	(1,910,499)							
14	Customer Operations (ex. B&C)					1,795,747				
15	Billing & Collection									
16	Corporate Operations			(492,278)	(274,761)	288,821				
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(538,090)</b>	<b>(1,910,499)</b>	<b>(492,278)</b>	<b>(274,761)</b>	<b>8,013,888</b>			<b>28,897,735</b>	
19	Net State & Local Income Taxes	(80,738)	(40,311)	32,490	18,134	(395,917)		222,064		(1,889,268)
20	Net Federal Income Tax	(300,838)	(199,862)	160,926	89,819	(1,985,940)		1,099,892		(9,357,601)
21	Other Taxes	18,506	(1,232)					(3,354,612)		
22	<b>TOTAL OPERATING TAXES</b>	<b>(343,070)</b>	<b>(241,205)</b>	<b>193,416</b>	<b>107,953</b>	<b>(2,362,857)</b>		<b>(2,042,656)</b>		<b>(11,246,869)</b>
23	<b>NET OPERATING INCOME</b>	<b>(558,700)</b>	<b>(370,800)</b>	<b>298,882</b>	<b>166,808</b>	<b>(3,851,031)</b>		<b>2,042,656</b>		<b>(17,650,866)</b>
24	Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation								(14,448,888)	
28	Accumulated Amortization									
29	Accumulated Deferred Taxes									5,876,960
30	<b>NET AVERAGE RATE BASE</b>									<b>(8,771,908)</b>

ORDER NO. 00-101

Staff/2  
 Lambert/17  
 Schedule 2  
 Page 2

**Docket UT 125**  
**U S WEST Communications, Inc.**  
**SEPARATIONS FACTORS**

Schedule 3

Line No.		Factors Used in Columns 14-52
<b>Revenues:</b>		
1	Local Service & EAS	100.0000%
2	Network Access	25.4078%
3	Long Distance	81.6939%
4	Directory	100.0000%
5	Billing & Collection	29.5234%
6	Miscellaneous	85.1078%
7	Uncollectibles	<i>calculated</i>
<b>Expenses:</b>		
8	Plant Specific	71.8180%
9	Depreciation & Amortization	70.3365%
10	Plant Nonspecific	70.6973%
11	Access (interstate)	0.0000%
12	Access (intrastate)	100.0000%
13	Customer Operations (ex. B&C)	79.4299%
14	Billing & Collection	67.7627%
15	Corporate Operations	74.2140%
16	Other Gains & Losses	70.5640%
17	Average Expenses	<i>sum</i>
<b>Rate Base:</b>		
18	Plant in Service	71.0911%
19	Plant Adjustment	71.1297%
20	Materials & Supplies	72.2069%
21	Accumulated Depreciation	71.0237%
22	Accumulated Amortization	73.7906%
23	Accumulated Deferred Taxes	71.2241%
24	Average Rate Base	<i>sum</i>
<b>Other Taxes:</b>		
25	PUC Fee	<i>calculated</i>
26	Based on Book Cost (Property Taxes)	<i>calculated</i>
27	Franchise Fees	100.0000%
28	Portland License & Permit	100.0000%
29	FCC Fee	0.0000%
30	Other Operating Taxes	71.2300%
31	Average Other Taxes	<i>sum</i>
<b>State Income Tax:</b>		
32	Net Deferred Depreciation & Leases	70.3365%
33	Depreciation on slide records	70.3365%
34	Interest	<i>calculated</i>
35	Net Other Additions (Deductions)	71.2300%
36	Calculated State Income Tax	<i>calculated</i>
37	Prior Deferred State Income Tax	70.0031%
38	Current State Income Tax	<i>sum</i>
39	Net Portland Income Taxes	71.2300%
40	Current Deferred State Income Tax	70.0031%
40	Average State Income Tax	<i>sum</i>
<b>Federal Income Tax:</b>		
41	Net Deferred Depreciation & Leases	70.3365%
42	Depreciation on slide records	70.3365%
43	Current State Income Tax	<i>calculated</i>
44	Current Portland Income Taxes	71.2300%
45	Interest	<i>calculated</i>
46	Net Other Additions (Deductions)	71.2300%
47	Calculated Federal Income Tax	<i>calculated</i>
48	Prior Deferred Federal Income Tax	70.0031%
49	Current Federal Income Tax	<i>sum</i>
50	Current Deferred Federal Income Tax	70.0031%
51	Investment Tax Credits	71.0961%



Docket UT 125  
U S WEST Communications, Inc.  
NET-TO-GROSS FACTORS

Line No.	Local Service (a)	Network Access (b)	Long Distance (c)
1 Base Year	<u>100.0000%</u>	<u>100.0000%</u>	<u>100.0000%</u>
Uncollectibles:			
2 Local	0.8911%	--	--
3 Access	--	0.1587%	--
4 Long Distance	--	--	0.7203%
5 Directory	--	--	--
6 Billing & Collection	--	--	--
7 Other	--	--	--
8 Net Intrastate Uncollectibles	<u>0.8911%</u>	<u>0.1587%</u>	<u>0.7203%</u>
9 Franchise Fees	1.7990%	--	--
10 PUC Fee	<u>0.2000%</u>	<u>0.2000%</u>	<u>0.2000%</u>
11 State Income Tax (SIT) Base	97.1099%	99.6413%	99.0797%
12 SIT Statutory Rate	6.6000%	6.6000%	6.6000%
13 SIT Effective Rate	<u>6.4093%</u>	<u>6.5763%</u>	<u>6.5393%</u>
14 Federal Income Tax (FIT) Base	90.7006%	93.0650%	92.5404%
15 FIT Statutory Rate	35.0000%	35.0000%	35.0000%
16 FIT Effective Rate	<u>31.7452%</u>	<u>32.5728%</u>	<u>32.3891%</u>
17 NET-TO-GROSS MULTIPLIER	<u>169.6200%</u>	<u>165.3110%</u>	<u>166.2470%</u>

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

RECEIVED

UT 125

DEC 11 1996

Public Utility Commission of Oregon  
Administrative Hearings Division

In the Matter of the  
Application of U S WEST  
Communications, Inc.,  
for an Increase in Revenues.

SECOND STIPULATION

I. PARTIES

The initial parties to this Second Stipulation are U S WEST Communications, Inc. (USWC), and the Public Utility Commission of Oregon's staff (staff). This stipulation will be made available to the other parties to this Docket, who may participate by signing and filing a copy of this Second Stipulation.

II. RECITALS

On December 18, 1995, USWC filed a petition for an increase in revenues pursuant to Order No. 91-1598. Staff subsequently conducted extensive discovery. Staff submitted a settlement offer to USWC. After exchanges of information and discussions, staff and USWC entered into a stipulation on August 2, 1996 ("the first Stipulation"), for the purpose of partially resolving issues in the revenue requirement phase (Phase I) of this Docket.

After further exchanges of information and discussions, staff and USWC enter into this Second Stipulation for the purpose of resolving some other issues in the revenue requirement phase (Phase I) of this Docket. This Second Stipulation represents only a partial settlement, and all issues not settled herein, or in the first Stipulation, remain contested.

III. STIPULATION

USWC and staff stipulate and agree as follows:

1. Issue 1b involves Net-to-Gross Factors. Staff and USWC agree to use the net-to-gross factors shown in Exhibit Staff/3, Lambeth/4; Columns d through f. This agreement

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1 supplements the partial settlement of Issue No. 1 in the first stipulation, page 2.

2           2.       Issue 4g(1) involves the Part 64 Still Regulated portion of Issue 4 (Affiliated  
3 Interests and Corporate Allocations). In settlement of Issue 4g(1), Staff and USWC agree to:

4           (a)       Allocate 74.65 percent of USWC's total Oregon miscellaneous revenues  
5 to intrastate operations.

6           (b)       Separate USWC's total Oregon expenses between interstate and  
7 intrastate jurisdictions.

8 The resulting adjustment is shown in Exhibit Revised Staff/3, Lambeth/10, Column 23.

9           3.       Issue 4g(2) involves the imputation of revenues to render the Part 64 Still  
10 Regulated services revenue-requirement-neutral. Issue 6c reflects the normalization of  
11 Tariff, Price and Contract Changes made after January 1, 1995. Staff and USWC agree that  
12 \$94,538 of net revenues associated with Issue 6c is attributable to Voice Messaging Service  
13 promotions. Therefore, staff and USWC agree that, if the Commission adopts both of staff's  
14 adjustments under Issues 4g(2) and 6(c), the imputation amount under Issue 4g(2) should be  
15 reduced by \$94,538 to prevent double-counting of new Voice Mail Service revenues. If the  
16 Commission adopts neither, or only one, of these two staff adjustments, no change is  
17 required.

18           4.       Issue 7a(1) involves the SFAS 106 Postretirement Benefits portion of Issue 7  
19 (Employee Benefits). In settlement of Issue 7a(1), Staff and USWC agree on the amount of  
20 the adjustment as follows:

21           (a)       If the Commission adopts staff's recommendation to amortize the  
22 Transition Benefit Obligation (TBO) as though no curtailments related to  
23 reengineering have been or will be recorded, then the amount of the adjustment shall  
24 be as shown in Exhibit Revised Staff/3, Lambeth/17, Column 32; or

25           (b)       If the Commission adopts USWC's position that curtailment expenses  
26 will continue during some portion of the period when rates from this Docket are in

1 effect and should be spread over the entire rate period, then the Commission should  
2 adopt USWC's adjustment as shown in Exhibit USW/92, Total State, page 8, column  
3 32b.

4 5. Issue 7d involves the Pension Accounting portion of Issue 7 (Employee  
5 Benefits). In settlement of Issue 7d, staff and USWC agree to (1) leave the negative expense  
6 in USWC's operating expenses, (2) leave accumulated deferred taxes in USWC's rate base,  
7 and (3) add the pension asset to the rate base. The resulting adjustment is shown in Exhibits  
8 Revised Staff/3, Lambeth/17, Column 35, and USW/92, Total State, page 9, Column 35b.

9 6. Issue 7e involves the End of Compensated Absences Accrual portion of Issue 7  
10 (Employee Benefits). In settlement of Issue 7e, staff and USWC agree to adjust the test year  
11 for this accrual, which will end in December 1997. The resulting adjustment is shown in  
12 Exhibits Revised Staff/3, Lambeth/17, Column 36, and USW/92, Total State, page 9,  
13 Column 36.

14 7. Issue 8b(2) involves the Other Payroll Changes portion of Issue 8 (Operating  
15 Expenses and Taxes). Staff and USWC agree that the payroll tax expenses should be  
16 increased by \$298,000. Staff and USWC also agree on how to calculate the wage increase  
17 adjustments, which are shown in Attachment 1 to this Stipulation, which attachment is  
18 incorporated herein, but USWC does not agree that the adjustments should be included in the  
19 test year.

20 8. Issue 8f involves the ORS 291.349 Income Tax Refund portion of Issue 8  
21 (Operating Expenses and Taxes). In settlement of Issue 8f, staff and USWC agree that the  
22 effective state income tax rate should be 6.27 percent (to reflect the effects of periodic tax  
23 refunds). This agreement affects USWC's current income tax expenses and the net-to-gross  
24 factor. See Exhibit Staff/1, Lambeth/71-72. However, the amount of the adjustment (see  
25 Exhibit Revised Staff/3, Lambeth/17, Column 42) depends on which of the other adjustments  
26 the Commission adopts in this Docket.

1 9. This Second Stipulation covers only the issues listed herein and shall not preclude  
2 any party from litigating any issues not covered by this Second Stipulation.

3 10. The parties agree that the agreements reached in this Second Stipulation will not  
4 be cited in other proceedings as indicative of a party's position on the issues resolved or as  
5 any type of precedent for other cases.

6 11. Although the parties stipulate and agree herein to certain amounts or figures,  
7 such agreements do not constitute any agreement or acquiescence by any party to the method  
8 or theories used by any other party in deciding to enter into this Second Stipulation. No  
9 party agrees that the method used by any other party in reaching this Second Stipulation is  
10 appropriate or superior.

11 12. The parties recommend that the Commission adopt this Second Stipulation in its  
12 entirety. The parties have negotiated this Second Stipulation as an integrated document.  
13 Accordingly, if the Commission rejects all or any part of this Second Stipulation, or adds  
14 elements to this Stipulation in any order which are not contemplated by this Stipulation, each  
15 party reserves the right to withdraw from this Stipulation upon written notice to the  
16 Commission and the other parties within fifteen (15) days of rejection.

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1 13. The parties agree that this Second Stipulation in no manner binds the  
2 Commission in ruling on this Docket and does not restrict the Commission's exercise of its  
3 discretion in this or any other proceeding.

4  
5  
6 U S WEST Communications, Inc.

7 By: Molly K. Hastings  
8 Title: Senior Attorney  
9 Date: November 27, 1996

10  
11 Public Utility Commission Staff

12 By: Benny Won  
13 Title: Assistant Attorney General  
14 Date: December 11, 1996

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Docket UT 125  
U S WEST Communications, Inc.  
**TOTAL OREGON**  
Issue 8b(2), Other Payroll Changes

	Payroll Changes Before Disputed Issues (a)	Issue 8a Team Incentives Included In Management Wage Base (b)	Issue 9a Reengineered Wages Included In Wage Base (c)	Total Disputed Adjustments (b)+(c) (d)	Adjusted Total (e)	
<u>1996 Payroll Changes</u>						
1 Wage Increases	1,907,271	(168,658)	(471,597)	(640,255)	1,267,016	
2 FICA, Savings Plans & Group Life	222,045	(19,635)	(47,594)	(67,229)	154,816	
3 Total 1996 Wage Adjustments	<u>2,129,316</u>	<u>(188,293)</u>	<u>(519,191)</u>	<u>(707,484)</u>	<u>1,421,832</u>	
<u>1997 Payroll Changes</u>						
4 Wage Increases	7,423,101	(169,876)	(475,003)	(644,879)	6,778,222	
5 FICA, Savings Plans & Group Life	778,915	(19,777)	(47,938)	(67,715)	711,200	
6 Total 1997 Payroll Changes	<u>8,202,016</u>	<u>(189,653)</u>	<u>(522,941)</u>	<u>(712,594)</u>	<u>7,489,422</u>	
7 Total Payroll Changes	<u>10,331,332</u>	<u>(377,946)</u>	<u>(1,042,132)</u>	<u>(1,420,078)</u>	<u>8,911,254</u>	
<u>Account Distribution:</u>						
8 Plant Specific	15.54%	1,605,489	(58,733)	(161,947)	(220,680)	1,384,809
9 Plant Nonspecific	22.80%	2,355,544	(86,172)	(237,606)	(323,778)	2,031,766
10 Customer Operations	30.12%	3,111,797	(113,837)	(313,890)	(427,727)	2,684,070
11 Corporate Operations	31.54%	3,258,502	(119,204)	(328,689)	(447,893)	2,810,609
12 Total Operating Expense		<u>10,331,332</u>	<u>(377,946)</u>	<u>(1,042,132)</u>	<u>(1,420,078)</u>	<u>8,911,254</u>

2ND REVISED STAFF EXHIBIT

PRICE CHANGES MADE AFTER JANUARY 1, 1995

Fig. No.	Tariff Data				Number of Days to Add Annualized Test Year Col. 2 - Jan. 1, 1995	Annualized Adjustment		
	Tariff Filing	Effective Date	Annual Revenues	Annual Expenses		Revenues	Expenses	Net Effect
			Per USWOC's Work Papers Supporting the Filings	Per USWOC's Work Papers Supporting the Filings				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
1	PL 95-4015	27-Feb-95	1,253,461	321,095	57	195,746	50,144	145,602
2	PL 95-003	15-Mar-95	80,472	0	73	16,094	0	16,094
3	PL 95-4019	15-Mar-95	80,079	0	73	18,016	0	18,016
4	PL 95-4001	05-Apr-95	2,765,641	1,383,611	94	712,247	356,327	355,920
5	PL 95-020	18-Sep-95	747,760	42,674	260	632,651	30,398	602,253
6	PL 95-018	18-Sep-95	1,174,288	344,584	260	836,479	245,457	591,022
Jan. through Sep. 1995								
7	PL 95-031	16-Oct-95	0	0	365	0	0	0
8	C1-95	29-Nov-95	(44,304)	0	365	(44,304)	0	(44,304)
9	PL 95-040	08-Dec-95	164,788	62,873	365	164,788	62,873	101,925
10	PL 95-035	12-Dec-95	(62,668)	0	365	(62,668)	0	(62,668)
11	PL 95-042	04-Jan-96	892,274	576,076	365	892,274	576,076	416,199
12	PL 96-002	27-Feb-96	1,907,686	1,180,573	365	1,907,686	1,180,573	717,113
13	PL 96-011	15-Mar-96	4,170,613	2,202,900	365	4,170,613	2,202,900	1,967,713
14	PL 96-017	16-Mar-96	1,695,836	0	365	1,695,836	0	1,695,836
15	PL 96-018	01-Apr-96	37,079	10,338	365	37,079	10,338	26,741
16	C2-96	10-Apr-96	1,819,765	1,660,681	365	1,819,765	1,660,681	159,084
17	PL 96-027	30-Apr-96	65,782	63,608	365	65,782	63,608	(7,726)
18	PL 96-028	30-Apr-96	291,671	367,421	365	291,671	367,421	(75,750)
19	PL 96-029	13-May-96	2,003,430	667,040	365	2,003,430	667,040	1,336,390
20	PL 96-026	20-May-96	130,574	84,413	365	130,574	84,413	36,161
21	PL 96-033	06-Jul-96	463,535	442,498	365	463,535	442,498	21,037
<b>TOTAL (PL 95-000-5069)</b>								
			19,737,772	10,430,288		16,997,304	8,020,646	8,966,668
22	PL 95-4029	28-Apr-95	(285,000)	0	117	(91,356)	0	(91,356)
Jan. through Sep. 1995								
23	PL 95-024	18-Oct-95	405,132	182,923	365	405,132	182,923	222,209
24	PL 96-024	04-Apr-96	(58,060)	0	365	(58,060)	0	(58,060)
25	PL 96-025	26-Apr-96	(198,210)	0	365	(198,210)	0	(198,210)
26	PL 96-023	26-Apr-96	96,389	0	365	96,389	0	96,389
<b>TOTAL (PL 96-000-6169)</b>								
			(385,881)	0		(359,931)	0	(359,931)



IN THE COURT OF APPEALS OF THE STATE OF OREGON

NORTHWEST PUBLIC  
COMMUNICATIONS COUNCIL,

Petitioner,

v.

QWEST CORPORATION, fka U.S. West  
Communications, Inc. and PUBLIC  
UTILITY COMMISSION OF OREGON,

Respondents.

TRANSMITTAL OF SHORTENED  
RECORD AND CERTIFICATE

Appellate Court No. CA No. A166810

Agency Case No. UT 125

VOLUME III

ITEM NOS. 17 - 22

FILED  
COURT OF APPEALS

MAR 27 2018

STATE COURT ADMINISTRATOR

By AB Deputy

CASE NO. A166810

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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UT 125/UT 80

In the Matter of the Application of )  
U S WEST Communications, Inc., for ) ORDER  
an Increase in Revenues. )

DISPOSITION: STIPULATION ADOPTED; ORDER NO. 96-107  
MODIFIED; ORDER NOS. 96-183, 96-286, AND  
97-171 RESCINDED

**Background.** This docket began in December 1995, when U S WEST Communications, Inc., (USWC) submitted its general rate filing with the Commission pursuant to the terms of the Alternative Form of Regulation (AFOR) adopted by the Commission in 1991.<sup>1</sup> In its filing, USWC requested a revenue increase of \$28 million. The case was bifurcated into a revenue requirement phase (Phase 1) and a rate design phase (Phase 2). By Order No. 97-171, the Commission completed the revenue requirement phase. In that order, we rejected USWC's requested increase and instead ordered a revenue reduction of \$97.4 million and a refund of \$102 million, retroactive to May 1, 1996. We adopted an authorized rate of return of 8.77 percent for USWC.

USWC appealed the Commission's order to Marion County Circuit Court and moved for a stay. On July 16, 1997, the Circuit Court stayed the order, including USWC's obligation to issue any refund to its customers. The Circuit Court, in a judgment entered February 19, 1998, reversed and modified Order No. 97-171. The Commission appealed the judgment to the Court of Appeals, and USWC cross-appealed. The appeals involving Order No. 97-171 are called below the Rate Case Appeals.

In addition to the UT 125 issues on appeal, USWC has filed an appeal with respect to refund methodology. Order No. 91-1598 (Docket UT 80) stated that any refund would be calculated using USWC's actual earnings during the interim rate period. In Order No. 96-183, at 4, the Commission stated that any refund would be based on "the difference between the permanent rate level established in pending docket UT 125 and

<sup>1</sup> The AFOR was adopted in Order No. 91-1598 and was due to expire on December 31, 1996. The Commission terminated the AFOR as of May 1, 1996, because of service quality problems. Under the terms of the AFOR, USWC was required to submit a general rate filing pursuant to ORS 759.180 at least nine months before expiration of the AFOR. USWC filed its general rate case on December 18, 1995. USWC's rates have been interim rates subject to refund with interest since May 1, 1996.

the current interim rate level, assuming that the latter amount of revenues is greater than the former." Specifically, the Commission ordered, at 5, that "the annualized test year from January 1 to September 30, 1995, as modified by adjustments ordered in docket UT 125, shall be used to determine whether [USWC] overearned during the period from May 1, 1996, to the effective date of rates established in docket UT 125." USWC believed that this decision contravened the plain language of the AFOR order and increased USWC's potential refund liability. Accordingly, USWC appealed Order Nos. 96-183 and 96-286 (the order denying reconsideration) to the Circuit Court of Marion County. The Circuit Court affirmed the Commission's orders and USWC appealed to the Court of Appeals, where the action is still pending. This appeal is referred to as the Refund Methodology Appeal. Both sets of appeals together are referred to as the Appellate Litigation.

At present, USWC's rates have been interim rates since May 1, 1996. USWC's ratepayers have received no refund, although the Commission ordered one nearly three years ago. The Appellate Litigation is pending, and if USWC prevails, there is a possibility that ratepayers will receive no refund.

Settlement negotiations began in November 1998 in an effort to resolve the revenue requirement phase of the case and proceed to the rate design phase. USWC, Commission Staff (Staff), Citizens' Utility Board (CUB), and American Association of Retired Persons (AARP) attended all negotiation sessions. On August 5, 1999, Staff and USWC reached a settlement in principle. They drafted a Stipulation that was executed on September 9, 1999. Negotiations took ten months, in part because USWC and Staff were originally almost \$50 million apart in their positions.

As detailed below, the Court of Appeals partially lifted the stay and held the Appellate Litigation in abeyance for the purpose of permitting the Commission to consider the Stipulation. The Stipulation is also designed to resolve the issue of refund methodology from UT 80. On November 8, 1999, Staff filed testimony and exhibits in support of the Stipulation. USWC filed testimony in support of the Stipulation on November 12, 1999. CUB, Western States Competitive Telecommunications Coalition (WSCTC), AT&T, and Telecommunications Ratepayers Association for Cost-based and Equitable Rates (TRACER) filed testimony opposing the Stipulation in whole or in part. No party required cross-examination of any other, so no hearing was held. All parties who filed written testimony on the Stipulation executed a stipulation to admit testimony and exhibits filed with respect to the Stipulation. That stipulation to admit testimony and exhibits was filed February 9, 2000, and all testimony and exhibits covered by the stipulation are part of the record in this case. The parties that submitted testimony filed briefs, as did AARP and Teligent, Inc.

**The Stipulation.** The Stipulation reached between Staff and USWC in resolution of the Appellate Litigation is attached to this order as Appendix A. The Stipulation entails a number of changes to the findings and conclusions of the Commission's Phase I rate case order in UT 125, Order No. 97-171, which is rescinded by this order. Appendix B to this order, based on the testimony of Staff witness Terry Lambeth, details the revenue requirement effects of the Stipulation on USWC's Oregon intrastate revenue requirement. Appendix B is based on Appendix A to Order No. 97-171.

The Stipulation consists of three parts:

- A. An agreement on procedures to implement the Stipulation;
- B. A description of and procedures for distributing the refund; and
- C. A description of and procedures for implementing a temporary bill credit pending implementation of a final rate design in UT 125.

*A. Procedures to Implement the Stipulation.* In July 1997, the Circuit Court entered a stay of all proceedings pertaining to Order No. 97-171. Before the Stipulation could be presented to the Commission, the Court of Appeals had to lift the stay for purposes of allowing the Commission to consider the Stipulation. On November 4, 1999, the Court of Appeals granted the joint motion of USWC and the Commission to lift the stay and allow the Commission to consider the Stipulation.

If the Commission rejects or modifies the Stipulation, both Staff and USWC have the right to withdraw from their agreement. If this occurs, the Appellate Litigation would resume. If the Commission adopts the Stipulation, the Commission and USWC will jointly move the Court of Appeals to dismiss the Appellate Litigation.

If the Commission approves the Stipulation, USWC agrees to implement the refund and temporary bill credits within 45 days after the Commission disposes of any motions for rehearing or reconsideration. Once the Commission disposes of any such motions, USWC is obligated to implement the refund and temporary bill credits despite pendency of any appeals of this order.

*B. Description of and Procedures for Distributing the Refund.* USWC will make a one-time refund of revenues to its Oregon local and access customers. The total amount, set forth in Exhibit A to the Stipulation, varies from \$222.7 to \$272.8 million, depending on the date of the refund. Oregon local service customers who subscribe to the services shown on Exhibit A, page 2 of the Stipulation will receive 86.2 percent of the refund, in the amounts derived in accordance with the methodology illustrated in that exhibit.

To be eligible for a refund, local customers must be on the USWC network as of the date of the refund and have had service 60 days prior to the refund date. Local customers will receive their refunds on a per-line basis and the amount per line will be determined by the type of service on each line. Local customers will receive their refunds in the form of a bill credit.

The refund to interexchange carriers (IXCs) is shown on Exhibit A, page 1. The amount due each IXC is based on the ratio of USWC's billed intrastate switched access revenues from each IXC to the total USWC intrastate switched access billed revenues during the 12 months immediately preceding the refund date. Refunds to IXCs will be by check.

The amount of the refund is given in a range because Staff and USWC did not know exactly when the refund would be made. The amount each local retail customer receives depends on which eligible service the customer subscribes to, the number of customers who subscribe to the eligible services, and the date of the refund. Because of the variables, the Stipulation requires USWC to calculate the refund as near as possible to the date of the refund. Carrier access customers will receive 13.8 percent of the total refund, the same percentage as in Order No. 97-171.

The Stipulation protects USWC from issuing double refunds in case a Commission order approving the Stipulation is reversed or modified by a court. It also guarantees that any subsequent additional refunds would be subject to interest at the current authorized rate of return.

No later than 45 days after the Commission disposes of any petitions for reconsideration of this order, USWC will issue the refund. At its sole discretion, USWC may make the refund earlier if it so chooses. The services subject to refund are the same as those specified in Order No. 97-171.

*C. Temporary Bill Credit.* Beginning from the date of the refund and extending until permanent rates become effective, as determined in the rate design phase of this docket, USWC will use bill credits and switched access rate reductions to reduce the company's revenues by \$63 million per year. This calculation is made in reliance on USWC's local billing units as of August 31, 1997, and USWC's carrier common line minutes of use for the five months preceding and six months following August 1997. The actual effect of the reduction in revenues will be greater than \$63 million because of the company's growth since 1997.

The services eligible for the temporary bill credits are the same as those that receive the one time refunds. Exhibit B to the Stipulation calculates the temporary bill credits. These are \$1.85 for a private line, \$2.47 for residential and Centrex lines, \$5.93 for a simple business line (1FB), and \$6.68 for complex business line. Switched access customers will receive temporary rate reductions in both originating and terminating carrier common line charges.

The refund is a separate item from the temporary bill credits. The refund is a return of revenues collected from customers, made in settlement of potential liability to make refunds at some future date. The bill credits reflect a reduction going forward in revenue requirement pending conclusion of the rate design portion of this docket.

**Parties' Positions.** *AARP* opposes both the content of the proposed settlement and the process by which settlement was reached. *AARP* believes that Order No. 97-171 is reasonable and in accordance with applicable law. *AARP* opposes reducing the refund amount as a transfer from ratepayers' to USWC's pocket. *AARP* also takes issue with the fact that the agreement allows USWC to add new plant to its rate base, a decision that accounts for 85 percent of the change in revenue requirement. *AARP* notes that Staff's agreement includes no mechanism to monitor whether USWC uses its additional plant to improve service quality.

Finally, AARP has concerns with the proposed reduction of the interest rate to be applied to the outstanding ratepayer refund, from 11.2 percent in Order No. 97-171 to 8.77 percent in the proposed Stipulation. According to AARP, the reduction amounts to a \$10 million reduction of the total refund.

*CUB* opposes the Stipulation in general. According to *CUB*, the Stipulation is the result of political pressure and does not benefit customers. *CUB* argues that the proposed settlement gives away the fairly determined refund and revenue reduction determined in Order No. 97-171.

*CUB* asserts that this is the last traditional rate case USWC will ever see. Therefore, *CUB* claims that customers will live with the decisions in this case until the legislature or the voters reset prices. *CUB* questions whether the speed of settlement is worth the reduction in customer benefits, since anything given away might never be returned to customers.

*CUB* believes that USWC brought political pressure to bear on the Commission to settle the case rather than to proceed in such a way as to analyze issues in the best interests of customers. Specifically, *CUB* believes that USWC tried to use Senate Bill 622 (SB 622) as a mechanism for settling the case and withdrew its legislative proposal only because it was assured that the rate case would be settled at an acceptable revenue requirement reduction.

*CUB* contends that the Stipulation violates the agreement among *CUB*, TRACER, USWC, and Staff that was adopted by Order No. 96-107. There, the parties agreed that the interest rate on the refund would be 11.2 percent. Here, Staff and USWC propose an interest rate of 8.77 percent, constituting a dollar value difference to customers of \$15 million (assuming a refund of \$58 million).

*CUB* asserts that Staff has violated the used and useful standard set out in ORS 759.285<sup>2</sup> by including in rates additional plant investments made between May 1996 and December 1998. Staff argues that it is too difficult to adjust a future test year, but *CUB* disagrees, pointing out the Commission used a future test year in the PGE rate case, UE 88, but did not include the Coyote Springs plant in that test year. Coyote Springs was added to rate base in UE 93, after it came on line. Finally, *CUB* contends that it is inappropriate to adopt 40 new adjustments to the rate case, as Staff has done, without extending the proceeding and allowing parties to review work papers, submit data requests, and respond.

*CUB* objects to the proposed refund procedure and to the amount of the proposed refund in the Stipulation. Staff's evidence submitted in support of the Stipulation arrives at a \$58 million figure for the refund, not the \$53 million Staff now proposes. *CUB* acknowledges that the reduction going forward is set at \$63 million per year, an increase of \$5 million over the \$58 million figure, but argues that this is not a

<sup>2</sup> ORS 759.285 provides: "No telecommunications utility shall, directly or indirectly, by any device, charge . . . rates which are derived from a rate base which includes within it any construction, building, installation or real or personal property not presently used for providing utility service to the customer."

fair trade, because we do not know how much of the rate reduction going forward will flow to customers and how much to shareholders. CUB claims that some of the revenue reduction actually covers competitive losses experienced by USWC. If price reductions are applied to services that are shrinking, the value to customers as a whole declines.

AT&T proposes only one change to the Stipulation. AT&T urges the Commission to adopt a time frame other than the 12 months proposed in the Stipulation to more appropriately distribute the refund amount intended for the interexchange carriers. AT&T proposes this change to reflect the state of the IXC market over the time frame during which overpayment of access charges occurred.

AT&T recommends that the Commission adopt a time period beginning on May 1, 1996, and running up to the date of the refund, as originally contemplated in Order No. 97-171, to allocate the refund amounts to the IXCs. As currently proposed, the refund would be based on the amount the individual carrier paid USWC for access service over the 12 months preceding the refund date.

AT&T argues that the current refund proposal would treat disparately situated IXCs the same by allowing a refund over the same one-year period for later and earlier entrants into the market. AT&T argues that the Commission should seek to reimburse customers who were assessed excessive charges. AT&T's recommendation is simply to use a longer period (from May 1, 1996, to the date of the refund) to allocate the refunds due to IXCs. The recommendation would not change the total amount of refund due to IXCs.

*The Northwest Payphone Association* (NPA) asks the Commission to condition approval of the Stipulation on USWC agreeing to a refund methodology that provides for refunds to former customers of USWC. Customers who have switched to competitors should receive refunds to avoid any anticompetitive distortion of the market. NPA fears that prospective refunds create an incentive to delay or curtail a change in competitive providers. Customers might remain on USWC's system rather than switch to a competitive local exchange carrier (CLEC), simply to receive the refund.

NPA argues that former customers should be allowed to file claims for refunds or that the Commission should require USWC to locate and notify former customers. NPA asserts that if USWC were to publish notices and permit former customers to file claims for refunds, the expense and burden would be fairly minimal.

NPA contends that even if no other class of former customer receives refunds, former Public Access Line (PAL) customers should receive them. USWC bills are a large portion of payphone service providers' expenses. Moreover, payphone service providers are more likely than residential and other business line customers to be former customers of USWC at least as to some of their lines.

NPA finally maintains that federal law may require USWC to provide refunds to payphone service providers. In its payphone orders, the FCC required local exchange companies including USWC to file cost based PAL rates. USWC was given a waiver excusing it from having the new rates in place by April 15, 1997, provided they



issue refunds to payphone service providers if the state Commission ultimately approves a rate lower than the rate filed by the local exchange company or the rate it had in place on April 15, 1997. *Order on Reconsideration, Re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96-128, FCC 96-439 (1996); Order, CC Docket 96-128 (DA 97-678 (1997)). NPA notes that the record does not clarify whether USWC would contend that its 1997 PAL rate is appropriately cost based.

*Teligent* argues that the refund mechanism proposed in the Stipulation will have an anticompetitive impact, would create a barrier to competition, and is inconsistent with the representations USWC made to the Marion County Circuit Court. Moreover, *Teligent* asserts that the proposed Stipulation would discriminate against USWC's former customers, including those who are now customers of CLECs.

*Teligent* contends that former customers who have left the USWC system would be punished for switching to a competitive alternative. Thus the proposed refund mechanism is unfair to former customers who are no longer on the system and to customers of longer standing, while it rewards new customers who did not overpay as much as the older customers did. Even worse is the bill credit, according to *Teligent*, because it gives CLEC customers an incentive to return to USWC. Thus, *Teligent* argues, USWC can delay and hamper competition for an additional 45 days after the Commission adopts the Stipulation, thereby creating a new disincentive to customers to leave USWC for a CLEC.

Additionally, *Teligent* believes that the refund mechanism raises legal issues under §253(a) of the Telecommunications Act of 1996 (the Act). That section provides: "No State or local statute or regulation, or any other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 USC §253.

*Teligent* asserts that the fact that there is no concrete evidence in the record of anticompetitive effects should not be the determinant on this issue. *Teligent* argues that the incentives and disincentives for competition are obvious.

*Teligent* maintains that USWC made representations to the Marion County Circuit Court that are inconsistent with the refund mechanism in the Stipulation. USWC represented that it would make reasonable efforts to pay any refund to its customers as of May 19, 1997. *Teligent* urges the Commission to adopt the refund procedures articulated in the Superior Court of King County review of USWC's general rate case in Washington State. There, USWC was required to give refunds to former customers by advertising the availability of refunds for former customers each day for one week. The court also ordered USWC to allow at least 60 days for the former customers to submit their refund claims.

*TRACER* also argues against the proposed refund mechanism. The proposed refund procedure, according to *TRACER*, is anticompetitive and unfair to customers who have been overcharged and have left the system or who have been on the system longer than customers who joined the system in time to qualify for the same

refund. TRACER fears that customers may delay or opt against changing service providers because of the refund mechanism. TRACER also urges the Commission to advertise the availability of the refund to all past customers or present customers about to change service providers. This would increase the costs associated with issuing the refund but TRACER believes the benefits merit the increase. Like Teligent, TRACER recommends some version of the Washington State general rate case refund provisions.

*WSCTC*, whose members consist of Electric Lightwave, Inc.; GST Telecom Oregon, Inc.; Advanced TelCom Group, Inc.; Shared Communications Services, Inc.; Advanced Telecommunications, Inc.; Global Crossing Telemanagement, Inc.; and Global Crossing Local Services, Inc., believes that the refund mechanism in the proposed Stipulation creates a barrier to competition and results in anticompetitive effects for CLECs. *WSCTC* recommends an alternative refund mechanism to diminish the Stipulation's anticompetitive harms by ensuring that former USWC customers who have switched to CLEC services receive their refunds without being forced to switch back to USWC.

As to the proposed refund for Centrex services, *WSCTC* recommends that the Commission amend the proposed refund ratio for resellers from 1.00 to 2.40 to reflect the special circumstances that surround Centrex resellers. *WSCTC* has in mind the \$5.40 per line surcharge to which Centrex resellers are subject. *WSCTC* also advocates treating Centrex resellers on a par with business simple (1FB) customers.

As to the proposed refund mechanism, *WSCTC* points out that CLEC customers must return to USWC to receive the refunds they are owed. Staff's and USWC's proposals for speedy refunds do not address the CLECs' concerns. *WSCTC* argues that if all USWC customers, including former customers now taking service from CLECs, are made eligible for the refund, a slight delay in processing the refund will not matter. *WSCTC* proposes that USWC issue refunds to current customers and also to those former customers who have overpaid during the period in question and who have switched to a CLEC in the meantime. CLECs should be permitted to notify their customers that the customers should contact USWC to receive the refunds owed them. USWC should be required to notify its current customers through a billing insert that the customers may elect to receive a check rather than a billing credit for their refund. Further, USWC must explain that checks must be issued for any remaining balances if the customer elects to switch to a CLEC.

*USWC* argues in favor of the Stipulation, maintaining that it is in the public interest. USWC points out that its current rates have been interim for almost four years, leading to uncertainty for both USWC and ratepayers. USWC also notes that the Commission's initial order (Order No. 97-171) has been reversed in the Circuit Court and is currently on appeal. Moreover, ratepayers face the possibility of receiving a smaller refund, or none at all, if litigation proceeds. Third, the uncertainty of USWC's current rates impedes the development of competition by delaying implementation of rates more suitable to a competitive environment. The same uncertainty impedes USWC's ability to make needed investment decisions. All these issues would be put to rest by adopting the Stipulation.

USWC contends that the amounts of the refund and the rate reduction in the Stipulation are well within the range of reasonableness. Since the possible outcomes of continued litigation range from no refund and a rate increase to the original figures in Order No. 97-171, the figures of the Stipulation represent an outcome clearly consistent with the public interest. USWC also points out that it made a major concession in agreeing to make refunds prior to all appeals of the order on the Stipulation having run their course. USWC acceded to Staff insistence that the timing of the refund was critical and that refunds be issued despite any appeals.

In response to CUB's allegations that the Stipulation is the result of political pressure, USWC notes that CUB has provided no evidence in support of its position. USWC also refutes CUB's assertion that the financial terms of the proposed settlement are unreasonable and do not stand up to normal rate case scrutiny. USWC argues that the terms are within the reasonable range and are even skewed in favor of ratepayers. CUB, according to USWC, ignores the fact that one reason the Circuit Court gave for reversing Order No. 97-171 was because the Commission failed to use normal rate case scrutiny. Specifically, USWC believes that adjustments that forecast changes in revenues and expenses to the mid point of a future 32-month period have not appeared in prior USWC rate cases and were not used in UT 141, the GTE rate case.

In defense of the refund methodology, USWC points out that it is substantially the same as set forth in Order No. 97-171. USWC states that its refund is limited to current customers because it does not have readily available (online) records for customers who leave the system. The effort of reviewing each monthly bill for each customer back to May 1996 could be a massive manual undertaking.

USWC notes that the 60-day cutoff period is based on Staff's desire to discourage customers from subscribing to additional lines immediately before the refund date simply to receive a larger refund. Given the size of the potential refund, such a limitation is a practical response to customers who may attempt to procure an unwarranted windfall.

Alternative refund methodologies, according to USWC, fail to conform to the circumstances. Proponents of these methodologies do not address the practical problems each alternative would entail. USWC also points out that until the rate design phase of the case is completed, there is no evidence that any particular customer has paid USWC too much for telephone service. Finally, USWC notes that resellers may pass on the refunds they receive from USWC to their end users to mitigate the perceived unfairness of the mechanism.

In response to AT&T's argument that the refund should be allocated to IXCs based on relative revenues from May 1, 1996, to the date of refund, USWC points out that this proposal would increase AT&T's refund at the expense of other IXCs.

USWC characterizes TRACER's proposed refund procedures as complex and laborious. It would result in a delay of several months in refunds, besides being very expensive. USWC objects that there is no evidence on which to conclude that the

proposed procedure is anticompetitive. USWC again points out that reseller CLECs can pass the refunds on to their customers.

USWC opposes WSCTC's proposed method of granting customers refunds in the form of a check. USWC argues that this process would aggravate anticompetitive delay and increase the costs and burdens of implementing the refund. It would take over 30 days to prepare notices and notify customers that they have the option of receiving checks. That would require USWC to wait at least 30 days for responses. Then USWC would begin the cycle of issuing checks or billing credits, which takes another 30 days. This additional time would aggravate the situation that WSCTC thinks should be mitigated.

*Staff* recommends adopting the Stipulation in its entirety. Staff notes that the Stipulation, if adopted, would:

- Settle and resolve the appeals of the Commission's orders in UT 80 and UT 125 currently pending before the Oregon Court of Appeals;
- Reduce USWC's annual Oregon intrastate revenue by \$63 million from current rates (based on August 1997 billing units for local services and the minutes of use for the five months preceding and six months following August 1997, for switched access services);
- Produce a refund to current customers of \$53 million per year for the period May 1, 1996, to the date of the refund. The billing credits in aggregate would include interest at a rate of 8.77 percent compounded monthly.
- Provide temporary bill credits in the amount of \$63 million per year on a going forward basis, until the Commission sets permanent rates for USWC in Phase II of this docket.

In response to CUB's opposition to the Stipulation, Staff argues that the settlement is not driven by political pressure. CUB speculates that Staff and USWC agreed to settle the rate case at a reduced level if the Legislature would drop from SB 622 provisions that would have limited USWC's liability in the rate case. Staff points out that the timing of the various events precludes CUB's allegations. The Legislature had no assurance that there would be a settlement when it passed SB 622, and the Governor signed the bill before he knew the rate case was settled. A settlement in principle was achieved August 5, 1999, and the Stipulation was signed on September 9, 1999.

According to Staff, a more plausible explanation of why the liability limitation provisions were removed from SB 622 is that the Governor's office as well as the Commission and CUB opposed their inclusion in SB 622. Settlement negotiations between Staff and USWC resumed in June 1999, only after USWC had increased its settlement offer from a \$28 million revenue reduction to a \$50 million reduction. Finally, Staff notes the lengthy settlement negotiations and the fact that the final revenue requirement settlement (a reduction of approximately \$58 million, considering the \$53 million refund amount and the \$63 million permanent revenue reduction) is substantially above the \$50 million that USWC offered in May 1999. These factors belie

CUB's theory that USWC and the Commission reached a political settlement in exchange for removal of the rate case from SB 622.

Staff also maintains, against CUB's contentions, that the revenue requirement settlement is reasonable and supported by substantial evidence. Staff reports that it had two self-imposed constraints in its settlement negotiations with USWC. First, it was unwilling to withdraw the adjustments to USWC's base case adopted in Order No. 97-171 that it strongly felt were proper adjustments. Second, it would not agree to a revenue requirement number that produced an unreasonable rate of return for USWC. Thus, Staff revised several of its test year adjustments in Order No. 97-171 to arrive at the revenue requirement settlement amounts. About 85 percent of the total revenue requirement change from Order No. 97-171 is attributable to documented plant additions USWC made between May 1996 and December 1998. Most of the remaining amount of revenue requirement change is attributable to Staff's revised recommendations about the imputation of directory revenues to USWC.<sup>3</sup>

Settlement would produce a return on equity of 10.2 percent and a return on rate base of 8.77 percent. These are the returns authorized in Order No. 97-171. Staff contends that some of CUB's arguments, if adopted, would result in lower refunds and benefits for USWC's customers than they would receive under the Stipulation.

CUB disagrees with the Stipulation's reduction of the interest rate on the utility's refunds to customers from 11.2 percent to 8.77 percent. Staff points out that the Commission ordinarily prescribes a utility's current authorized rate of return as the interest rate for refunds. Here, that figure is the 8.77 percent contained in the Stipulation.

Second, Staff argues that under the Stipulation, the reduction in USWC revenues going forward in effect amounts to \$68 million rather than \$63 million, a reasonable trade for the lower interest rate on the refund. The \$5 million difference in effective and nominal revenue reductions results because August 1997 was the midpoint of Staff's review period for developing adjustments. Using two-year-old billing units and minutes of use effectively raises the revenue reductions in 2000 by \$5 million.

Third, the agreement on the lower interest rate was one element of the Stipulation that will accelerate the beginning of the rate design phase in this docket. Under the Stipulation, paragraph 2(a), USWC was to file its rate design proposal by December 6, 1999 (in fact, USWC filed in November 1999), many months sooner than if the Commission waited for a final Court of Appeals or Supreme Court decision.

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<sup>3</sup> For settlement purposes, Staff made two changes to its imputation recommendations. First, Staff updated the adjustment in Order No. 97-171 to use the retention rate from Docket UT 102, which has been in effect since January 1, 1992. This modification increased the annual intrastate revenue requirement in Staff's proposed test year by \$4.9 million. Second, Staff removed foreign directories from the revenue imputation because they are not sold to USWC's customers. That treatment is consistent with the stipulation in UT 141 for GTE Northwest Incorporated in Order No. 98-388. This increased USWC's annual intrastate revenue requirement in Staff's proposed test year by \$0.3 million.

In support of the refund mechanism set out in the Stipulation, Staff notes that the procedures are virtually the same as in Order No. 97-171. Staff notes that intervenors who raise the issue of unfairness with respect to the procedures assume that specific customers or customer groups have overpaid USWC since May 1996. Staff points out that absent a Commission order in this docket assigning permanent rates to various telecommunications services, there is no basis for an assertion that any particular customer has overpaid USWC.

In response to parties who assert that USWC should make refunds to customers who have left its system, Staff notes that USWC as a practical matter cannot keep track of customers who leave the network. Staff opposes giving customers notice and allowing them to file claims. In 1992, Staff points out, it and USWC attempted to notify former USWC customers of a refund in UT 85. That attempt added substantial time to the process and benefited relatively few customers. Staff argues that the method it has proposed for distributing refunds is administratively efficient and is the optimal way of ensuring that USWC returns to its customers, generally, the company's excess revenues since May 1996.

In response to TRACER, which urged a weighted or pro rata refund approach, Staff notes that USWC does not maintain automated records back to May 1996, which would make TRACER's proposal highly unwieldy and time consuming.

Staff makes three responses to charges that the proposed refund mechanism is anticompetitive. In reply to TRACER and other intervenors who argue that customers awaiting refunds may stay with USWC to receive them, Staff responds that the sooner the refunds are made, the smaller the anticompetitive effect will be. Staff also points out that once USWC's customers receive their billing credits, they are free to terminate their USWC service, receive a check from USWC for the balance of their refund, and choose a different service provider. Finally, Staff notes that reseller CLECs will receive refunds on the same basis as USWC's end user customers and will be able to pass the refunds through to their customers.

WSCTC asks that customers be allowed to receive their refund in the form of a check. Staff points out that notice to customers of their right to request a check would entail allowing time for notice, time for customers to respond, and time for USWC to cross check its records so that it did not issue double credits. USWC would be unable to proceed with bill credits until after it was certain which customers preferred to receive checks.

Finally, Staff opposes AT&T's proposal that the refund to IXC be based on the amount paid to USWC from May 1, 1996, to the date of the refund. The Commission's intent in Order No. 97-171 was to direct refunds to current customers based on their current service demand. The Stipulation reflects that intent by providing that each IXC will receive an amount based on the ratio of USWC's billed intrastate switched access revenues from each IXC to the total USWC intrastate switched access billed revenues during the 12 months immediately preceding the refund date. Staff contends that the use of access minutes over a year preceding the refund date is a

surrogate for the number of lines in use by a current customer as of the refund date. The refund mechanism is not designed to reflect possible overpayments by IXCs from May 1996 to the present.

**Discussion.** It is critical that we be able to proceed with the rate design phase of UT 125 without further delay. That will allow us to set the permanent rates of USWC's regulated telecommunications services. The last comprehensive rate design order for USWC was entered in 1990. Since then, Congress and the Oregon Legislature have both passed laws to promote development of competitive telecommunications markets—the 1996 Telecommunications Act and SB 622. We must establish a rate structure for USWC that more fully promotes the objectives of those laws. If the UT 80 and UT 125 appeals are not settled, those appeals could continue and delay the rate design phase of UT 125 for several more years.

Moreover, adopting the Stipulation would eliminate the litigation risks associated with those appeals. The outcome of litigation, especially in complex and highly technical cases, is uncertain. We note that several of the hotly disputed issues in the underlying UT 125 appeal involve tens of millions of dollars (imputation of directory revenues, plant investments and related costs, service reengineering costs, and service quality issues). Therefore, although the revenue reduction in the Stipulation is substantially less than the \$97.4 million revenue reduction in Order No. 97-171, if a court reversed us on any or all of the issues listed above, the reduction could be significantly less than the \$63 million USWC and Staff have settled upon.

In the following, we respond to the parties' objections to the Stipulation. We note at the outset, however, that a settlement necessarily represents a series of tradeoffs. Because we believe that the tradeoffs in the Stipulation benefit ratepayers more than they disadvantage them, we support the Stipulation for the most part. The benefit of settlement itself, in this context, is considerable, and the overall result is just and reasonable. We further note that Staff has preserved critical adjustments to USWC's rate case and has preserved the basic refund mechanism from Order No. 97-171.

*Procedural Concerns.* AARP and CUB challenge the process by which the proposed settlement was reached. CUB in particular alleges that the Stipulation is the result of political pressure. We find no evidence in the record to support this view, and believe that the timing of events (the Governor signed SB 622 before the Stipulation was signed, and the Legislature passed SB 622 before there was even a settlement in principle) supports the position that the Stipulation is not politically tainted. Like Staff, we find it much more likely that negotiations with USWC were resumed and successfully concluded because USWC came back to the table with a \$50 million revenue reduction offer.

*Staff's adjustments.* AARP takes issue with the fact that one of Staff's adjustments is to allow USWC to add new plant in its rate base for the purpose of improving service quality, with no mechanism in place to monitor whether USWC uses its plant to improve service quality. We find Staff's adjustment reasonable. We have made our dissatisfaction with USWC's service quality public in the past; it would be counterproductive to disallow additional plant to improve the quality of service. While

we do not have a specific mechanism in place to monitor how USWC deploys its plant, we do have service quality monitoring in effect and are satisfied that our service quality requirements serve as a proxy for monitoring the use to which USWC puts its plant. We also note that in view of USWC's recent held order problems, any plant addition that leads to deployment of a desired service on time is a service quality improvement.

CUB challenges Staff's inclusion in rates of additional plant investments made between May 1996 and December 1998, as violating the used and useful standard of ORS 759.285. We do not agree that this inclusion violates ORS 759.285. In contradistinction to Coyote Springs in UE 88, this plant is already in use. Staff proposes using an updated rate base that contains only documented plant additions.

CUB also objects to Staff's making numerous adjustments to the rate case without extending the proceeding and allowing parties to review work papers, submit data requests, and respond. We find that the process provided adequate time for CUB to file two rounds of data requests and review all work papers prepared by Staff in support of its adjustments. In addition, we have reviewed Staff's testimony about its adjustments and find that they were made reasonably and prudently and were based on substantial evidence. The purpose of a settlement is to take issues out of dispute; in this case, the Commission is satisfied that those issues have been resolved in the public interest.

CUB also contends that it is inappropriate to adopt 40 new adjustments to the rate case. We find that Staff has not proposed an unreasonable number of new adjustments. Some of its adjustments, moreover, result from the circular effects of revised or new adjustments on all other adjustments. The record shows that the changes in Issue 8f (ORS 291.349, income tax refund) and Issue 8n (PUC fee increase) affected Issue 1b. In turn, the change in Issue 1b (net to gross factor) affected the revenue requirement of many adjustments. The change in Issue 3a affected Issue 3b (directory revenue growth). The addition of Issue 9d (new plant additions) affected Issue 9c (service quality). All the changes affected Issue 10 (final test year separation factors).

*Amount of Refund.* CUB's final objection to the Stipulation<sup>4</sup> is the amount of the proposed refund which, CUB argues, should be \$5 million higher annually than the Stipulation's \$53 million, based on Staff's case. We find that the tradeoff of a higher reduction going forward, as Staff explained, is reasonable. CUB's concerns about which services will bear the rate reduction will be addressed in the rate design phase of UT 125.

*Refund Mechanisms: IXC's.* We have reservations, however, about the Stipulation's refund mechanisms. AT&T's suggestion of a different time period than the proposed one-year period for the refund to IXC's appears reasonable to us. Rates have been interim and subject to refund since May 1996. It is not feasible to design a perfectly prorated scheme for distributing the refund money among IXC's, and it is not appropriate to prorate the refund amount until the rate design phase of this case is completed. However, we can more closely approximate an equitable distribution to the IXC's who have overpaid over a four-year period by using a four-year period for minutes of use. Administratively, it is much simpler to create an equitable solution with the IXC's,

<sup>4</sup> CUB's objection to the interest rate of 8.77 percent rather than 11.2 percent is discussed below.



because there are few carriers involved. We adopt AT&T's proposal of using the minutes of use from May 1, 1996, to the date of the refund as the basis for the refund to the IXCs. As AT&T points out, this change does not affect the amount of the refund to IXCs. It affects only the distribution of the amount among IXCs.

*Refund Mechanisms: Payphone Providers.* Like the remainder of the intervenors, NPA challenges the Stipulation's proposed refund mechanism. NPA notes that federal law may require USWC to provide refunds to payphone service providers, based on the FCC payphone orders. NPA itself, however, notes that the record does not contain enough evidence to clarify whether USWC's 1997 PAL rate qualifies it for a waiver from the FCC. This is not an issue that can be decided on the record before us.

*Refund Mechanisms: Former Customers.* NPA, Teligent, TRACER, and WSCTC urge the Commission to include former customers in the refund procedure. Not to do so, the parties argue, is to punish customers for switching to a competitive alternative.<sup>5</sup> As USWC and Staff have pointed out, the greater anticompetitive effect would come from delaying the rate design phase of the case. Any of the mechanisms for including former customers in the pool of recipients of the refund proposed by NPA, Teligent, TRACER, and WSCTC would delay the rate case.<sup>6</sup> Each of these proposed mechanisms is also cumbersome and will increase the time and expense of issuing the refund. Moreover, reseller CLECs are free to pass their refunds through to their customers, thus rewarding customers for switching to a competitive alternative.

We are sensitive, however, to the situation of USWC customers who ceased taking service before the refund cutoff date. The refund mechanisms proposed by NPA et al. are administratively unwieldy, but we believe that some way of allowing this group of customers to share in the refund is desirable. Numerous customers, large and small, have likely left the system in the nearly four years since rates have been interim, and some of those who left took service from USWC for a substantial period. Accordingly, we adopt a plan to return money to some of the customers who have left the system. This plan will permit some recovery of the refund by former USWC customers and will not delay the refund to customers currently on the system.

We will order USWC to set aside 5 percent of the local refund amount to return to customers who were customers of USWC for at least six months during the period from May 1, 1996 to the date of the refund bill credits (the Fund). We choose 5 percent as the set-aside figure because in our UT 85 refund experience, 1.8 percent of the total amount was refunded through the claim process. In this case we are dealing with a larger amount of refund and a longer period covered by the refund. Therefore, 5 percent seems a reasonable figure to designate for the refund to customers no longer on the system. The remaining 95 percent of the refund amount will be issued as bill credits

<sup>5</sup> Teligent also argues that the refund mechanism may raise legal issues under §253(a) of the Act. We reject Teligent's contention. Nothing about the refund mechanism effectively or actually prohibits any entity from providing telecommunications service.

<sup>6</sup> The same argument persuades us that it is preferable to allow local customers their refund in the form of bill credits rather than giving them the option of a check initially. See Staff's discussion of this issue above. As Staff and USWC point out, customers may ask for a check for any unused bill credit at any time after the initial credit, receive a check, and leave the USWC system at that point.

to local retail customers as described in the Stipulation. The timing of the refund to these customers will be as described in the Stipulation.

Former USWC retail customers who were customers for at least six months between May 1996 and the day the last refund bill credit is given are eligible for a refund. We choose to make a refund to customers of six months or longer for two reasons. First, we recognize that former customers who received less than six months' worth of service may have incurred some loss, but it is not substantial. We have designed a procedure to recognize substantial claims, those involving six months or more of service. Second, we will allow USWC to recover its costs of administering the refund to former customers. By limiting claims to customers with at least six months of service, we reduce the number of claims, reduce small claims, and keep administrative costs relatively low so that more of the Fund goes to customers than to administration costs.

The refund amount will be the same for the former customers as for retail customers still on the system. If a customer subscribed to multiple lines during the eligibility period, the customer's refund will be limited to the number of lines the customer had on the last day the customer was on the system. If a customer had more than one line sequentially during the eligibility period, because the customer moved and changed telephone numbers, for instance, the customer would be eligible for only a single line refund.

We will require USWC to advertise widely in newspapers throughout Oregon that former retail customers who were USWC customers for at least six months can apply to USWC for a refund from the Fund. USWC is to run quarter page ads in the following Oregon newspapers to provide statewide coverage:

Albany: Albany Democrat Herald  
 Astoria: The Daily Astorian  
 Baker City: Baker City Herald  
 Bend: The Bulletin  
 Corvallis: Corvallis Gazette Times  
 Eugene: The Register Guard  
 Grants Pass: Grants Pass Daily Courier  
 Klamath Falls: Herald and News  
 Medford: The Mail Tribute  
 Pendleton: East Oregonian  
 Portland: The Oregonian  
 Roseburg: The News Review  
 Salem: Statesman Journal

The ads will include information about the refund and a claim form to be clipped out, filled in, and mailed to USWC for a refund. USWC is also to publish a contact telephone number for customers who need claim forms or information about the refund. Four ads will run in each paper, one per week for four weeks. USWC is to establish and announce a contact telephone number at which potential claimants can receive information or request a claim form. The telephone number will be included in the notice of refund published in the newspapers.

On receipt of the claim form from customers, USWC will review the customer's claim and mail a check to the customer promptly, if the claim is verified. Staff and USWC will collaborate on developing language for the advertisements as well as the claim form that will be part of the advertisement. The form should contain language warning claimants of the consequences of filing a false claim.

Refunds from the Fund will be available until the Fund is exhausted. They will be paid in the order in which the claims are verified. The amount of the refunds will be the same as for retail customers who qualify for refunds under the terms set out in the Stipulation. Refunds from the Fund will be provided by check. The Fund will come into existence on the date USWC gives bill credits to its current local retail customers. It will remain in existence for a period of three months from its inception or until it is exhausted by claims. USWC will continue to pay interest on money in the fund at an annual rate of interest of 8.77 percent until the Fund ceases to exist. USWC will be allowed to recover the approved administrative costs associated with the Fund from the Fund pool.

After it is exhausted by claimants or after three months elapse, whichever comes first, the Fund will cease to exist. If there is a residue remaining in the Fund, it will be distributed as uniform bill credits during the next billing cycle after administrative costs have been verified and paid. All USWC retail customers of record at that time will receive an equal bill credit per line.

*Interest Rate.* CUB and AARP in particular object to the fact that the interest rate applied to the ratepayer refund is 8.77 percent in the Stipulation and was 11.2 percent in Order No. 97-171. The lower interest rate is one of a number of tradeoffs made for the sake of settlement. It is USWC's authorized rate of return, however, and is therefore a reasonable rate of interest. The Stipulation also represents a reasonable tradeoff between a lower interest rate and an accelerated start to the rate design phase of this case.

*Centrex Resellers.* WSCTC asks the Commission to amend the proposed refund ratio for Centrex resellers from 1.00 to 2.40 per line to reflect their special circumstances, particularly the surcharge. Centrex resellers have twice challenged the surcharge and the Commission has decided that the surcharge is justified. See Order No. 99-753 and discussions in Docket UM 909/UT 147. We are not convinced by WSCTC's arguments that Centrex resellers should be treated equally with business rather than equally with residential customers. We find that the pricing of Centrex station lines is far closer to prices paid by residential customers than by business customers. A more reasonable approach is to place Centrex customers on a par with residential customers, as the Stipulation does.

We conclude that the Stipulation, as modified above, is reasonable, is supported by substantial evidence in the record, is in the public interest, and should be adopted. The modifications above are reflected in the ordering paragraphs below.

**Modification of Order No. 96-107 (UT 80).** We modify Order No. 96-107 to change the refund interest rate from 11.2 percent to 8.77 percent. The discussion and procedures of that order remain intact.

**Rescission of Orders No. 96-183 (UT 80), 96-286 (UT 80), and 97-171 (UT 125).** To reflect the changes the Stipulation introduces, we rescind Order Nos. 96 183 (UT 80); 96-286 (UT 80); and 97-171 (UT 125). Portions of Order Nos. 96-183 and 97-171 are readopted in Order No. 00-191, entered on this date.

We set out below a summary of the issues in Order No. 97-171 that are modified by the Stipulation or readopted in Order No. 00-191.

- a) Issue 1, Test Year, pages 8-20, is readopted.
  - Issue 1b, Net to Gross Factors:
    - The discussion on page 9 is readopted.
    - The stipulated factors are weighted based on the revenue distributions used in settlement of Issue 11 below.
    - The factors shown in Order No. 97-171, Appendix A, page 21, are readopted.
    - The weighted net to gross factors from Appendix B, Lambeth/2, Column 4, of this order are added.
- b) Issue 2, Cost of Capital, the discussion on pages 20-37 of Order No. 97-171 is readopted.
- c) Issue 3a, U S WEST Direct Yellow Pages Revenue Imputation (*see* current order, Appendix B, Column 16), the discussion on pages 37-43 is readopted *except*:
  - USWC may continue to use the retention rate from UT 102, in effect since June 1992; and
  - Foreign directory revenues are removed from the imputation.
- d) Issue 3b, U S WEST Direct Yellow Pages Revenue Growth, the discussion on page 43 is readopted, but the amount in Appendix A, Column 16a, of Order No. 97-171 is amended to reflect the \$0.3 million reduction in growth due to exclusion of foreign directory revenues and the change in retention rate.
- e) Issue 4, Affiliated Interests and Corporate Allocations, the Issue 4 adjustments at pages 44-59 are readopted.
- f) Issue 5, UP 96 Sale of Exchanges, the Issue 5 discussion at pages 59-62 is readopted.
- g) Issue 6, Operating Revenues, the discussion at pages 62-68 is readopted.
- h) Issue 7, Employee Benefits, the discussion at pages 68-72 is readopted.
- i) Issue 8, Operating Expenses and Taxes, the discussion at pages 72-83 is readopted except as modified with respect to Issue 8f and Issue 8n. Issue 8o is added as shown in Appendix B to this order, Column 59. *See* Stipulation, Appendix A to this order, paragraph 12.
  - Issue 8f, ORS 291.349 Income Tax Refund: Staff modified adjustments at Issues 3 and 9 that affected taxable income. The Issue 8f discussion at pages 72-73 is readopted, but the amounts in Column 42 of Appendix A to Order No. 97-171 are amended as shown in Appendix B to the current order, Column 42.
  - Issue 8n, PUC Fee Increase: The discussion at page 83 is readopted, but the amounts in Appendix A, Column 49a, of Order No. 97-171 are amended as shown in Appendix B to the current order, Column 50.

- j) Issue 9, Service Quality and Reengineering:
- The findings regarding Issue 9a and 9b at pages 83-93 are readopted. In Order No. 97-171, Appendix A, the revenue requirement consequences of these issues are shown in Columns 50 and 51. In Appendix B to the current order, they are shown in Columns 51 and 52.
  - Issue 9c, Service Quality: Staff added Issue 9d, New Plant Investments and Related Costs, for settlement purposes. That addition changed the revenue requirement of Issue 9c. The discussion at pages 93-101 is readopted, but the amounts shown in Appendix A, Column 52, of Order No. 97-171 are amended to include the Issue 9d effects on the service quality adjustment. The new amount is shown in Appendix B to the current order, Column 53.
  - Issue 9d, New Plant Investments and Related Costs: Staff added rate base and related expenses to recognize investment made from May 1996 through December 1998, as shown in Column 54, Appendix B to the current order.
- k) Issue 10, Final Test Year Separation Factors: Staff modified adjustments at Issues 3a, 3b, and 9d for settlement purposes. Staff calculated the intrastate effects of each adjustment on the final separation factors. The discussion at page 101 of Order No. 97-171 is readopted, but the amounts shown in Appendix A, Column 53 of that order are amended as shown in Appendix B to the current order, Column 56.
- l) Issue 11, Refund Procedures: The discussion at pages 101 to 107 is readopted except: 1) the interest rate is revised; 2) the refund eligibility date is updated from May 19, 1997, to reflect the provisions of the Stipulation, Appendix A to this order, starting at 3; 3) we update the date when the refund will begin, in accordance with the Stipulation, *supra*; 4) we allow a refund for former customers; and 5) we allow temporary rate reductions and bill credits as provided in the Stipulation.
- Issue 11a, Amount of Refund: We revise the conclusions to allow refunds to be based on an amount lower than the adjusted test year revenue requirement.
  - Issue 11b, Interest Rate for Refund: The interest rate for the refund shall be 8.77 percent.
  - Issue 11c, Distribution of Refund: We update the refund eligibility date from May 19, 1997, to be consistent with the Stipulation, Appendix A to this order, Paragraph 1.
- m) Issue 12, Cash Flow; Issue 13, Business Valuation: These issues were combined in Order No. 97-171 at pages 107-113. The issues were part of USWC's argument that Staff's proposed revenue requirement was unreasonable. Because USWC agreed to a revenue requirement in the Stipulation, these issues are moot and are not readopted.
- n) Issue 14, Effect of UM 351 on access revenues: The discussion on page 114 is readopted.
- o) Ordering Paragraph 4f at page 115 of Order No. 97-171: distribution of the refund: This paragraph is readopted.

## ORDER

IT IS ORDERED that:

1. The Stipulation, Appendix A to this order, is adopted as modified. The first section of Appendix A, entitled Refund, is replaced by the following text:

1. Refund. In consideration of the Commission's issuance of an order implementing the terms of this Stipulation, and upon the Commission's final disposition of any motions to rehear and/or reconsider said order, U S WEST agrees to make a refund of revenues, within forty-five (45) days of said final disposition, to its Oregon customers of record who subscribe to the services identified, effective for one month of billing cycles beginning on the date of the refund. The amount of the local refund shall be 95 percent of the amount corresponding to the date of the refund, as set forth in Exhibit A hereto. Except for interexchange carriers, each customer of record shall be entitled to the refund for each line, provided that (a) they are a customer of record to the services set forth in Exhibit A on the date of the refund; (b) the customer has subscribed to the service set forth in Exhibit A for at least sixty (60) days immediately prior to the date of the refund; and (c) in the event that the customer has more than one line, the refund shall be limited to only those lines which the customer of record has at the time of the refund and had subscribed to for the sixty (60) days prior to the date of the refund. In addition, the refund shall be subject to the following terms and conditions:

- a. With the exception of interexchange carriers and former customers, the refund shall be made in the form of a single credit to customers' bills and as follows:
  - i. The amount of an individual customer's refund, per line, shall be based upon the customer's class of service and shall be calculated in the manner set forth in Exhibit A, page 2 hereto, less 5 percent. In the event a specific customer does not exhaust the full amount of the refund in one billing cycle, the remaining, unused portion of the refund due the specific customer shall be carried over to the subsequent bill(s) until such time as the full amount of the refund has been credited to the customer.
  - ii. The parties hereby recognize that the calculations set forth in Exhibit A hereto are preliminary. Final calculations, utilizing U S WEST's most current billing units, shall be performed as near as possible to the date of the refund.

- iii. Bill credits made pursuant to the terms of the Stipulation shall be separately identified on customers' bills with the following notation: "One time refund per PUC Order."
- b. Refunds payable to interexchange carriers shall be made in the form of a check, and shall be based on the amounts paid to U S WEST for services provided over the period from May 1, 1996, to the date of the refund. The amount due to a carrier will be calculated based on a ratio of U S WEST's billed intrastate switched access revenues from the carrier to the total U S WEST intrastate switched access billed revenues during the period from May 1, 1996, to the refund date. Estimates of the total amount are set forth in Exhibit A. Again, the calculations set forth in Exhibit A are preliminary, and final calculations, using U S WEST's most current billing information, shall be performed as near as possible to the date of the refund.
- c. Refunds to former retail customers shall be made from a Fund consisting of 5 percent of the total amount designated for local retail customer refunds as calculated in Exhibit A.
  - i. U S WEST shall publish notice of the Fund in the following newspapers once a week over a period of four weeks:

Albany: Albany Democrat Herald  
 Astoria: The Daily Astorian  
 Baker City: Baker City Herald  
 Bend: The Bulletin  
 Corvallis: Corvallis Gazette Times  
 Eugene: The Register Guard  
 Grants Pass: Grants Pass Daily Courier  
 Klamath Falls: Herald and News  
 Medford: The Mail Tribute  
 Pendleton: East Oregonian  
 Portland: The Oregonian  
 Roseburg: The News Review  
 Salem: Statesman Journal

Notice shall be a quarter page in size and shall include claim forms for customers to clip and submit. The notice shall include the information that claimants may not receive a refund because the Fund may be exhausted. Notice shall also include clear information on the deadline for submitting claims.

The claim form shall request information sufficient to allow USWC to verify the customer's claim of eligibility for the refund, such as

customer name, telephone number(s), and dates of service.

USWC shall establish and announce a contact telephone number at which potential claimants can receive information or request a claim form. The telephone number shall be included in the notice of refund published in the newspapers.

Staff and USWC shall collaborate on developing language for the advertisements as well as the claim form that will be part of the advertisement. The form shall contain language warning claimants of the consequences of filing a false claim.

- ii. Customers who were retail customers of U S WEST for a period of no less than six months between May 1, 1996, and the date of the refund bill credit, who are no longer U S WEST customers, and who did not receive a refund bill credit, are eligible for a refund from the Fund. If customers subscribed to more than one USWC line for a six-month period between May 1, 1996, and the date of this order, they will receive refunds for each line to which they subscribed simultaneously, provided they subscribed for six months or more. Customers who had a varying amount of lines will be limited to the number of lines the customer had on the last day the customer was on USWC's system.

Customers shall receive only one refund for multiple lines to which they subscribed sequentially, as would be the case if a customer moved residences within USWC's service area and switched to a new account at the new address.

Refund to these former customers shall be made by check. The base amount of the refund shall be the same as for retail customers still on the system. If the Fund is exhausted by claims against it, claims made after its exhaustion will not be paid.

- iii. Claims against the Fund will be paid in the order in which they are verified. The Fund shall be disbursed until it is exhausted or until three months elapse from the time the last refund bill credit is given, whichever comes first. If three months elapse and the Fund has a residual amount, after administrative costs are approved and assessed, that amount will be spread across all U S WEST retail customers of record as of the first of the month following the date the disbursement ends. The residual amount shall appear as a credit



on retail customers' bills and shall be identified as "Residual refund as ordered by PUC."

- iv. USWC shall continue to pay interest on money in the Fund at the rate of 8.77 percent per year.
- v. USWC shall recover its approved administrative expenses from the money set aside for the Fund.

2. Exhibit A, Page 1 of 2, footnote 3 of the Stipulation is revised to read as follows:

Interexchange carriers who are access service customers of U S WEST will receive refunds based on amounts paid to U S WEST over the period from May 1, 1996, to the refund date. The amount due to a carrier will be calculated based upon a ratio of U S WEST's billed intrastate switched access revenues from the carrier to the total U S WEST intrastate switched access billed revenues during the period from May 1, 1996, to the refund date.

3. Exhibit A, Page 1 of 2, footnote 4 of the Stipulation is revised to read as follows:

Ninety-five percent of the local refund amount will be distributed to customers of record, as of the date of the refund, for the services listed in Exhibit A of this Stipulation, provided the customers have been customers for at least 60 days prior to the refund date. The accumulated balance will be divided by the total billing units on the date identified pursuant to Paragraph 1 of this Stipulation. The exact number of customers will not be known until the Commission issues an order adopting this stipulation and establishes a date for the refund.

3. Order No. 96-107 is modified to change the refund interest rate from 11.2 percent to 8.77 percent, but the discussion and procedures of that order remain intact.
4. Order No. 96-183 is rescinded.
5. Order No. 96-286 is rescinded.
6. Order No. 97-171 is rescinded.

- 7. USWC shall file with the Commission a detailed breakdown of administrative costs for advertising and disbursing from the Fund. The final disbursement from the Fund shall occur after USWC's administrative costs are verified and paid from the Fund.

Made, entered, and effective APR 14 2000

*Ron Eachus*

Ron Eachus  
Chairman

*Roger Hamilton*

Roger Hamilton  
Commissioner



*Joan H. Smith*

Joan H. Smith  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

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STIPULATION TO RESOLVE MATTERS ON APPEAL

This Stipulation, made by and between U S WEST Communications, Inc. ("U S WEST") and the Staff of the Public Utility Commission of Oregon ("Commission Staff"), is dated this 9<sup>th</sup> day of September, 1999:

RECITALS

WHEREAS, on July 16, 1996, the Public Utility Commission of Oregon (the "Commission") issued Order No. 96-183 in Docket No. UT 80(1), In the Matter of the Petition of U S WEST Communications, Inc. for Clarification and Request for Ruling, in which, inter alia, the Commission ordered that the annualized test year from January 1 to September 30, 1995, as modified by adjustments ordered in Docket UT 125, shall be used to determine whether U S WEST had overearned during the period from May 1, 1996 to the effective date of rates established in Docket UT 125;

WHEREAS, on November 5, 1996, the Commission issued Order No. 96-286 in Docket No. UT 80(1), denying U S WEST's Petition for Reconsideration of Order No. 96-183;

WHEREAS, on July 22, 1997, the Marion County Circuit Court affirmed Commission Order Nos. 96-183 and 96-286;

WHEREAS, U S WEST has appealed the judgment of the Marion County Circuit Court affirming Commission Order Nos. 96-183 and 96-286 and that appeal is currently pending in the Court of Appeals of the State of Oregon and styled as U S WEST

Communications, Inc. v. Public Utility Commission of Oregon, Case No. A99505 (the "Refund Methodology Appeal");

WHEREAS, on May 19, 1997, the Commission issued Order No. 97-171 in Docket No. UT 125, In the Matter of the Application of U S WEST Communications, Inc., for an Increase of Revenues, in which, *inter alia*, the Commission: (a) ordered U S WEST to refund \$102,000,000 to its customers for the period from May 1, 1996 through April 30, 1997; (b) reduced U S WEST's revenue requirement by \$97,400,000; and (c) adopted an authorized rate of return on rate base for U S WEST of 8.77%;

WHEREAS, on July 16, 1997, upon motion of U S WEST, the Marion County Circuit Court stayed enforcement of Commission Order No. 97-171 relating to refunds until such time as a final disposition of the order is rendered;

WHEREAS, on February 19, 1998, the Marion County Circuit Court entered a Judgment on Review that reversed and modified Commission Order No. 97-171 and remanded the proceeding to the Commission for further proceedings consistent with the court's judgment, continued the stay issued July 16, 1997, and, further, stayed all proceedings before the Commission pursuant to Order No. 97-171 or the court's judgment during the pendency of any appeals of the Court's order, pursuant to the stipulation of the parties;

WHEREAS, the Commission has appealed the judgment of the Marion County Circuit Court reversing and modifying Commission Order 97-171, and U S WEST has filed a cross-appeal, and those appeals are currently pending in the Court of Appeals of the State of Oregon and styled as U S WEST Communications, Inc. v. Public Utility Commission of Oregon, Case No. A101358 (the "Rate Case Appeal") (collectively, the

Refund Methodology Appeal and the Rate Case Appeal shall be referred to as the "Appellate Litigation");

WHEREAS, the parties to this Stipulation recognize the risks each party bears in the possible outcomes of the Appellate Litigation;

WHEREAS, the parties to this Stipulation have determined that the public's interest is best served by a settlement of the various issues pending in the Appellate Litigation on terms that are just and reasonable, as set forth in this Stipulation;

NOW, THEREFORE, in light of the Recitals enumerated above, and in consideration of the mutual promises, covenants and conditions contained herein, the parties agree to settle the matters and issues pending in the Appellate Litigation on the terms and conditions set forth herein:

1. Refund. In consideration of the Commission's issuance of an order implementing the terms of this Stipulation, and upon the Commission's final disposition of any motions to rehear and/or reconsider said order, U S WEST agrees to make a refund of revenues, within forty-five (45) days of said final disposition, to its Oregon customers of record who subscribe to the services identified and in the amount set forth in Exhibit A hereto, effective for one month of billing cycles beginning on or after the date of the refund. The amount of the refund shall be that corresponding to the date of the refund, as set forth in Exhibit A hereto. Except for interexchange carriers, each customer of record shall be entitled to the refund for each line, provided that: (a) they are a customer of record to the services set forth on Exhibit A on the date of the refund; (b) the customer has subscribed to the service set forth on Exhibit A for at least sixty (60) days immediately prior to the refund; and (c) in the event that the customer has more than one line, the refund shall be

limited to only those lines which the customer of record has at the time of the refund and had subscribed to for the sixty (60) days prior to the refund. In addition, the refund shall be subject to the following terms and conditions:

- a. With the exception of interexchange carriers, the refund shall be made in the form of a single credit to customers' bills and as follows:
  - i. The amount of an individual customer's refund, per line, shall be based upon the customer's class of service and shall be calculated in the manner set forth in Exhibit A, page 2 hereto. In the event a specific customer does not exhaust the full amount of the refund in one billing cycle, the remaining, unused portion of the refund due the specific customer shall be carried over to the subsequent bill(s) until such time as the full amount of the refund has been credited to the customer.
  - ii. The parties hereby recognize that the calculations set forth in Exhibit A hereto are preliminary. Final calculations, utilizing U S WEST's most current billing units, shall be performed as near as possible to the date of the refund.
  - iii. Bill credits made pursuant to the terms of this Stipulation shall be separately identified on customers' bills with the following notation:  
 "One time refund per PUC Order."
- b. Refunds payable to interexchange carriers shall be made in the form of a check, and shall be based on the amounts paid to U S WEST over the 12 months immediately preceding the refund date. The amount due to a carrier will be calculated based upon a ratio of U S WEST's billed intrastate switched access revenues from the carrier to the total U S WEST intrastate switched access billed revenues during the 12 months immediately preceding the refund date. Estimates of the total amount are set forth on Exhibit A. Again, the calculations set forth in Exhibit A are preliminary and final calculations, utilizing U S WEST's most current billing information, shall be performed as near as possible to the date of the refund.

2. Revenue Reduction. In addition to the refund described above, and in further consideration of the Commission's issuance of an order implementing the terms of this Stipulation, and upon the Commission's final disposition of any motions to rehear and/or

APPENDIX A  
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reconsider said order, U S WEST agrees to implement within forty-five (45) days of the expiration of said final disposition an ongoing annual revenue reduction in the amount of \$63 million from current rates, based upon U S WEST's August 1997 billing units, on the following terms and conditions:

- a. Permanent rates, incorporating the \$63 million revenue reductions, shall be established in the rate design phase of Docket UT 125. The parties hereby agree to take all actions necessary in order to conclude the rate design phase of Docket UT 125 as quickly as possible. In order to expedite this process, U S WEST agrees to file its rate design proposal no later than the later of November 15, 1999 or 30 days after the Court of Appeals lifts the stay as described in Paragraph 4(c).
- b. Prior to the implementation of the rates described in Paragraph 2(a), above, U S WEST will give temporary bill credits to its Oregon local service customers who subscribe to the services set forth on Exhibit B and make a temporary rate reduction for its switched access customers on the following terms and conditions:
  - i. The temporary bill credits and switched access rate reduction will begin on the effective date of the refund described in Paragraph 1, above, and continue until the effective date of the permanent rates, described in Paragraph 2(a), above.
  - ii. The temporary bill credits and switched access rate reduction will be based on an annualized amount of \$63 million and will be credited monthly, with the notation: "Temporary monthly credit per PUC order."
  - iii. The amount of the temporary bill credits and switched access rate reduction shall be based upon the customers' class of service and shall be calculated as set forth on Exhibit B. The calculations set forth on Exhibit B shall be done utilizing August 31, 1997 billing units.

3. Timing and Intent. The parties recognize that an expeditious settlement of the Appellate Litigation is in the best interest of U S WEST's customers and that time is of the essence of this Stipulation. Accordingly, by signing this Stipulation, the parties manifest their intent to have the Commission issue an order implementing this

Stipulation, and to have the Commission finally dispose of any motions to rehear and/or reconsider said order, as quickly as possible. U S WEST shall be under no obligation to, but may in its sole discretion, implement the terms of Paragraphs 1 and 2 of this Stipulation prior to the time the Commission finally disposes of any motions to rehear and/or reconsider the order implementing the terms of this Stipulation.

4. Procedure. Immediately upon execution of this Stipulation, or as soon as practicable thereafter, the parties shall take all actions necessary to accomplish the following:

- a. to present the terms of this Stipulation to the Commission;
- b. to have U S WEST and the Commission jointly move the Court of Appeals to hold in abeyance all proceedings in the Refund Methodology Appeal and the Rate Case Appeal;
- c. — to move the Court of Appeals to lift all stays to allow the issues in the Refund Methodology Appeal and the Rate Case Appeal to come before the Commission, pursuant to ORS 756.568, for the sole purposes of:
  - i. taking evidence on the advisability of adopting the terms this Stipulation as a means of settling the Appellate Litigation;
  - ii. holding proceedings consistent with implementing the terms of this Stipulation; and
  - iii. upon the completion of the proceedings described in Paragraph 4(c)(i) and (ii) above, issuing an order consistent with the evidence produced at such hearings and vacating Order Nos. 96-183, 96-286 and 97-171, and modifying Order No. 96-107.
- d. to move the Court of Appeals to dismiss the Refund Methodology Appeal and the Rate Case Appeal upon the issuance of the Commission's order specified in Paragraph 4(c)(iii), above (once the Commission has finally disposed of any motions to rehear and/or reconsider the order) on the grounds that the Commission has vacated the orders which are the subject of the Appellate Litigation. As part of the motion, the parties agree to request the Court of Appeals to direct



the Circuit Court of Marion County to vacate its orders and judgments in the underlying actions;

e. if necessary and/or appropriate, to move the Circuit Court of Marion County to vacate its judgments modifying and reversing Order No. 97-171 and affirming Order Nos. 96-183 and 96-286 and to dismiss U S WEST's complaints once the Court of Appeals has dismissed the Refund Methodology Appeal and the Rate Case Appeal; and

f. to take all actions necessary to complete the processes described in this Paragraph 4 as quickly as possible.

5. Appeal of the Commission's Order. The parties recognize that the Commission's order implementing the terms of this Stipulation may be subject to suit pursuant to ORS 756.580 by any party aggrieved by the terms of said order (hereinafter in this paragraph 5 referred to as an "appeal"). In the event of such appeal, the parties shall advocate that the court(s) should affirm said order. Despite the pendency of any such appeal, U S WEST agrees to implement the terms of Paragraphs 1 and 2 of this Stipulation, forty-five days after the Commission has finally disposed of any motions requesting rehearing and/or reconsideration of the order implementing the terms of this Stipulation. The parties further recognize that the order adopting the terms of this Stipulation may be reversed and/or modified on appeal. The parties further recognize that U S WEST's obligation to refund monies to customers and to reduce its ongoing rates may be modified on appeal, either by the issuing of a judgment incorporating or requiring different refunds or rate reductions, or by the Court of Appeals refusing to dismiss the Appellate Litigation. In the event that an order implementing the terms of this Stipulation is reversed or modified on appeal, the parties agree that U S WEST will be entitled to a credit for refunds and rate reductions made under Paragraphs 1 and 2 of this Stipulation against any such increased

refund and/or rate reduction obligation imposed by a judgment reversing or modifying the order adopting the terms of this Stipulation or any subsequent order. Notwithstanding anything herein to the contrary, the parties understand that U S WEST does not waive its rights, if any, to seek recovery of any overpayments – whether in the form of surcharges or rate increases – in the event that U S WEST's refund and/or rate reduction obligation is reduced by a judgment reversing or modifying the order adopting the terms of this Stipulation or any other order. It is the intent of the parties to this Stipulation that the Commission's order implementing the terms of this Stipulation contain provisions implementing the terms of this Paragraph 5 and, in the event that the order does not contain provisions implementing this Paragraph 5, the order will be deemed to be materially different from the terms of this Stipulation.

6. Nature of the Obligations. In the event that (a) the Court of Appeals does not hold the Appellate Litigation in abeyance, or (b) that the Commission does not issue an order implementing the terms of this Stipulation within 130 days after condition (a) of this Paragraph 6 is satisfied, or (c) that the Court of Appeals does not dismiss the Appellate Litigation after the issuance of such Commission Order, then the parties to this Stipulation are relieved of their obligations hereunder and this Stipulation shall be null and void, unless otherwise agreed by the parties. In the event the Commission determines that the terms of this Stipulation are not just, reasonable, in customers' best interest, and/or issues an order which is materially different from the terms of this Stipulation, either party shall be free to move the Court of Appeals to resume the Appellate Litigation, and the other party shall not oppose such a motion. Whether an order issued by the Commission is materially different from the terms of this Stipulation

is entirely and solely within the discretion and judgment of each of the parties to this Stipulation.

7. Interest Rate Reduction. Provided that the Commission issues an order implementing the terms of this Stipulation, and provided further that the Court of Appeals dismisses the Appellate Litigation pursuant to Paragraph 4 (d), above, the parties agree that the interest rate on any refund found due and owing by U S WEST greater than the amount set forth in Paragraph 1, above – regardless of how such an increase in the refund amount is determined – will be limited to 8.77% annually, compounded monthly, unless otherwise ordered by a court of competent jurisdiction. It is the intent of the parties to this Stipulation that the Commission’s order implementing the terms of this Stipulation contain provisions implementing the terms of this Paragraph 7 and, in the event the order does not contain provisions implementing this Paragraph 7, the order will be deemed to be materially different from the terms of this Stipulation.

8. Precedential Effect. The parties agree that the agreements reached in this Stipulation will not be cited in other proceedings as indicative of a party’s position on the issues resolved or as any type of precedent for other cases.

9. Non-Waiver and No Admission. Although the parties stipulate and agree herein to certain amounts or figures, such stipulations do not constitute any agreement or acquiescence by any party to the method or theories used by any other party in deciding to enter into this Stipulation. No party agrees that the method used by any other party in reaching this Stipulation is appropriate or superior. The parties specifically acknowledge that they have entered this Stipulation to resolve disputed issues, and neither party admits or denies any fact or legal position at issue.

10. Amendment and Integration. The parties recommend that the Commission adopt this Stipulation in its entirety. The parties have negotiated this Stipulation as an integrated document. Accordingly, if the Commission rejects all or any part of this Stipulation, or adds elements to the Stipulation in any order which are not contemplated by the Stipulation, each party reserves the right to withdraw from the Stipulation upon written notice to the Commission and the other party within fifteen (15) days of rejection.

11. Non-Binding on Commission. The parties agree that this Stipulation in no manner binds the Commission in ruling upon remand and does not restrict the Commission's exercise of its discretion in this or any other proceeding, except with respect to the issues covered by Paragraph 4.

12. Commission Fee. The parties recognize that the 70<sup>th</sup> Oregon Legislative Assembly has passed a bill commonly known as House Bill 2578, which has been duly enacted into law. House Bill 2578 describes the payment and collection procedures to be used by utilities, including U S WEST, to collect and remit the payment of an annual fee to the Commission. In the event that U S WEST shall separately charge its retail customers for the fee described in House Bill 2578, then U S WEST agrees to a corresponding rate reduction in the amount projected to equal the amount separately charged to customers from the rates described in paragraph 2(b), above. The parties agree to implement the rate reduction, if required, as part of the rate design phase of UT 125.

IT IS SO AGREED.

U S WEST COMMUNICATIONS, INC.

By: *[Signature]*  
Its: Director - Regulatory

STAFF OF THE PUBLIC UTILITY  
COMMISSION OF OREGON

By: *[Signature]*  
Its: Administrator, Telecommunications Division

Docket UT 125  
U S WEST Communications, Inc.  
Summary of Accumulated Balance Subject to Refund

Refund Date <sup>1</sup>	Accumulated Balance <sup>2</sup> (rounded to millions)		
	Total	Access <sup>3</sup>	Local <sup>4</sup>
December 1, 1999	\$222.7	\$30.8	\$191.9
January 1, 2000	\$228.8	\$31.6	\$197.2
February 1, 2000	\$234.9	\$32.4	\$202.5
March 1, 2000	\$241.1	\$33.3	\$207.8
April 1, 2000	\$247.4	\$34.2	\$213.2
May 1, 2000	\$253.6	\$35.0	\$218.6
June 1, 2000	\$260.0	\$35.9	\$224.1
July 1, 2000	\$266.4	\$36.8	\$229.6
August 1, 2000	\$272.8	\$37.6	\$235.2

<sup>1</sup> If the refund begins during a month, the amount due will be adjusted for a partial month. For example, if the refund begins on December 15, 1999, the accumulated balance would be about \$225.7 [(\$222.7 + \$228.8) ÷ 2]. The exact amount will be slightly different, due to the effect of compounded interest.

<sup>2</sup> The portion of the total refund that will be distributed to interexchange carriers will be based on total intrastate revenues subject to refund. Using this ratio, the accumulated balance will be distributed 86.2 percent to local customers and 13.8 percent to interexchange carriers.

<sup>3</sup> Interexchange carriers who are access service customers of U S WEST will receive refunds based on amounts paid to U S WEST over the 12 months preceding the refund date. The amount due to a carrier will be calculated based upon a ratio of U S WEST's billed intrastate switched access revenues from the carrier to the total U S WEST intrastate switched access billed revenues during the twelve months immediately preceding the refund date.

<sup>4</sup> The local refund amount will be distributed to customers of record of the services listed in Exhibit A of this Stipulation at least 60 days prior to the refund date. The accumulated balance will be divided by the total billing units on the date identified pursuant to Paragraph 1 of this Stipulation. The exact number of customers will not be known until the Commission issues an order adopting this stipulation and establishes a date for the refund.

**Docket UT 125**  
**U S WEST Communications, Inc.**  
**Estimated Local One-Time Refund**

Class of Service	December 1, 1999		January 1, 2000		February 1, 2000		March 1, 2000		April 1, 2000		May 1, 2000		June 1, 2000		July 1, 2000		August 1, 2000	
	One-Time Refund per Line	Amount of Refund by Service	One-Time Refund per Line	Amount of Refund by Service	One-Time Refund per Line	Amount of Refund by Service	One-Time Refund per Line	Amount of Refund by Service	One-Time Refund per Line	Amount of Refund by Service	One-Time Refund per Line	Amount of Refund by Service	One-Time Refund per Line	Amount of Refund by Service	One-Time Refund per Line	Amount of Refund by Service	One-Time Refund per Line	Amount of Refund by Service
<b>Residential Services</b>																		
One-Party Flat Rate	\$101.77	\$33,894,143	\$104.57	\$98,271,952	\$107.38	\$98,858,987	\$110.22	\$101,473,902	\$113.08	\$104,106,850	\$115.98	\$106,758,110	\$118.85	\$109,418,777	\$121.78	\$112,118,270	\$124.72	\$114,822,069
One-Party Measured	\$101.77	\$3,834,185	\$104.57	\$3,639,675	\$107.38	\$4,045,542	\$110.22	\$4,152,539	\$113.08	\$4,280,289	\$115.98	\$4,388,793	\$118.85	\$4,477,674	\$121.78	\$4,588,062	\$124.72	\$4,898,828
Two-Party Flat Rate	\$101.77	\$0	\$104.57	\$0	\$107.38	\$0	\$110.22	\$0	\$113.08	\$0	\$115.98	\$0	\$118.85	\$0	\$121.78	\$0	\$124.72	\$0
Two-Party Measured	\$101.77	\$0	\$104.57	\$0	\$107.38	\$0	\$110.22	\$0	\$113.08	\$0	\$115.98	\$0	\$118.85	\$0	\$121.78	\$0	\$124.72	\$0
Four-Party Suburban Flat Rate	\$101.77	\$1,527	\$104.57	\$1,589	\$107.38	\$1,611	\$110.22	\$1,653	\$113.08	\$1,696	\$115.98	\$1,739	\$118.85	\$1,783	\$121.78	\$1,827	\$124.72	\$1,871
Four-Party Suburban Measured	\$101.77	\$0	\$104.57	\$0	\$107.38	\$0	\$110.22	\$0	\$113.08	\$0	\$115.98	\$0	\$118.85	\$0	\$121.78	\$0	\$124.72	\$0
Farmer Line	\$101.77	\$407	\$104.57	\$418	\$107.38	\$430	\$110.22	\$441	\$113.08	\$452	\$115.98	\$464	\$118.85	\$475	\$121.78	\$487	\$124.72	\$499
<b>Total Residential</b>		<b>\$37,530,262</b>		<b>\$109,213,814</b>		<b>\$102,908,549</b>		<b>\$105,628,235</b>		<b>\$108,389,087</b>		<b>\$111,128,108</b>		<b>\$113,898,799</b>		<b>\$116,708,845</b>		<b>\$119,524,165</b>
<b>Centrex Type Services</b>																		
<b>Centrex Lines</b>	\$101.77	\$12,120,803	\$104.57	\$12,454,078	\$107.38	\$12,788,743	\$110.22	\$13,123,982	\$113.08	\$13,467,602	\$115.98	\$13,810,304	\$118.85	\$14,154,787	\$121.78	\$14,503,754	\$124.72	\$14,853,903
<b>Business Simple</b>																		
One-Party Flat Rate	\$244.28	\$33,297,523	\$250.98	\$34,210,887	\$257.71	\$35,131,027	\$264.52	\$36,059,368	\$271.39	\$36,995,885	\$278.30	\$37,937,850	\$285.25	\$38,885,280	\$292.28	\$39,840,883	\$299.33	\$40,804,666
Simple Two-Party Flat Rate	\$244.28	\$0	\$250.98	\$0	\$257.71	\$0	\$264.52	\$0	\$271.39	\$0	\$278.30	\$0	\$285.25	\$0	\$292.28	\$0	\$299.33	\$0
Four-Party Suburban Flat Rate	\$244.28	\$0	\$250.98	\$0	\$257.71	\$0	\$264.52	\$0	\$271.39	\$0	\$278.30	\$0	\$285.25	\$0	\$292.28	\$0	\$299.33	\$0
Farmer Line	\$244.28	\$244	\$250.98	\$251	\$257.71	\$258	\$264.52	\$265	\$271.39	\$271	\$278.30	\$278	\$285.25	\$285	\$292.28	\$292	\$299.33	\$299
All Business Measured Lines	\$244.28	\$4,450,681	\$250.98	\$4,572,742	\$257.71	\$4,695,734	\$264.52	\$4,819,819	\$271.39	\$4,944,987	\$278.30	\$5,070,064	\$285.25	\$5,197,540	\$292.28	\$5,325,289	\$299.33	\$5,454,092
Stand-by Lines	\$244.28	\$1,002,932	\$250.98	\$1,050,442	\$257.71	\$1,098,157	\$264.52	\$1,098,119	\$271.39	\$1,114,327	\$278.30	\$1,142,700	\$285.25	\$1,171,237	\$292.28	\$1,200,020	\$299.33	\$1,229,049
Simple PBX Trunks	\$244.28	\$420,127	\$250.98	\$431,851	\$257.71	\$443,291	\$264.52	\$454,974	\$271.39	\$468,781	\$278.30	\$478,676	\$285.25	\$490,630	\$292.28	\$502,687	\$299.33	\$514,848
Simple D/D Trunks	\$244.28	\$38,105	\$250.98	\$39,159	\$257.71	\$40,203	\$264.52	\$41,265	\$271.39	\$42,337	\$278.30	\$43,415	\$285.25	\$44,498	\$292.28	\$45,593	\$299.33	\$46,698
<b>Total Business Simple</b>		<b>\$39,209,582</b>		<b>\$40,285,103</b>		<b>\$41,368,843</b>		<b>\$42,461,808</b>		<b>\$43,564,692</b>		<b>\$44,673,828</b>		<b>\$45,788,471</b>		<b>\$46,914,744</b>		<b>\$48,049,848</b>
<b>Business Complex</b>																		
Complex One-Party Flat Rate	\$274.79	\$19,058,610	\$282.33	\$19,581,582	\$289.92	\$20,107,981	\$297.59	\$20,639,950	\$305.31	\$21,175,388	\$313.09	\$21,714,983	\$320.90	\$22,258,881	\$328.79	\$22,803,888	\$336.74	\$23,355,276
Complex Two-Party Flat Rate	\$274.79	\$0	\$282.33	\$0	\$289.92	\$0	\$297.59	\$0	\$305.31	\$0	\$313.09	\$0	\$320.90	\$0	\$328.79	\$0	\$336.74	\$0
Complex Four-Party Suburban Flat Rate	\$274.79	\$0	\$282.33	\$0	\$289.92	\$0	\$297.59	\$0	\$305.31	\$0	\$313.09	\$0	\$320.90	\$0	\$328.79	\$0	\$336.74	\$0
PBX Trunks	\$274.79	\$3,838,893	\$282.33	\$3,942,174	\$289.92	\$4,048,153	\$297.59	\$4,155,249	\$305.31	\$4,263,044	\$313.09	\$4,371,878	\$320.90	\$4,480,727	\$328.79	\$4,590,895	\$336.74	\$4,701,901
D/D Trunks	\$274.79	\$2,822,918	\$282.33	\$2,900,378	\$289.92	\$2,978,348	\$297.59	\$3,057,142	\$305.31	\$3,138,450	\$313.09	\$3,218,374	\$320.90	\$3,298,506	\$328.79	\$3,377,880	\$336.74	\$3,459,330
ISDN Line Basic	\$274.79	\$1,290,983	\$282.33	\$1,326,388	\$289.92	\$1,362,044	\$297.59	\$1,398,078	\$305.31	\$1,434,348	\$313.09	\$1,470,897	\$320.90	\$1,507,588	\$328.79	\$1,544,655	\$336.74	\$1,582,005
ISDN Line Primary Rate	\$274.79	\$1,154,118	\$282.33	\$1,185,796	\$289.92	\$1,217,084	\$297.59	\$1,249,878	\$305.31	\$1,282,302	\$313.09	\$1,314,978	\$320.90	\$1,347,780	\$328.79	\$1,380,915	\$336.74	\$1,414,308
DSS Trunks	\$274.79	\$10,134,851	\$282.33	\$10,412,943	\$289.92	\$10,692,879	\$297.59	\$10,975,785	\$305.31	\$11,260,495	\$313.09	\$11,547,439	\$320.90	\$11,835,486	\$328.79	\$12,128,489	\$336.74	\$12,419,702
Misc. Trunks	\$274.79	\$31,051	\$282.33	\$31,903	\$289.92	\$32,781	\$297.59	\$33,628	\$305.31	\$34,500	\$313.09	\$35,379	\$320.90	\$36,282	\$328.79	\$37,153	\$336.74	\$38,052
Switchnet 28	\$274.79	\$38,020	\$282.33	\$40,091	\$289.92	\$41,188	\$297.59	\$42,258	\$305.31	\$43,354	\$313.09	\$44,458	\$320.90	\$45,568	\$328.79	\$46,688	\$336.74	\$47,817
PAL Lines	\$274.79	\$1,783,083	\$282.33	\$1,811,429	\$289.92	\$1,880,127	\$297.59	\$1,909,337	\$305.31	\$1,958,889	\$313.09	\$2,008,785	\$320.90	\$2,058,894	\$328.79	\$2,109,517	\$336.74	\$2,160,524
Selective Class of Call Screening	\$274.79	\$229,450	\$282.33	\$235,748	\$289.92	\$242,088	\$297.59	\$248,488	\$305.31	\$254,954	\$313.09	\$261,952	\$320.90	\$267,952	\$328.79	\$274,540	\$336.74	\$281,178
<b>Total Business Complex</b>		<b>\$40,280,927</b>		<b>\$41,483,298</b>		<b>\$42,683,209</b>		<b>\$43,709,772</b>		<b>\$44,843,879</b>		<b>\$45,988,399</b>		<b>\$47,133,328</b>		<b>\$48,292,402</b>		<b>\$49,460,982</b>
<b>Private Line NACS</b>																		
Analog & DDS (incl. Digicom)	\$78.33	\$2,583,289	\$78.43	\$2,654,483	\$80.53	\$2,725,538	\$82.68	\$2,797,628	\$84.81	\$2,870,294	\$86.97	\$2,943,500	\$89.14	\$3,018,943	\$91.33	\$3,091,064	\$93.54	\$3,165,881
DS1	\$78.33	\$77,170	\$78.43	\$79,293	\$80.53	\$81,416	\$82.68	\$83,589	\$84.81	\$85,743	\$86.97	\$87,927	\$89.14	\$90,121	\$91.33	\$92,335	\$93.54	\$94,568
DS3	\$78.33	\$458	\$78.43	\$471	\$80.53	\$483	\$82.68	\$496	\$84.81	\$509	\$86.97	\$522	\$89.14	\$535	\$91.33	\$548	\$93.54	\$561
<b>Total Private Line</b>		<b>\$2,661,918</b>		<b>\$2,734,227</b>		<b>\$2,807,437</b>		<b>\$2,881,893</b>		<b>\$2,956,846</b>		<b>\$3,031,948</b>		<b>\$3,107,992</b>		<b>\$3,183,946</b>		<b>\$3,260,991</b>
<b>Total</b>		<b>\$181,852,401</b>		<b>\$187,155,417</b>		<b>\$192,454,578</b>		<b>\$197,808,490</b>		<b>\$203,201,623</b>		<b>\$208,631,887</b>		<b>\$214,084,102</b>		<b>\$219,661,493</b>		<b>\$225,348,799</b>
	Refund Per Weighted Billing Unit	Average Per Billing Unit	Refund Per Weighted Billing Unit	Average Per Billing Unit	Refund Per Weighted Billing Unit	Average Per Billing Unit	Refund Per Weighted Billing Unit	Average Per Billing Unit	Refund Per Weighted Billing Unit	Average Per Billing Unit	Refund Per Weighted Billing Unit	Average Per Billing Unit	Refund Per Weighted Billing Unit	Average Per Billing Unit	Refund Per Weighted Billing Unit	Average Per Billing Unit	Refund Per Weighted Billing Unit	Average Per Billing Unit
	\$101.77	\$135.16	\$104.57	\$138.87	\$107.38	\$142.60	\$110.22	\$146.37	\$113.08	\$150.17	\$115.98	\$154.00	\$118.85	\$157.84	\$121.78	\$161.72	\$124.72	\$165.63

**NOTE:** The local billing credit per access line is an estimate and varies based upon when the refund is issued. The exact amount of the refund will not be known until after the Commission issues an order adopting this stipulation. Customers of the services listed are entitled to the refund provided that (1) they are customers of record on the date of the refund and (2) they have subscribed to the service for at least 60 days immediately prior to the refund.

Docket UT 125  
U S WEST Communications, Inc.  
Temporary Rate Reductions by Class of Service

Local Service <sup>1</sup>		
Annual Temporary Revenue Reduction		\$54,306,000
Class of Service	Weighting	Temporary Bill Credit Per Month
Residential	1.00	\$2.47
Business Simple	2.40	\$5.93
Business Complex	2.70	\$6.68
Centrex	1.00	\$2.47
Private Line	0.75	\$1.85
Average per Line		\$3.40

<sup>1</sup> The temporary rate reduction will be in the form of a bill credit per line for each local customer of the services listed. The bill credit will be in effect until such time as the Commission completes its rate design investigation and permanent rates are implemented.

The temporary bill credit is calculated based upon August 1997 billing units.

Switched Access <sup>2</sup>		
Annual Temporary Revenue Reduction		\$8,694,000
Carrier Common Line (CCL)	Current Rate per Minute of Use	Temporary CCL Rate per Minute of Use
Originating	\$0.011803	\$0.006564
Terminating	\$0.023608	\$0.013127
Total CCL	\$0.018164	\$0.010101

<sup>2</sup> The temporary reduction for switched access customers will be made as a temporary rate reduction in both originating and terminating CCL. The temporary CCL rate reduction will be in effect until such time as the Commission completes its investigation into a permanent rate structure and permanent rates are implemented.

The temporary rate reduction is calculated based on CCL minutes of use using the 5 months preceding and 6 months following August 1997 (March 1997 to February 1998 actual CCL minutes of use).

Total Local and Switched Access Rate Reduction	\$63,000,000
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Docket UT 125  
 U S WEST Communications, Inc.  
 SUMMARY OF INTRASTATE TEST YEAR  
 (\$000's)

Line No.	1995 Unadjusted Test Year (1)	Staff's Adjustments (2)	Revised Test Year (3)	Revenue Requirement (4)	Adjusted Intrastate Results of Operations (5)	
1	Local Service & EAS	348,109.0	42,621.4	390,730.4	(49,996.0)	340,734.4
2	Toll & Access	154,466.0	(2,054.0)	152,412.0	(8,004.0)	144,408.0
3	Directory & Other	17,735.0	58,772.3	76,507.3	458.2	76,965.5
4	TOTAL OPERATING REVENUES	<u>520,310.0</u>	<u>99,339.7</u>	<u>619,649.7</u>	<u>(57,541.8)</u>	<u>562,107.9</u>
5	Plant Specific	84,151.0	(4,012.8)	80,138.2		80,138.2
6	Depreciation & Amortization	93,169.0	49,030.2	142,199.2		142,199.2
7	Other Operating Expenses	224,249.0	(13,525.8)	210,723.2		210,723.2
8	Operating Taxes	52,015.0	25,035.5	77,050.5	(23,103.4)	53,947.1
9	TOTAL OPERATING EXPENSES & TAXES	<u>453,584.0</u>	<u>56,527.1</u>	<u>510,111.1</u>	<u>(23,103.4)</u>	<u>487,007.7</u>
10	NET OPERATING INCOME	<u>66,726.0</u>	<u>42,812.6</u>	<u>109,538.6</u>	<u>(34,438.4)</u>	<u>75,100.2</u>
11	Telecommunications Plant in Service	1,477,856.0	338,397.3	1,816,253.3		1,816,253.3
12	Accumulated Depreciation	(576,115.0)	(193,191.2)	(769,306.2)		(769,306.2)
13	Other Rate Base	(183,598.0)	(6,733.6)	(190,331.6)		(190,331.6)
14	NET AVERAGE RATE BASE	<u>718,143.0</u>	<u>138,472.5</u>	<u>856,615.5</u>		<u>856,615.5</u>
15	RETURN ON RATE BASE	9.29%	3.50%	12.79%	-4.02%	8.77%
16	RETURN ON EQUITY	11.15%	6.31%	17.45%	-12.84%	10.20%

APPENDIX B  
Page 1 of 21

ORDER NO. 00-190

Staff/113  
Lambeth/1

Docket UT 125  
 U S WEST Communications, Inc.  
 NET-TO-GROSS FACTORS

Line No.	Second Stipulation			Weighted Average *	
	Local (1)	Network Access (2)	Long Distance (3)		
1	Percent of Rate Spread *	86.2000%	13.8000%	0.0000%	100.0000%
2	Base Year	100.0000%	100.0000%	100.0000%	100.0000%
Uncollectibles:					
3	Local	0.8911%	--	--	0.7681%
4	Access	--	0.1587%	--	0.0219%
5	Long Distance	--	--	0.7203%	0.0000%
6	Directory	--	--	--	--
7	Billing & Collection	--	--	--	--
8	Other	--	--	--	--
9	Net Intrastate Uncollectibles	0.8911%	0.1587%	0.7203%	0.7900%
10	Franchise Fees	1.7990%	--	--	1.5507%
11	PUC Fee	0.2000%	0.2000%	0.2000%	0.2000%
12	State Income Tax (SIT) Base	97.1099%	99.6413%	99.0797%	97.4593%
13	SIT Statutory Rate	6.2700%	6.2700%	6.2700%	6.2700%
14	SIT Effective Rate	6.0888%	6.2475%	6.2123%	6.1107%
15	Federal Income Tax (FIT) Base	91.0211%	93.3938%	92.8674%	91.3486%
16	FIT Statutory Rate	35.0000%	35.0000%	35.0000%	35.0000%
17	FIT Effective Rate	31.8574%	32.6878%	32.5036%	31.9720%
18	NET-TO-GROSS MULTIPLIER	169.0230%	164.7280%	165.6620%	168.4170%

\* In the Appeal Stipulation, staff and USWC agreed to distribute the one-time refund and temporary reduction to local service customers (86.2 percent) and access service customers (13.8 percent).

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 U S WEST Communications, Inc.  
 INTRASTATE OREGON  
 Adjustments to Annualized Test Year  
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Line No.	Description	ISSUES 1a-b Company's Annualized Test Year Before Side Records	Issue 1c(1a) Annualized Side Record for Interest During Construction (Pre-1)	Issue 1c(2a) Annualized Side Record for Western Electric Affil. Interest (Pre-2)	Issue 1c(3) Annualized Side Record for Interstate Depreciation Represcription (Pre-3)	Issue 1c(4) Annualized Side Record for Property Held for Future Use (Pre-4)	Company's Annualized Test Year Exhibit USW/3, Inovye/3	Issue 1c(1b) Adjust Interest During Construction	Issue 1c(2b) Adjust Western Electric Affiliated Interest
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	Local Service & EAS	348,105.000					348,109.000		
2	Network Access	62,537.000					62,537.000		
3	Long Distance	91,929.000					91,929.000		
4	Directory	3,819.000					3,819.000		
5	Billing & Collection	2,476.000					2,476.000		
6	Miscellaneous	15,559.000					15,559.000		
7	Uncollectibles	(4,119.000)					(4,119.000)		
8	<b>TOTAL OPERATING REVENUES</b>	<b>520,310.000</b>					<b>520,310.000</b>		
9	Plant Specific	84,151.000					84,151.000		
10	Depreciation & Amortization	109,278.599	1,068.109	(316.272)	(16,861.436)		93,169.000		316.272
11	Plant Nonspecific	43,695.000					43,695.000		
12	Access (interstate)	0.000					0.000		
13	Access (intrastate)	27,201.000					27,201.000		
14	Customer Operations (ex. B&C)	80,564.000					80,564.000		
15	Billing & Collection	5,255.000					5,255.000		
16	Corporate Operations	67,783.000					67,783.000		
17	Other Gains & Losses	(249.000)					(249.000)		
18	<b>TOTAL OPERATING EXPENSES</b>	<b>417,678.599</b>	<b>1,068.109</b>	<b>(316.272)</b>	<b>(16,861.436)</b>		<b>401,569.000</b>		<b>316.272</b>
19	Net State & Local Income Taxes	4,207.333			1,078.667		5,286.000	(12.817)	
20	Net Federal Income Tax	15,232.387			5,630.613		20,863.000	(47.488)	
21	Other Taxes	25,866.000					25,866.000		
22	<b>TOTAL OPERATING TAXES</b>	<b>45,305.720</b>			<b>6,709.280</b>		<b>52,015.000</b>	<b>(60.305)</b>	
23	<b>NET OPERATING INCOME</b>	<b>57,325.681</b>	<b>(1,068.109)</b>	<b>316.272</b>	<b>10,152.156</b>		<b>66,726.000</b>	<b>60.305</b>	<b>(316.272)</b>
24	Telecommunications Plant in Service	1,468,449.343	13,919.881	(4,513.224)			1,477,856.000	80.262	
25	Plant Adjustment	1,877.000					1,877.000		
26	Materials & Supplies	14,292.000					14,292.000		
27	Accumulated Depreciation	(589,740.956)	(4,365.415)	3,682.995	14,272.000	36.376	(576,115.000)	(46.520)	830.229
28	Accumulated Amortization	(8,794.000)					(8,794.000)		
29	Accumulated Deferred Taxes	(185,297.000)			(5,676.000)		(190,973.000)	(626.772)	
30	<b>NET AVERAGE RATE BASE</b>	<b>700,786.387</b>	<b>9,554.466</b>	<b>(830.229)</b>	<b>8,596.000</b>	<b>36.376</b>	<b>718,143.000</b>	<b>(593.030)</b>	<b>830.229</b>
31	RETURN ON RATE BASE	8.18%	-0.27%	0.05%	1.29%		9.29%	0.02%	-0.05%
32	RETURN ON EQUITY	9.14%	-0.49%	0.09%	2.32%	-0.00%	11.15%	0.04%	-0.09%
33	REVENUE REQUIREMENT	16,106.777	3,345.988	(668.445)	(15,773.391)	5.866	3,016.794	(197.554)	668.445

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Line No.	Description	Issue 1d Remove Annualized Caller ID (Pre-6) (9)	Issue 1e Remove Annualized UP 96 Sale of Exchanges to PT1 (Pre-11) (10)	Issue 1f Remove Annualized 1996 Wage Increases (Pre-16) (11)	Issue 1g Different Operating Tax Annualization Methods (12)	Issues 1h-n Separations & Other Annualization Methods (13)	Annualized Test Year as Stipulated Columns 6 through 13 (14)	Issue 1m Switching Assets (14a)	Issue 2d Interest Coordination (Fixed Charges) (Post-2) (15)
1	Local Service & EAS		4,077,347			876,250	353,062,597		
2	Network Access		2,659,665			(6,218)	65,200,447		
3	Long Distance					1,066,221	92,995,221		
4	Directory		33,285			69,584	3,921,869		
5	Billing & Collection						2,476,000		
6	Miscellaneous		76,281			(760,957)	14,874,324		
7	Uncollectibles		(55,299)			280,790	(3,893,509)		
8	<b>TOTAL OPERATING REVENUES</b>		<b>6,801,279</b>			<b>1,525,670</b>	<b>528,636,949</b>		
9	Plant Specific		104,244	(1,720,341)		197,528	82,732,431		
10	Depreciation & Amortization		3,545,348			(59,227)	96,971,393		
11	Plant Nonspecific			(886,531)		317,812	43,126,081		
12	Access (interstate)						0.000		
13	Access (intrastate)		(3,790,000)			(0,417)	23,410,583		
14	Customer Operations (ex. B&C)	593,412		(1,362,792)		(368,253)	79,426,367		
15	Billing & Collection		(432,000)			(16,918)	4,806,082		
16	Corporate Operations			(191,132)		123,485	67,715,353		
17	Other Gains & Losses					0,343	(248,657)		
18	<b>TOTAL OPERATING EXPENSES</b>	<b>593,412</b>	<b>(572,408)</b>	<b>(4,160,796)</b>		<b>194,153</b>	<b>397,939,633</b>		
19	Net State & Local Income Taxes	(39,165)	471,680	274,613	280,732	102,173	6,363,216	9,001	56,073
20	Net Federal Income Tax	(194,249)	2,361,593	1,362,002	(1,244,334)	538,350	23,638,874	44,580	277,734
21	Other Taxes		159,229		358,555	18,145	26,401,929		
22	<b>TOTAL OPERATING TAXES</b>	<b>(233,414)</b>	<b>2,992,502</b>	<b>1,636,615</b>	<b>(605,047)</b>	<b>658,668</b>	<b>56,404,019</b>	<b>53,581</b>	<b>333,807</b>
23	<b>NET OPERATING INCOME</b>	<b>(359,998)</b>	<b>4,381,185</b>	<b>2,524,181</b>	<b>605,047</b>	<b>672,849</b>	<b>74,293,297</b>	<b>(53,581)</b>	<b>(333,807)</b>
24	Telecommunications Plant in Service		62,667,250			5,045,570	1,545,649,082	(172,669)	
25	Plant Adjustment					7,420	1,884,420		
26	Materials & Supplies					109,037	14,401,037		
27	Accumulated Depreciation		(20,190,645)			(7,503,436)	(603,025,372)	(4,217,810)	
28	Accumulated Amortization					5,515	(8,788,485)		
29	Accumulated Deferred Taxes		(6,231,371)		(718,022)		(198,549,165)		
30	<b>NET AVERAGE RATE BASE</b>		<b>36,245,234</b>		<b>(718,022)</b>	<b>(2,335,894)</b>	<b>751,571,517</b>	<b>(4,390,479)</b>	
31	RETURN ON RATE BASE	-0.05%	0.13%	0.35%	0.09%	0.12%	9.89%	0.05%	-0.05%
32	RETURN ON EQUITY	-0.09%	0.23%	0.63%	0.16%	0.22%	12.21%	0.09%	-0.09%
33	REVENUE REQUIREMENT	608,479	(1,560,741)	(4,266,446)	(1,138,448)	(1,513,926)	(4,383,399)	(617,391)	564,211

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Line No.	Description	Issue 3a	Issue 3b	Issue 4a	Issue 4b	Issue 4c	Issue 4d(1)	Issue 4d(2)	Issue 4d(3)
		U S WEST Direct Directory Imputation (Post-13) (16)	U S WEST Direct Directory Growth (16a)	Rent Compensation Study (Post-1) (17)	UM 753 Affiliate & Certain Leases (18)	Strategic Marketing (19)	Fax Services (20)	Growth in Fax Services (20a)	Affiliated Interest Charges (Post-3) (20b)
1	Local Service & EAS								
2	Network Access								
3	Long Distance								
4	Directory	49,225.200	3,165.000						
5	Billing & Collection								
6	Miscellaneous						803.673		
7	Uncollectibles								
8	<b>TOTAL OPERATING REVENUES</b>	<b>49,225.200</b>	<b>3,165.000</b>				<b>803.673</b>		
9	Plant Specific			3,840.342	(62.255)				
10	Depreciation & Amortization			13,093.153					
11	Plant Nonspecific								
12	Access (interstate)								
13	Access (intrastate)								
14	Customer Operations (ex. B&C)								
15	Billing & Collection								
16	Corporate Operations					(105.310)			(164.497)
17	Other Gains & Losses								
18	<b>TOTAL OPERATING EXPENSES</b>			<b>16,933.495</b>	<b>(62.255)</b>	<b>(105.310)</b>			<b>(164.497)</b>
19	Net State & Local Income Taxes	3,242.366	208.472	(1,174.473)	4.109	6.950	52.936		10.857
20	Net Federal Income Tax	16,059.534	1,032.569	(5,817.199)	20.351	34.426	262.196		53.774
21	Other Taxes	98.450	6.330	15.066			1.607		
22	<b>TOTAL OPERATING TAXES</b>	<b>19,400.350</b>	<b>1,247.371</b>	<b>(6,976.606)</b>	<b>24.460</b>	<b>41.376</b>	<b>316.739</b>		<b>64.631</b>
23	<b>NET OPERATING INCOME</b>	<b>29,824.850</b>	<b>1,917.629</b>	<b>(9,956.889)</b>	<b>37.795</b>	<b>63.934</b>	<b>486.934</b>		<b>99.866</b>
24	Telecommunications Plant in Service			44,051.963					
25	Plant Adjustment								
26	Materials & Supplies			(2,406.075)					
27	Accumulated Depreciation			(13,638.862)					
28	Accumulated Amortization								
29	Accumulated Deferred Taxes			(754.817)					
30	<b>NET AVERAGE RATE BASE</b>			<b>27,252.209</b>					
31	RETURN ON RATE BASE	4.15%	0.27%	-1.68%	0.01%	0.01%	0.07%		0.01%
32	RETURN ON EQUITY	7.48%	0.49%	-3.03%	0.02%	0.02%	0.13%		0.02%
33	REVENUE REQUIREMENT	(50,410.856)	(3,241.234)	21,223.795	(63.882)	(108.063)	(823.030)		(168.797)

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Line No.	Description	Issue 4d(4) FCC License (20c)	Issue 4e Affiliated Interest Return Component (21)	Issue 4f Headquarters Allocations (22)	Issue 4g(1) Part 64 Still Regulated (Post-10) (23)	Issue 4g(2) Revenue Requirement Part 64 Still Regulated (23a1)	Issue 4g(2) VMS Promotional Offerings (23a2)	Issue 4h Non-regulated Costs in Columns 18 through 21 (23b)	Issue 5a UP 96 Sale of Exchanges to PTI (Pre-11) (24)
1	Local Service & EAS								(3,755.138)
2	Network Access								(943.971)
3	Long Distance								
4	Directory								(31.317)
5	Billing & Collection								(29.000)
6	Miscellaneous				3,372.176	3,472.397	(94.538)		(71.917)
7	Uncollectibles				(19.371)				34.960
8	<b>TOTAL OPERATING REVENUES</b>				<b>3,352.805</b>	<b>3,472.397</b>	<b>(94.538)</b>		<b>(4,796.383)</b>
9	Plant Specific			(110.783)	1,022.523			3.003	(1,773.143)
10	Depreciation & Amortization				800.241				(3,643.500)
11	Plant Nonspecific			(198.081)	1,080.844				(95.491)
12	Access (interstate)								
13	Access (intrastate)								2,822.032
14	Customer Operations (ex. B&C)			(214.130)	2,455.105				(173.308)
15	Billing & Collection								339.724
16	Corporate Operations		(101.163)	(564.000)	898.144			8.348	(154.217)
17	Other Gains & Losses				81.702				
18	<b>TOTAL OPERATING EXPENSES</b>		<b>(101.163)</b>	<b>(1,086.994)</b>	<b>6,338.559</b>			<b>11.351</b>	<b>(2,677.903)</b>
19	Net State & Local Income Taxes		6.677	71.742	(210.407)	228.720	(6.227)	(0.749)	(57.513)
20	Net Federal Income Tax		33.070	355.338	(1,049.274)	1,132.856	(30.843)	(3.711)	(284.862)
21	Other Taxes				74.127	8.945	(0.189)		(83.541)
22	<b>TOTAL OPERATING TAXES</b>		<b>39.747</b>	<b>427.080</b>	<b>(1,185.554)</b>	<b>1,368.521</b>	<b>(37.259)</b>	<b>(4.460)</b>	<b>(425.916)</b>
23	<b>NET OPERATING INCOME</b>		<b>61.416</b>	<b>659.914</b>	<b>(1,800.200)</b>	<b>2,103.876</b>	<b>(57.279)</b>	<b>(6.891)</b>	<b>(1,692.564)</b>
24	Telecommunications Plant in Service				6,190.268				(64,125.841)
25	Plant Adjustment				6.939				
26	Materials & Supplies				68.802				
27	Accumulated Depreciation				(2,418.681)				20,889.539
28	Accumulated Amortization								
29	Accumulated Deferred Taxes				(664.142)				5,776.617
30	<b>NET AVERAGE RATE BASE</b>				<b>3,183.186</b>				<b>(37,459.685)</b>
31	RETURN ON RATE BASE		0.01%	0.09%	-0.29%	0.29%	-0.01%		0.26%
32	RETURN ON EQUITY		0.02%	0.16%	-0.52%	0.52%	-0.02%		0.47%
33	REVENUE REQUIREMENT	0.000	(103.807)	(1,115.406)	3,556.034	(3,556.034)	96.815	11.647	(3,179.475)

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Line No.	Description	Issue 5b UP 96 Stipulation (Post-4) (25)	Issue 5c UP 96 Effect on Property Taxes (26)	Issue 6a 1995 EAS Conversion (Post-7) (27)	Issue 6b 1996 EAS Conversion (28)	Issue 6c Tariff, Price & Contract Changes Made After Jan. 1, 1995 (29)	Issue 6d Switched Access Filing (Post-11) (30)	(not used) (31)	Issue 7a(1) Current SFAS 106 Post- retirement Benefits (Post-5) (32)	Issue 7a(2) Unfunded SFAS 106 Post- retirement Benefits (Post-5) (32a)
1	Local Service & EAS			136,001	1,129,882	15,937,304				
2	Network Access						(1,582,542)			
3	Long Distance			(867,284)	(2,578,245)	153,895				
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles			5,035	8,503	(143,126)	2,511			
8	<b>TOTAL OPERATING REVENUES</b>			<b>(726,248)</b>	<b>(1,439,860)</b>	<b>15,948,073</b>	<b>(1,580,031)</b>			
9	Plant Specific								161,834	
10	Depreciation & Amortization									
11	Plant Nonspecific								80,495	
12	Access (interstate)									
13	Access (intrastate)			(296,903)	(538,090)		(1,910,499)			
14	Customer Operations (ex. B&C)					6,516,087			134,170	
15	Billing & Collection									
16	Corporate Operations								28,679	
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>			<b>(296,903)</b>	<b>(538,090)</b>	<b>6,516,087</b>	<b>(1,910,499)</b>		<b>405,178</b>	
19	Net State & Local Income Taxes	27,878	25,283	(28,441)	(60,738)	601,464	21,768		(26,742)	7,075
20	Net Federal Income Tax	138,083	125,227	(140,859)	(300,838)	2,979,070	107,815		(132,453)	35,042
21	Other Taxes		(383,074)	1,578	18,506	318,894	0,656			
22	<b>TOTAL OPERATING TAXES</b>	<b>165,961</b>	<b>(232,564)</b>	<b>(167,732)</b>	<b>(343,070)</b>	<b>3,899,428</b>	<b>130,239</b>		<b>(159,195)</b>	<b>42,117</b>
23	<b>NET OPERATING INCOME</b>	<b>(165,961)</b>	<b>232,564</b>	<b>(261,613)</b>	<b>(558,700)</b>	<b>5,532,558</b>	<b>200,229</b>		<b>(245,983)</b>	<b>(42,117)</b>
24	Telecommunications Plant in Service									(3,451,113)
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation	(22,400,000)								
28	Accumulated Amortization									
29	Accumulated Deferred Taxes	8,800,960								
30	<b>NET AVERAGE RATE BASE</b>	<b>(13,599,040)</b>								<b>(3,451,113)</b>
31	RETURN ON RATE BASE	0.16%	0.03%	-0.04%	-0.08%	0.77%	0.03%		-0.03%	0.04%
32	RETURN ON EQUITY	0.29%	0.05%	-0.07%	-0.14%	1.39%	0.05%		-0.05%	0.07%
33	REVENUE REQUIREMENT	(1,912,305)	(393,087)	442,186	944,832	(9,351,296)	(338,433)	0.000	415,768	(485,297)

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Line No.	Description	Issue 7b AT&T Post-retirement Benefits Cost-Sharing Agreement (33)	Issue 7c Disability Pension Payment True-Up (Post-8) (34)	Issue 7d Pension Accounting (Post-9, 12) (35)	Issue 7e End of Compensated Absences Accrual (36)	Issue 8a Team Performance Awards & Officers' Incentives (Bonuses) (37)	Issue 8b(1) 1996 Occupational Wage Increases (Pre-16) (38)	Issue 8b(2) 1996-1997 Wage & Salary Increases (38a)	(not used) (38b)
1	Local Service & EAS								
2	Network Access								
3	Long Distance								
4	Directory								
5	Billing & Collection								
6	Miscellaneous								
7	Uncollectibles								
8	<b>TOTAL OPERATING REVENUES</b>								
9	Plant Specific					(141,818)	1,863,240	1,153,030	
10	Depreciation & Amortization								
11	Plant Nonspecific					(1,984,115)	957,898	1,665,306	
12	Access (interstate)								
13	Access (intrastate)								
14	Customer Operations (ex. B&C)					(1,019,739)	1,426,360	2,471,697	
15	Billing & Collection								
16	Corporate Operations	(365,339)	(203,911)		(297,969)	(780,602)	199,503	2,418,265	
17	Other Gains & Losses								
18	<b>TOTAL OPERATING EXPENSES</b>	(365,339)	(203,911)		(297,969)	(3,906,274)	4,447,001	7,708,298	
19	Net State & Local Income Taxes	24,112	13,458	(79,457)	19,666	257,814	(293,502)	(508,748)	
20	Net Federal Income Tax	119,429	66,659	(393,553)	97,406	1,276,961	(1,453,725)	(2,519,843)	
21	Other Taxes								
22	<b>TOTAL OPERATING TAXES</b>	143,541	80,117	(473,010)	117,072	1,534,775	(1,747,227)	(3,028,591)	
23	<b>NET OPERATING INCOME</b>	221,798	123,794	473,010	180,897	2,371,499	(2,699,774)	(4,879,707)	
24	Telecommunications Plant in Service			38,758,976					
25	Plant Adjustment								
26	Materials & Supplies								
27	Accumulated Depreciation								
28	Accumulated Amortization								
29	Accumulated Deferred Taxes								
30	<b>NET AVERAGE RATE BASE</b>			38,758,976					
31	RETURN ON RATE BASE	0.03%	0.02%	-0.41%	0.03%	0.33%	-0.38%	-0.65%	
32	RETURN ON EQUITY	0.05%	0.04%	-0.74%	0.05%	0.59%	-0.69%	-1.17%	
33	REVENUE REQUIREMENT	(374,890)	(209,240)	5,450,309	(305,758)	(4,008,379)	4,563,239	7,909,781	0.000

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Line No.	Description	Issue 8b(2) Payroll Tax Increases (38c)	(not used) (38d)	Issue 8b(2) [Issue 8a] Bonuses Included in Wage Base (38e)	Issue 8b(2) [Issue 9a] Wage Base Related to Reengin'g (38f)	Issue 8c SFAS 109 Accounting for income Taxes (39)	Issue 8d SFAS 112 Accounting for Post- employment Benefits (40)	Issue 8e Ballot Measure 5 Property Taxes (Post-6) (41)	Issue 8f ORS 291.349 Income Tax Refund (42)	Issue 8g UM 767 Oregon Depreciation Repre- scription (Post-14) (43)
1	Local Service & EAS									
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles									
8	<b>TOTAL OPERATING REVENUES</b>									
9	Plant Specific	33,252		(42,181)	(112,351)					
10	Depreciation & Amortization									20,325,655
11	Plant Nonspecific	48,003		(60,921)	(162,268)					
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)	71,328		(90,421)	(240,843)					
15	Billing & Collection									
16	Corporate Operations	69,761		(88,466)	(235,637)					
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	222,344		(281,989)	(751,099)					20,325,655
19	Net State & Local Income Taxes	(14,675)		18,611	49,573		169,768	(575,822)	(1,328,844)	
20	Net Federal Income Tax	(72,684)		92,182	245,534		840,868	201,538	(6,581,808)	
21	Other Taxes						(2,572,248)			
22	<b>TOTAL OPERATING TAXES</b>	(87,359)		110,793	295,107		(1,561,612)	(374,284)	(7,910,652)	
23	<b>NET OPERATING INCOME</b>	(134,985)		171,196	455,992		1,561,612	374,284	(12,415,003)	
24	Telecommunications Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation									(10,163,000)
28	Accumulated Amortization									
29	Accumulated Deferred Taxes									3,993,043
30	<b>NET AVERAGE RATE BASE</b>									(6,169,957)
31	RETURN ON RATE BASE	-0.02%		0.02%	0.06%		0.22%	0.05%	-1.66%	
32	RETURN ON EQUITY	-0.04%		0.04%	0.11%		0.40%	0.09%	-2.99%	
33	<b>REVENUE REQUIREMENT</b>	228,156	0.000	(289,361)	(770,731)	0.000	0.000	(2,639,483)	(632,626)	19,989,318

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Line No.	Description	Issue 8h	Issue 8i	Issue 8j	Issue 8k	Issue 8l	Issue 8m	Issue 8n	Issue 9a
		Aircraft (44)	Advertising (45)	Average Growth in Access Lines (46)	Marketing Accrual Reversal (Pre-10) (47)	Information Management Systems (48)	Purchase Rebates (49)	PUC Fee Rate Change (50)	Service Reengineering Costs (51)
1	Local Service & EAS			24,219.789					
2	Network Access								
3	Long Distance								
4	Directory								
5	Billing & Collection								
6	Miscellaneous								
7	Uncollectibles			(215.823)					
8	<b>TOTAL OPERATING REVENUES</b>			24,003.966					
9	Plant Specific					(353.938)	(343.179)		(7,334.995)
10	Depreciation & Amortization								
11	Plant Nonspecific						(26.524)		(6,250.879)
12	Access (interstate)								
13	Access (intrastate)								
14	Customer Operations (ex. B&C)					(550.082)			(5,303.184)
15	Billing & Collection								
16	Corporate Operations				(392.870)		(189.072)		(6,017.658)
17	Other Gains & Losses								
18	<b>TOTAL OPERATING EXPENSES</b>				(392.870)	(904.020)	(558.775)		(24,906.717)
19	Net State & Local Income Taxes			1,552.308	25.929	59.665	36.879	(14.743)	1,643.843
20	Net Federal Income Tax			7,688.626	128.429	295.524	182.664	(73.025)	8,142.006
21	Other Taxes			484.154					223.386
22	<b>TOTAL OPERATING TAXES</b>			9,725.088	154.358	355.189	219.543	135.618	9,785.349
23	<b>NET OPERATING INCOME</b>			14,278.878	238.512	548.831	339.232	(135.618)	15,120.868
24	Telecommunications Plant in Service								
25	Plant Adjustment								
26	Materials & Supplies								
27	Accumulated Depreciation								
28	Accumulated Amortization								
29	Accumulated Deferred Taxes								
30	<b>NET AVERAGE RATE BASE</b>								
31	RETURN ON RATE BASE			1.99%	0.03%	0.08%	0.05%	-0.02%	2.11%
32	RETURN ON EQUITY			3.59%	0.05%	0.14%	0.09%	-0.04%	3.80%
33	REVENUE REQUIREMENT	0.000	0.000	(24,134.588)	(403.140)	(927.651)	(573.380)	229.226	(25,557.745)

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Line No.	Description	Issue 9b	Issue 9c	Issue 9d	Issues 1b and 11	Issue 10	TOTAL ADJS. Columns 7.. 13 and 15.. 56	ADJUSTED TEST YEAR Columns 6 + 57	Issue 8a
		Extra-ordinary Expenses (52)	Service Quality (53)	New Plant Investments & Related Costs (54)	Weighted Net-to-Gross Factor (55)	Effects of Adjustments on Intrastate Separations (56)			HB 2578 PUC Fee Statute Changes (58)
1	Local Service & EAS						42,621,435	390,730,435	
2	Network Access						136,934	62,673,934	
3	Long Distance					34,446	(2,190,967)	89,738,033	
4	Directory						52,461,752	56,280,752	
5	Billing & Collection						(29,000)	2,447,000	
6	Miscellaneous					(355,451)	6,441,664	22,000,664	
7	Uncollectibles					(0,248)	(102,068)	(4,221,068)	
8	<b>TOTAL OPERATING REVENUES</b>					(321,253)	99,339,750	619,649,750	
9	Plant Specific	(4,684,707)		4,191,385		96,515	(4,012,796)	80,138,204	
10	Depreciation & Amortization			14,735,401		(83,166)	49,030,177	142,199,177	
11	Plant Nonspecific	(1,357,703)				(14,227)	(6,866,582)	36,828,418	
12	Access (interstate)							0,000	
13	Access (intrastate)						(3,713,877)	23,487,123	
14	Customer Operations (ex. B&C)	(438,239)				(340,736)	3,566,432	84,130,432	
15	Billing & Collection					(457,442)	(566,636)	4,688,364	
16	Corporate Operations					91,916	(6,013,742)	61,769,258	
17	Other Gains & Losses			(13,482)			68,564	(180,437)	
18	<b>TOTAL OPERATING EXPENSES</b>	(6,480,649)		18,913,305		(707,140)	31,491,540	433,060,540	
19	Net State & Local Income Taxes	427,723		(1,557,493)		13,764	4,033,126	9,319,126	74,700
20	Net Federal Income Tax	2,118,524		(7,714,308)		42,496	20,437,390	41,300,390	390,842
21	Other Taxes			1,683,345		135,109	565,030	26,431,030	(1,191,391)
22	<b>TOTAL OPERATING TAXES</b>	2,546,247		(7,588,456)		191,369	25,035,546	77,050,546	(725,849)
23	<b>NET OPERATING INCOME</b>	3,934,402		(11,324,849)		194,518	42,812,665	109,538,664	725,849
24	Telecommunications Plant in Service			247,400,144		1,952,521	338,397,331	1,816,253,331	
25	Plant Adjustment					2,013	16,372	1,893,372	
26	Materials & Supplies			(3,414,487)		(2,830)	(5,645,553)	8,646,447	
27	Accumulated Depreciation			(136,886,962)		2,554,920	(193,191,228)	(769,306,228)	
28	Accumulated Amortization					(12,219)	(6,704)	(8,800,704)	
29	Accumulated Deferred Taxes			(10,459,072)		(214,171)	(1,097,747)	(192,070,747)	
30	<b>NET AVERAGE RATE BASE</b>			96,639,623		4,280,234	138,472,471	856,615,471	
31	RETURN ON RATE BASE	0.55%		-2.49%		-0.03%	3.50%	12.79%	0.10%
32	RETURN ON EQUITY	0.99%		-4.49%		-0.05%	6.31%	17.45%	0.18%
33	<b>REVENUE REQUIREMENT</b>	(6,650,044)	(11,190,643)	34,724,539	208,696	361,399	(61,016,794)	(58,000,000)	(1,226,852)

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**Docket UT 125**  
**U S WEST Communications, Inc.**  
**Total Oregon Subject to Separations**  
**Adjustments to Annualized Test Year**  
**(\$000's)**

Line No.	Description	ISSUES 1a-b	Issue 1c(1a)	Issue 1c(2a)	Issue 1c(3)	Issue 1c(4)	Company's Annualized Test Year	ISSUE 1c(1b)	Issue 1c(2b)
		Annualized Test Year Before Side Records	Annualized Side Record for Interest During Construction (Pre-1)	Annualized Side Record for Western Electric Affil. Interest (Pre-2)	Annualized Side Record for Interstate Depreciation (Pre-3)	Annualized Side Record for Property Held for Future Use (Pre-4)		Adjust Interest During Construction	Adjust Western Electric Affiliated Interest
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	Local Service & EAS	348,109.143					348,109.143		
2	Network Access	248,399.363					248,399.363		
3	Long Distance	112,528.408					112,528.408		
4	Directory	3,818.935					3,818.935		
5	Billing & Collection	8,386.560					8,386.560		
6	Miscellaneous	18,096.792					18,096.792		
7	Uncollectibles	(5,811.267)					(5,811.267)		
8	<b>TOTAL OPERATING REVENUES</b>	<b>733,527.934</b>					<b>733,527.934</b>		
9	Plant Specific	117,634.532					117,634.532		
10	Depreciation & Amortization	154,827.489	1,543.287	(456.974)	(24,371.895)		131,541.907		456.974
11	Plant Nonspecific	62,355.959					62,355.959		
12	Access (Interstate)	3,926.760					3,926.760		
13	Access (Intrastate)	27,200.583					27,200.583		
14	Customer Operations (ex. B&C)	101,009.361					101,009.361		
15	Billing & Collection	7,092.521					7,092.521		
16	Corporate Operations	91,512.189					91,512.189		
17	Other Gains & Losses	(352.385)					(352.385)		
18	<b>TOTAL OPERATING EXPENSES</b>	<b>555,207.009</b>	<b>1,543.287</b>	<b>(456.974)</b>	<b>(24,371.895)</b>		<b>541,921.427</b>		<b>456.974</b>
19	Net State & Local Income Taxes	8,189.645				1,559.353	9,748.998	(18,519)	
20	Net Federal Income Tax	29,111.402				8,134.701	37,246.103	(68,615)	
21	Other Taxes	31,946.981					31,946.981		
22	<b>TOTAL OPERATING TAXES</b>	<b>69,248.028</b>				<b>9,694.054</b>	<b>78,942.082</b>	<b>(87,134)</b>	
23	<b>NET OPERATING INCOME</b>	<b>99,072.897</b>	<b>(1,543.287)</b>	<b>456.974</b>	<b>14,677.841</b>		<b>112,664.425</b>	<b>87,134</b>	<b>(456.974)</b>
24	Telecommunications Plant in Service	2,079,782.815	19,854.345	(6,437.347)			2,093,199.813	114,480	
25	Plant Adjustment	2,649.594					2,649.594		
26	Materials & Supplies	19,944.722					19,944.722		
27	Accumulated Depreciation	(840,540.617)	(6,266.746)	5,287.102	20,761.994	51.343	(820,706.924)	(66,782)	1,150.245
28	Accumulated Amortization	(11,909.855)					(11,909.855)		
29	Accumulated Deferred Taxes	(261,445.502)				(8,075.117)	(269,520.619)	(880,000)	
30	<b>NET AVERAGE RATE BASE</b>	<b>988,481.157</b>	<b>13,587.599</b>	<b>(1,150.245)</b>	<b>12,686.877</b>	<b>51.343</b>	<b>1,013,656.731</b>	<b>(832,302)</b>	<b>1,150.245</b>
31	RETURN ON OREGON RATE BASE	10.02%	-0.29%	0.06%	1.34%	-0.00%	11.11%	0.02%	-0.05%
32	RETURN ON EQUITY						14.43%		

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**(S000's)**

Line No.	Description	Issue 1d Remove Annualized Caller ID (Pre-6) (9)	Issue 1e Remove Annualized UP 98 Sale of Exchanges to PTI (Pre-11) (10)	Issue 1f Remove Annualized 1996 Wage Increases (Pre-16) (11)	Issue 1g Different Operating Tax Annualization Methods (12)	Issues 1h-n Other Different Annualization Methods (13)	Annualized Test Year as Stipulated Columns 6 through 13 (14)	Issue 1m Switching Assets (14a)	Issue 2d Interest Coordination (Fixed Charges) (Post-2) (15)
1	Local Service & EAS		4,077,347			876,107	353,062,597		
2	Network Access		9,001,528			(784,766)	256,616,125		
3	Long Distance					1,305,329	113,833,737		
4	Directory		33,285			69,649	3,921,869		
5	Billing & Collection						8,386,560		
6	Miscellaneous		87,089			(706,841)	17,477,040		
7	Uncollectibles		(107,194)			1,571,075	(4,347,386)		
8	<b>TOTAL OPERATING REVENUES</b>		<b>13,092,055</b>			<b>2,330,553</b>	<b>748,950,542</b>		
9	Plant Specific		157,207	(2,594,392)			115,197,347		
10	Depreciation & Amortization		5,122,595				137,121,476		
11	Plant Nonspecific			(1,354,929)			61,001,030		
12	Access (interstate)		(25,000)				3,901,760		
13	Access (intrastate)		(3,790,000)				23,410,583		
14	Customer Operations (ex. B&C)	781,937		(1,795,746)			99,995,552		
15	Billing & Collection		(439,000)			(31,283)	6,622,238		
16	Corporate Operations			(268,821)			91,243,368		
17	Other Gains & Losses						(352,385)		
18	<b>TOTAL OPERATING EXPENSES</b>	<b>781,937</b>	<b>1,025,802</b>	<b>(6,013,888)</b>		<b>(31,283)</b>	<b>538,140,969</b>		
19	Net State & Local Income Taxes	(51,608)	769,536	396,917	1,269	152,105	10,998,698	12,672	46,237
20	Net Federal Income Tax	(255,961)	3,848,750	1,968,596	12,776	769,105	43,520,754	62,766	229,011
21	Other Taxes		308,662		(38,542)	17,203	32,234,304		
22	<b>TOTAL OPERATING TAXES</b>	<b>(307,569)</b>	<b>4,926,948</b>	<b>2,365,513</b>	<b>(24,497)</b>	<b>938,413</b>	<b>86,753,756</b>	<b>75,438</b>	<b>275,248</b>
23	<b>NET OPERATING INCOME</b>	<b>(474,368)</b>	<b>7,139,305</b>	<b>3,648,375</b>	<b>24,497</b>	<b>1,423,423</b>	<b>124,055,817</b>	<b>(75,438)</b>	<b>(275,248)</b>
24	Telecommunications Plant in Service		89,381,330			(8,328,031)	2,174,367,592	(242,884)	
25	Plant Adjustment						2,649,594		
26	Materials & Supplies						19,944,722		
27	Accumulated Depreciation		(28,984,561)			188,553	(848,419,469)	(5,938,595)	
28	Accumulated Amortization						(11,909,855)		
29	Accumulated Deferred Taxes		(8,865,231)		393,116		(278,872,734)		
30	<b>NET AVERAGE RATE BASE</b>		<b>51,531,538</b>		<b>393,116</b>	<b>(8,139,478)</b>	<b>1,057,759,850</b>	<b>(6,181,479)</b>	
31	RETURN ON OREGON RATE BASE	-0.05%	0.19%	0.37%	-0.00%	0.23%	11.73%	0.06%	-0.03%
32	RETURN ON EQUITY						15.54%		

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Line No.	Description	Issue 3a	Issue 3b	Issue 4a	Issue 4b	Issue 4c	Issue 4d(1)	Issue 4d(2)	Issue 4d(3)
		U S WEST Direct Directory Imputation (Post-13) (16)	U S WEST Direct Directory Growth (16a)	Rent Compensation Study (Post-1) (17)	UM 753 Affiliate & Certain Leases (18)	Strategic Marketing (19)	Fax Services (20)	Growth in Fax Services (20a)	Affiliated Interest Charges (Post-3) (20b)
1	Local Service & EAS								
2	Network Access								
3	Long Distance								
4	Directory	49,225.200	3,165.000						
5	Billing & Collection								
6	Miscellaneous						944.300		
7	Uncollectibles								
8	<b>TOTAL OPERATING REVENUES</b>	<b>49,225.200</b>	<b>3,165.000</b>				<b>944.300</b>		
9	Plant Specific			5,347.325	(86.684)				
10	Depreciation & Amortization			18,615.019					
11	Plant Nonspecific								
12	Access (interstate)								
13	Access (intrastate)								
14	Customer Operations (ex. B&C)								
15	Billing & Collection								
16	Corporate Operations					(141.900)			(221.652)
17	Other Gains & Losses								
18	<b>TOTAL OPERATING EXPENSES</b>			<b>23,962.344</b>	<b>(86.684)</b>	<b>(141.900)</b>			<b>(221.652)</b>
19	Net State & Local Income Taxes	3,242.366	208.472	(1,661.573)	5.721	9.365	62.199		14.629
20	Net Federal Income Tax	16,059.534	1,032.569	(8,229.821)	28.337	46.387	308.074		72.458
21	Other Taxes	98.450	6.330	21.183			1.889		
22	<b>TOTAL OPERATING TAXES</b>	<b>19,400.350</b>	<b>1,247.371</b>	<b>(9,870.211)</b>	<b>34.058</b>	<b>55.752</b>	<b>372.162</b>		<b>87.087</b>
23	<b>NET OPERATING INCOME</b>	<b>29,824.850</b>	<b>1,917.629</b>	<b>(14,092.133)</b>	<b>52.626</b>	<b>86.148</b>	<b>572.138</b>		<b>134.565</b>
24	Telecommunications Plant in Service			61,965.510					
25	Plant Adjustment								
26	Materials & Supplies			(3,332.196)					
27	Accumulated Depreciation			(19,203.254)					
28	Accumulated Amortization								
29	Accumulated Deferred Taxes			(1,059.777)					
30	<b>NET AVERAGE RATE BASE</b>			<b>38,370.283</b>					
31	RETURN ON OREGON RATE BASE	2.48%	0.15%	-1.53%			0.05%		0.01%
32	RETURN ON EQUITY								

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Line No.	Description	Issue 4d(4) FCC License (20c)	Issue 4e Affiliated Interest-Return Component (21)	Issue 4f Headquarters Allocations (22)	Issue 4g(1) Part 64 Still Regulated (Post-10) (23)	Issue 4g(2) Revenue Requirement Part 64 Still Regulated (23a1)	Issue 4g(2) VMS Promotional Offerings (23a2)	Issue 4h Non-regulated Costs in Columns 18 through 21 (23b)	Issue 5a UP 96 Sale of Exchanges to PTI (Pre-11) (24)
1	Local Service & EAS								(3,755,138)
2	Network Access								(2,921,022)
3	Long Distance								
4	Directory								(31,317)
5	Billing & Collection								(88,000)
6	Miscellaneous				4,517,316	3,472,397	(94,538)		(82,106)
7	Uncollectibles				(25,948)				48,918
8	<b>TOTAL OPERATING REVENUES</b>				<b>4,491,367</b>	<b>3,472,397</b>	<b>(94,538)</b>		<b>(6,828,665)</b>
9	Plant Specific			(154,255)	1,423,770			4,182	(2,468,940)
10	Depreciation & Amortization				1,137,732				(5,180,098)
11	Plant Nonspecific			(280,182)	1,528,833				(135,070)
12	Access (interstate)								49,441
13	Access (intrastate)								2,822,032
14	Customer Operations (ex. B&C)			(269,584)	3,090,908				(218,190)
15	Billing & Collection								345,566
16	Corporate Operations		(136,312)	(759,965)	1,210,208			11,248	(207,800)
17	Other Gains & Losses				115,784				
18	<b>TOTAL OPERATING EXPENSES</b>		<b>(136,312)</b>	<b>(1,463,986)</b>	<b>8,507,235</b>			<b>15,430</b>	<b>(4,993,059)</b>
19	Net State & Local Income Taxes		8,997	96,623	(283,781)	217,284	(5,916)	(1,018)	(7,364)
20	Net Federal Income Tax		44,560	478,577	(1,415,592)	1,136,859	(30,952)	(5,044)	(36,474)
21	Other Taxes				103,819	6,945	(0,189)		(87,744)
22	<b>TOTAL OPERATING TAXES</b>		<b>53,557</b>	<b>575,200</b>	<b>(1,595,554)</b>	<b>1,361,088</b>	<b>(37,057)</b>	<b>(6,052)</b>	<b>(131,582)</b>
23	<b>NET OPERATING INCOME</b>		<b>82,755</b>	<b>888,786</b>	<b>(2,420,314)</b>	<b>2,111,309</b>	<b>(57,481)</b>	<b>(9,368)</b>	<b>(1,704,024)</b>
24	Telecommunications Plant in Service				8,707,515				(90,202,348)
25	Plant Adjustment				9,756				
26	Materials & Supplies				95,285				
27	Accumulated Depreciation				(3,405,456)				29,412,068
28	Accumulated Amortization								
29	Accumulated Deferred Taxes				(932,468)				8,110,481
30	<b>NET AVERAGE RATE BASE</b>				<b>4,474,832</b>				<b>(52,679,799)</b>
31	RETURN ON OREGON RATE BASE			0.07%	-0.25%	0.17%	-0.01%		0.42%
32	RETURN ON EQUITY								

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Line No.	Description	Issue 5b UP 96 Stipulation (Post-4) (25)	Issue 5c UP 96 Effect on Property Taxes (26)	Issue 6a 1995 EAS Conversion (Post-7) (27)	Issue 6b 1996 EAS Conversion (28)	Issue 6c Tariff, Price & Contract Changes Made After Jan. 1, 1995 (29)	Issue 6d Switched Access Filing (Post-11) (30)	(not used) (31)	Issue 7a(1) SFAS 106 Post- retirement Benefits (Post-5) (32)	Issue 7a(2) Unfunded SFAS 106 Post- retirement Benefits (Post-5) (32a)
1	Local Service & EAS			136,001	1,129,882	15,937,304				
2	Network Access						(2,526,514)			
3	Long Distance			(867,284)	(2,578,245)	153,895				
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles			5,035	8,503	(143,126)	4,010			
8	<b>TOTAL OPERATING REVENUES</b>			<b>(725,248)</b>	<b>(1,439,860)</b>	<b>15,948,073</b>	<b>(2,522,504)</b>			
9	Plant Specific								225,339	
10	Depreciation & Amortization									
11	Plant Nonspecific								113,858	
12	Access (interstate)									
13	Access (intrastate)			(296,903)	(538,090)		(1,910,499)			
14	Customer Operations (ex. B&C)					8,203,569			168,916	
15	Billing & Collection									
16	Corporate Operations								38,644	
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>			<b>(296,903)</b>	<b>(538,090)</b>	<b>8,203,569</b>	<b>(1,910,499)</b>		<b>546,757</b>	
19	Net State & Local Income Taxes	39,539	35,546	(28,441)	(60,738)	490,090	(40,311)		(36,086)	9,952
20	Net Federal Income Tax	195,836	176,053	(140,869)	(300,838)	2,427,432	(199,662)		(178,735)	49,292
21	Other Taxes		(538,582)	1,578	18,506	318,894	(1,232)			
22	<b>TOTAL OPERATING TAXES</b>	<b>235,375</b>	<b>(326,973)</b>	<b>(167,732)</b>	<b>(343,070)</b>	<b>3,236,416</b>	<b>(241,205)</b>		<b>(214,821)</b>	<b>59,244</b>
23	<b>NET OPERATING INCOME</b>	<b>(235,375)</b>	<b>326,973</b>	<b>(261,613)</b>	<b>(558,700)</b>	<b>4,508,088</b>	<b>(370,800)</b>		<b>(331,935)</b>	<b>(59,244)</b>
24	Telecommunications Plant in Service									(4,854,494)
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation	(31,631,984)								
28	Accumulated Amortization									
29	Accumulated Deferred Taxes	12,345,086								
30	<b>NET AVERAGE RATE BASE</b>	<b>(19,286,898)</b>								<b>(4,854,494)</b>
31	RETURN ON OREGON RATE BASE	0.18%	0.02%	-0.02%	-0.05%	0.37%	-0.03%		-0.03%	0.04%
32	RETURN ON EQUITY									

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Line No.	Description	Issue 7b AT&T Post-retirement Benefits Cost-Sharing Agreement (33)	Issue 7c Disability Pension Payment True-Up (Post-8) (34)	Issue 7d Pension Accounting (Post-9, 12) (35)	Issue 7e End of Compensated Absences Accrual (36)	Issue 8a Team Performance Awards & Officers' Incentives (Bonuses) (37)	Issue 8b(1) 1996 Occupational Wage Increases (Pre-16) (38)	Issue 8b(2) 1996-1997 Wage & Salary Increases (38a)	(not used) (38b)
1	Local Service & EAS								
2	Network Access								
3	Long Distance								
4	Directory								
5	Billing & Collection								
6	Miscellaneous								
7	Uncollectibles								
8	<b>TOTAL OPERATING REVENUES</b>								
9	Plant Specific					(197,468)	2,594,391	1,605,489	
10	Depreciation & Amortization								
11	Plant Nonspecific					(2,778,204)	1,354,929	2,355,544	
12	Access (interstate)								
13	Access (intrastate)								
14	Customer Operations (ex. B&C)					(1,283,823)	1,795,747	3,111,797	
15	Billing & Collection								
16	Corporate Operations	(492,278)	(274,761)		(401,500)	(1,051,826)	268,821	3,258,502	
17	Other Gains & Losses								
18	<b>TOTAL OPERATING EXPENSES</b>	(492,278)	(274,761)		(401,500)	(5,311,321)	6,013,888	10,331,332	
19	Net State & Local Income Taxes	32,490	18,134	(111,768)	26,499	350,547	(396,917)	(681,868)	
20	Net Federal Income Tax	160,926	89,819	(553,589)	131,250	1,736,271	(1,965,940)	(3,377,312)	
21	Other Taxes								
22	<b>TOTAL OPERATING TAXES</b>	193,416	107,953	(665,357)	157,749	2,086,818	(2,362,857)	(4,059,180)	
23	<b>NET OPERATING INCOME</b>	298,862	166,808	665,357	243,751	3,224,503	(3,651,031)	(6,272,152)	
24	Telecommunications Plant in Service			54,520.152					
25	Plant Adjustment								
26	Materials & Supplies								
27	Accumulated Depreciation								
28	Accumulated Amortization								
29	Accumulated Deferred Taxes								
30	<b>NET AVERAGE RATE BASE</b>			54,520.152					
31	RETURN ON OREGON RATE BASE	0.02%	0.01%	-0.49%	0.02%	0.27%	-0.31%	-0.53%	
32	RETURN ON EQUITY								

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Line No.	Description	Issue 8b(2)	Issue 8b(2)	Issue 8b(2)	Issue 8c	Issue 8d	Issue 8e	Issue 8f	Issue 8g
		Payroll Tax Increases (38c)	(not used) (38d)	Bonuses Included in Wage Base (38e)	Wage Base Related to Reengin'g (38f)	SFAS 109 Accounting for Income Taxes (39)	SFAS 112 Accounting for Post-employment Benefits (40)	Ballot Measure 5 Property Taxes (Post-6) (41)	ORS 291.349 Income Tax Refund (42)
1	Local Service & EAS								
2	Network Access								
3	Long Distance								
4	Directory								
5	Billing & Collection								
6	Miscellaneous								
7	Uncollectibles								
8	<b>TOTAL OPERATING REVENUES</b>								
9	Plant Specific	46,300		(58,733)	(156,439)				
10	Depreciation & Amortization								28,897,735
11	Plant Nonspecific	67,900		(86,172)	(229,525)				
12	Access (interstate)								
13	Access (intrastate)								
14	Customer Operations (ex. B&C)	89,800		(113,837)	(303,214)				
15	Billing & Collection								
16	Corporate Operations	94,000		(119,204)	(317,510)				
17	Other Gains & Losses								
18	<b>TOTAL OPERATING EXPENSES</b>	298,000		(377,946)	(1,006,688)				28,897,735
19	Net State & Local Income Taxes	(19,668)		24,944	66,441		222,064	(785,443)	(1,889,268)
20	Net Federal Income Tax	(97,416)		123,551	329,086		1,099,892	274,905	(9,357,601)
21	Other Taxes						(3,354,612)		
22	<b>TOTAL OPERATING TAXES</b>	(117,084)		148,495	395,527		(2,042,656)	(510,538)	(11,246,869)
23	<b>NET OPERATING INCOME</b>	(180,916)		229,451	611,161		2,042,656	510,538	(17,650,866)
24	Telecommunications Plant in Service								
25	Plant Adjustment								
26	Materials & Supplies								
27	Accumulated Depreciation								(14,448,868)
28	Accumulated Amortization								
29	Accumulated Deferred Taxes								5,676,960
30	<b>NET AVERAGE RATE BASE</b>								(8,771,908)
31	RETURN ON OREGON RATE BASE	-0.02%		0.02%	0.05%		0.17%	0.04%	-1.39%
32	RETURN ON EQUITY								

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Line No.	Description	Issue 8h	Issue 8i	Issue 8j	Issue 8k	Issue 8l	Issue 8m	Issue 8n	Issue 9a
		Aircraft	Advertising	Average Growth in Access Lines	Marketing Accrual Reversal (Pre-10)	Information Management Systems	Purchase Rebates	PUC Fee Rate Change	Service Reengineering Costs
		(44)	(45)	(46)	(47)	(48)	(49)	(50)	(51)
1	Local Service & EAS			24,219.789					
2	Network Access								
3	Long Distance								
4	Directory								
5	Billing & Collection								
6	Miscellaneous								
7	Uncollectibles			(215.823)					
8	<b>TOTAL OPERATING REVENUES</b>			24,003.966					
9	Plant Specific					(492.827)	(477.846)		(10,213.311)
10	Depreciation & Amortization								
11	Plant Nonspecific						(37.517)		(8,841.750)
12	Access (interstate)								
13	Access (intrastate)								
14	Customer Operations (ex. B&C)					(692.538)			(6,676.559)
15	Billing & Collection								
16	Corporate Operations				(529.375)		(254.766)		(8,108.521)
17	Other Gains & Losses								
18	<b>TOTAL OPERATING EXPENSES</b>				(529.375)	(1,185.365)	(770.129)		(33,840.141)
19	Net State & Local Income Taxes			1,552.308	34.939	78.234	50.829	(20.019)	2,233.449
20	Net Federal Income Tax			7,688.626	173.053	387.496	251.755	(99.155)	11,062.342
21	Other Taxes			484.154				303.318	
22	<b>TOTAL OPERATING TAXES</b>			9,725.088	207.992	465.730	302.584	184.144	13,295.791
23	<b>NET OPERATING INCOME</b>			14,278.878	321.383	719.635	467.545	(184.144)	20,544.350
24	Telecommunications Plant in Service								
25	Plant Adjustment								
26	Materials & Supplies								
27	Accumulated Depreciation								
28	Accumulated Amortization								
29	Accumulated Deferred Taxes								
30	<b>NET AVERAGE RATE BASE</b>								
31	RETURN ON OREGON RATE BASE			1.19%	0.02%	0.06%	0.04%	-0.02%	1.71%
32	RETURN ON EQUITY								

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(S000's)**

Line No.	Description	Issue 9b	Issue 9c	Issue 9d	Issues 1b and 11	Issue 10	TOTAL ADJS.
		Extra-ordinary Expenses	Service Quality	New Plant Investments & Related Costs	Weighted Net-to-Gross Factor	Effects of Adjustments on Intrastate Separations	Columns 7.. 13 and 15.. 56
		(52)	(53)	(54)	(55)	(56)	(57)
1	Local Service & EAS						42,621.292
2	Network Access						2,769.226
3	Long Distance						(1,986.305)
4	Directory						52,461.817
5	Billing & Collection						(88.000)
6	Miscellaneous						8,137.617
7	Uncollectibles						1,145.449
8	<b>TOTAL OPERATING REVENUES</b>						<b>105,061.096</b>
9	Plant Specific	(6,523.026)		5,836.120			(6,183.798)
10	Depreciation & Amortization			20,949.864			69,999.821
11	Plant Nonspecific	(1,920.446)					(10,242.731)
12	Access (interstate)						24.441
13	Access (intrastate)						(3,713.460)
14	Customer Operations (ex. B&C)	(551.731)					5,337.452
15	Billing & Collection						(124.717)
16	Corporate Operations						(8,404.768)
17	Other Gains & Losses			(19.105)			96.679
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(8,995.203)</b>		<b>26,766.879</b>			<b>46,788.919</b>
19	Net State & Local Income Taxes	593.683		(2,201.403)			2,802.371
20	Net Federal Income Tax	2,940.532		(10,903.617)			18,179.293
21	Other Taxes			2,367.870			27.900
22	<b>TOTAL OPERATING TAXES</b>	<b>3,534.215</b>		<b>(10,737.150)</b>			<b>21,009.564</b>
23	<b>NET OPERATING INCOME</b>	<b>5,460.988</b>		<b>(16,029.729)</b>			<b>37,262.613</b>
24	Telecommunications Plant in Service			348,004.383			459,065.613
25	Plant Adjustment						9.756
26	Materials & Supplies			(4,728.754)			(7,965.665)
27	Accumulated Depreciation			(192,734.203)			(265,662.837)
28	Accumulated Amortization						
29	Accumulated Deferred Taxes			(14,684.738)			103.429
30	<b>NET AVERAGE RATE BASE</b>			<b>135,856.689</b>			<b>185,550.297</b>
31	RETURN ON OREGON RATE BASE	0.45%		-2.48%			1.39%
32	RETURN ON EQUITY						2.50%

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U S WEST Communications, Inc.  
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(\$000's)**

Comparison of Total Oregon and Intrastate Data

Line No.	Description	TOTAL OREGON	FINAL SEPARATION FACTORS	TOTAL INTRASTATE
		Columns 6 + 57 (58)	(59)	Col. 58 x Col. 59 equals Exhibit Staff/113, Lambeth/11, Column 58 (60)
1	Local Service & EAS	390,730.435	100.0000%	390,730.435
2	Network Access	251,168.589	24.9529%	62,673.934
3	Long Distance	110,542.103	81.1872%	89,738.033
4	Directory	56,280.752	100.0000%	56,280.752
5	Billing & Collection	8,298.560	29.4870%	2,447.000
6	Miscellaneous	26,234.409	85.7780%	22,000.664
7	Uncollectibles	(4,665.818)	calculated	(4,221.068)
8	<b>TOTAL OPERATING REVENUES</b>	<b>838,589.030</b>	<b>74%</b>	<b>619,649.750</b>
9	Plant Specific	111,450.734	71.9046%	80,138.204
10	Depreciation & Amortization	201,541.728	70.5557%	142,199.177
11	Plant Nonspecific	52,113.228	70.6700%	36,828.418
12	Access (interstate)	3,951.201	0.0000%	0.000
13	Access (intrastate)	23,487.123	100.0000%	23,487.123
14	Customer Operations (ex. B&C)	106,346.813	79.1095%	84,130.432
15	Billing & Collection	6,967.804	67.2861%	4,688.364
16	Corporate Operations	83,107.421	74.3246%	61,769.258
17	Other Gains & Losses	(255.706)	70.5640%	(180.437)
18	<b>TOTAL OPERATING EXPENSES</b>	<b>588,710.346</b>	<b>74%</b>	<b>433,060.540</b>
19	Net State & Local Income Taxes	12,551.369	calculated	9,319.126
20	Net Federal Income Tax	55,425.396	calculated	41,300.390
21	Other Taxes	31,974.881	calculated	26,431.030
22	<b>TOTAL OPERATING TAXES</b>	<b>99,951.646</b>	<b>77%</b>	<b>77,050.546</b>
23	<b>NET OPERATING INCOME</b>	<b>149,927.038</b>	<b>73%</b>	<b>109,538.664</b>
24	Telecommunications Plant in Service	2,552,265.426	71.1624%	1,816,253.331
25	Plant Adjustment	2,659.350	71.1968%	1,893.372
26	Materials & Supplies	11,979.057	72.1797%	8,646.447
27	Accumulated Depreciation	(1,086,369.761)	70.8144%	(769,306.228)
28	Accumulated Amortization	(11,909.855)	73.8943%	(8,800.704)
29	Accumulated Deferred Taxes	(269,417.190)	71.2912%	(192,070.747)
30	<b>NET AVERAGE RATE BASE</b>	<b>1,199,207.028</b>	<b>71%</b>	<b>856,615.471</b>
31	RETURN ON OREGON RATE BASE	12.50%		12.79%
32	RETURN ON EQUITY	16.93%		17.45%

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ORDER NO. : **97-171**

ENTERED **MAY 19 1997**

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 125

In the Matter of the Application of U S WEST )  
Communications, Inc., for an Increase in Revenues. )

ORDER

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**APPENDICES**

**APPENDIX A: RESULTS OF OPERATIONS**

**APPENDIX B: STIPULATION 1**

**APPENDIX C: STIPULATION 2**

**APPENDIX D: PRICE CHANGES MADE AFTER  
JANUARY 1, 1995 (ISSUE 6C)**

**APPENDIX E: CALCULATION OF REFUND (ISSUE 11)**

## ISSUE LIST: UT 125, REVENUE REQUIREMENT PHASE

All Figures Given in Millions

Settled Issues Are Discussed in the Stipulations, Appendices B and C

## Issue 1: Test Year

## Completely Settled Issues:

- Issue 1a(2), Annualization Methods (Adjustment 1).
- Issue 1b, Net-to-Gross Factors.
- Issues 1c-m(1), Side Records and Annualizations (Adjustments 2-13).
- Issue 1n, Separations.

## Disputed Issues:

- Issue 1a(1), Test Year.
- Issue 1m(2), Switching Assets (Adjustment 14a).

## Staff's Proposed

Revenue Requirement Adjustments

\$ ( 3.6)	Issue 3b, U S WEST Direct Directory Growth
( .7)	Issue 4d(2), Fax Services Growth
( .5)	Issue 7a(2), SFAS 106 Postretirement Benefits
7.6	Issue 8b(2), Other Payroll Changes
(24.1)	Issue 8j, Average Growth in Access Lines
.2	Issue 8n, PUC Fee
<u>\$(21.1)</u>	<u>Staff's Pro Forma Adjustments</u>

\$( .1)	Issue 4d(1), Fax Services
( 9.4)	Issue 6c, Tariff, Price and Contract Changes
( .8)	Issue 8b(2), Wage Increases Related to Reengineering Wages
( .9)	Issue 8l, Information Management Systems
(25.5)	Issue 9a, Service Reengineering Costs
<u>( 6.7)</u>	<u>Issue 9b, Extraordinary Expenses</u>
<u>\$(43.4)</u>	<u>Staff's Normalizing Adjustments</u>

## Issue 1m(2): Switching Assets

\$ ( 0.6)	Staff's Proposed Revenue Requirement
0.0	USWC's Proposed Revenue Requirement

## Disposition: Staff's Proposed Adjustments Adopted

## Issue 2: Cost of Capital

## Completely Settled Issues:

- Issues 2 a-b, Cost of Debt and Capital Structure.

## Significantly Undisputed Issue:

- Issue 2d, Interest Coordination (Adjustment 15).

**Disputed Issue:**

- *Issue 2c, Cost of Equity.*  
*Staff's proposed reasonable range of return on equity: 10.2%-12.9%.*  
*USWC's proposed return on equity: 13.75%*

Difference in	
<u>Revenue Requirement</u>	
\$ ( 4.4)	Staff's Proposed Revenue Requirement
( .1)	Issue 4e, Affiliated Interest Return Component (Adjustment 21)
( 7.0)	USWC's Proposed Revenue Requirement (as revised on October 7, 1996)
<u>( .3)</u>	Issue 7d, Pension Accounting (Adjustment 35)
<u>\$ (11.8)</u>	Issue 2c, Cost of Equity

**Disposition: Staff's Proposed Cost of Equity Adopted (10.2%)**

**Issue 3: U S WEST Direct Directory Imputation**

**Disputed Issues:**

- *Issue 3a, U S WEST Direct Directory Imputation (Adjustment 16).*
- *Issue 3b, U S WEST Direct Directory Growth (Adjustment 16a).*

Difference in	
<u>Revenue Requirement</u>	
\$(59.2)	Staff's Proposed Revenue Requirement
<u>(34.7)</u>	USWC's Proposed Revenue Requirement
<u>\$(24.5)</u>	Issue 3, U S WEST Direct Directory

**Disposition: Staff's Proposed Adjustments Adopted**

**Issue 4: Affiliated Interests & Corporate Allocations**

**Completely Settled Issues:**

- *Issue 4c, Strategic Marketing (Adjustment 19).*
- *Issue 4d(3), Affiliated Interest Charges (Adjustment 20b).*
- *Issue 4g(1), Part 64 Still Regulated (Adjustment 23).*

**Significantly Undisputed Issues:**

- *Issue 4e, Affiliated Interest Return Component (Adjustment 21).*
- *Issue 4f, Headquarters Allocations (Adjustment 22).*
- *Issue 4h, Nonregulated Costs Removed in Columns 18-21 (Adjustment 23b).*

**Disputed Issues:**

- *Issue 4a, Rent Compensation Study (Adjustment 17).*
- *Issue 4b, UM 753 Affiliate and Certain Lease Expenses (Adjustment 18).*
- *Issue 4d(1) and 4d(2), Fax Services (Adjustments 20-20a).*
- *Issue 4d(4), FCC License (Adjustment 20c).*
- *Issue 4g(2), Part 64 Still Regulated Revenue Imputation (Adjustment 23a).*

Difference in	
<u>Revenue Requirement</u>	
\$16.1	Staff's Proposed Revenue Requirement
<u>24.7</u>	USWC's Proposed Revenue Requirement
\$(8.6)	Issue 4, Affiliated Interests and Corporate Allocations

Difference	
<u>by Subissue</u>	
\$(1.0)	Issue 4a, Rent Compensation Study
(1.5)	Issue 4f, Headquarters Allocations
(3.6)	Issue 4g(2), Part 64 Still Regulated
<u>(1.5)</u>	Other Differences <sup>1</sup>
\$(8.6)	Total Issue 4 Differences

**Disposition: Staff's Proposed Adjustments Adopted Except for Issues 4a, 4d(4)**

**Issue 5: UP 96 Sale of Exchanges**

**Completely Settled Issue:**

- *Issue 5c, Effect on Property Taxes (Adjustment 26).*

**Significantly Undisputed Issue:**

- *Issue 5b, Stipulation (Adjustment 25).*

**Disputed Issue:**

- *Issue 5a, Sale of Exchanges (Adjustment 24).*

Difference in	
<u>Revenue Requirement</u>	
\$(5.5)	Staff's Proposed Revenue Requirement
<u>(3.8)</u>	USWC's Proposed Revenue Requirement
\$(1.7)	Issue 5, UP 96 Sale of Exchanges

**Disposition: Staff's Proposed Adjustment Adopted**

**Issue 6: Operating Revenues**

**Completely Settled Issues:**

- *Issues 6a-b, EAS Conversion (Adjustments 27, 28).*
- *Issue 6d, Switched Access Filing (Adjustment 30).*

**Disputed Issue:**

- *Issue 6c, Tariff, Price, and Contract Changes Made after January 1, 1995 (Adjustment 29).*

<sup>1</sup> The amount shown excludes \$(.1) million related to return on equity on Affiliated Interest Charges, Issue 4d. It has been included with Issue 2c, Cost of Equity.

Difference in	
<u>Revenue Requirement</u>	
\$ (9.4)	Staff's Proposed Revenue Requirement
<u>(.3)</u>	USWC's Proposed Revenue Requirement
<u>\$(9.1)</u>	Issue 6c, Tariff, Price and Contract Changes Made after January 1, 1995

**Disposition: Staff's Proposed Adjustments Adopted**

**Issue 7: Employee Benefits**

**Completely Settled Issues:**

- *Issue 7b, AT&T Postretirement Benefits Cost-Sharing (Adjustment 33).*
- *Issue 7c, Disability Pension Payment True-up (Adjustment 34).*
- *Issue 7e, End of Compensated Absences Accrual (Adjustment 36).*

**Significantly Undisputed Issue:**

- *Issue 7d, Pension Accounting (Adjustment 35).*

**Disputed Issues:**

- *Issue 7a(1), Current Statement of Financial Accounting Standards (SFAS) 106 Postretirement Benefits (Adjustment 32).*
- *Issue 7a(2), Unfunded Statement of Financial Accounting Standards (SFAS) 106 Postretirement Benefits (Adjustment 32a).*

Difference in	
<u>Revenue Requirement</u>	
\$ (.1)	Staff's Proposed Revenue Requirement
<u>1.3</u>	USWC's Proposed Revenue Requirement
<u>\$(1.4)</u>	Issue 7a SFAS 106 Postretirement Benefits (Curtailment Loss) <sup>2</sup>

**Disposition: Staff's Proposed Adjustments Adopted**

**Issue 8: Expenses and Taxes**

**Completely Settled Issues:**

- *Issue 8b(1), 1996 Occupational Wage Increases (Adjustment 38).*
- *Issue 8b(2), Payroll Tax Increases (Adjustment 38c).*
- *Issues 8c-d, Changes in Accounting—SFAS 109 and 112 (Adjustments 39-40).*
- *Issue 8e, Ballot Measure 5 Property Tax Savings (Adjustment 41).*
- *Issue 8g, UM 767 Oregon Depreciation Represcription (Adjustment 43).*
- *Issues 8h-i, Aircraft and Advertising (Adjustments 44-45).*
- *Issue 8m, Purchase Rebates (Adjustment 49).*

**Significantly Undisputed Issue:**

- *Issue 8f, Oregon Revised Statute (ORS) 291.349 Income Tax Refund (Adjustment 42).*

<sup>2</sup> The amount shown excludes \$(.3) million related to return on equity; it has been included with Issue 2c, Cost of Equity.

**Disputed Issues:**

- *Issue 8a, Team Performance Awards and Officers' Incentives (Adjustment 37).*
- *Issue 8b(2), Other Payroll Changes (Adjustments 38a, 38e, and 38f).*
- *Issue 8j, Average Growth in Access Lines (Adjustment 46).*
- *Issue 8k, Marketing Accrual Reversal (Adjustment 47).*
- *Issue 8l, Information Management Systems (Adjustment 48).*
- *Issue 8n, PUC Fee (Adjustment 49a).*

Difference in	
<u>Revenue Requirement</u>	
\$( 4.0)	Issue 8a, Team Performance Awards and Officers' Incentives
11.6	Issue 8b, Payroll Changes
20.0	Issue 8g, Oregon Depreciation Represcription
(24.1)	Issue 8j, Average Growth in Access Lines
<u>( 5.1)</u>	Other Adjustments
\$( 1.6)	Staff's Proposed Revenue Requirement
20.7	USWC's Proposed Revenue Requirement
<u>(22.3)</u>	Issue 8, Operating Expenses and Taxes

**Disposition: Staff's Proposed Adjustments Adopted****Issue 9: Service Quality And Reengineering****Disputed Issues:**

- *Issue 9a, Service Reengineering Costs (Adjustment 50).*
- *Issue 9b, Extraordinary Expenses (Adjustment 51).*
- *Issue 9c, Service Quality (Adjustment 52).*

Difference in	
<u>Revenue Requirement</u>	
\$ (25.5)	Issue 9a, Service Reengineering Costs
( 6.7)	Issue 9b, Extraordinary Expenses
<u>( 9.9)</u>	Issue 9c, Service Quality
\$ (42.1)	Staff's Proposed Revenue Requirement
<u>( 0)</u>	USWC's Proposed Revenue Requirement
<u>\$ (42.1)</u>	Issue 9 (Staff's Proposed Revenue Requirement)

**Disposition: Staff's Proposed Adjustments Adopted****Issue 10: Final Test Year Separation Factors****Significantly Undisputed Issue:**

- *Modify Intrastate Separation Factor To Include Effects of PTI Exchange Sale and EAS Conversions (Adjustment 53).*

Difference in  
Revenue Requirement  
 \$.2 Issue 10 (Staff's Proposed Revenue Requirement)

**Disposition: Staff's Proposed Dollar Amounts Adopted**

**Issue 11: Refund Procedures**

**Process**

**Disputed Issue:**

- *Staff: one-time lump-sum credits on customers' bills.*
- *USWC: phase refund into rates; no refund for access service customers.*

**Basis of Refund**

**Completely Settled Issue:**

- *Ballot Measure 5 refund.*

**Disputed Issues:**

- *Staff: Refund should be based on total revenue requirement established in this docket less Ballot Measure 5 refund (see Order No. 96-183).*
- *USWC:*
  - *Refund should be based on actual earnings (see Order No. 91-1598).*
  - *Estimates and forecasts, imputations except for Yellow Pages, and disallowances of recorded data should be excluded.*

<u>Proposed Annual Revenue Requirement</u>		
<u>Staff</u>	<u>USWC</u>	
\$(89.9)		Adjustments Staff would include but USWC would exclude Total Adjustments To Include in the Refund Calculation (where the amounts depend on whose adjustments are adopted)
(10.5)	23.0	
<u>.9</u>	<u>.9</u>	Measure 5 Refund
\$(99.5)	\$ 0	Proposed Refund (based on annual revenue requirement)

**Disposition: Staff's Proposed Procedure and Adjustments Adopted**

**Issue 12: Cash Flow/Issue 13: Business Valuation**

**Disputed Issues:**

- *Cash Flow:*
  - *USWC's cash flow analysis purports to show that Staff's case would be disastrous for the company.*
  - *Staff disputes the significance or feasibility of a cash flow analysis for a hypothetical stand alone USWC/Oregon.*
- *Comparability of data:*
  - *USWC based its analysis on its 1995 unadjusted results of operations.*
  - *Staff based its case on a forward looking proposed revenue requirement.*



**Disposition: USWC's Cash Flow and Business Valuation Arguments Rejected**

**Issue 14: Effect Of UM 351 On Access Revenues**

**Disputed Issue:**

- *USWC argues that the effect of Order No. 96-188 (dated July 19, 1996, in docket UM 351) is a revenue requirement issue. Staff believes this is a rate design issue.*

Difference in  
Revenue Requirement  
\$ (1.9) USWC's Estimate

**Disposition: Effects of UM 351 on Access Revenues Deferred to Rate Design Phase**

Docket UT 125  
U S WEST Communications, Inc.  
**COMPARISON OF STAFF'S AND USWC'S PROPOSED INTRASTATE REVENUE REQUIREMENTS \***  
(\$ Thousands)

Line No.	Issue Number and Description (a)	Appendix A Column Number (b)	Staff's Proposal (c)	USWC's Proposal (d)	Difference (e)	Differences Between Staff and USWC			
						Issues Other Than Test Year & ROE (f)	Issue 1a(1), Test Year		Issue 2c, Return on Equity (i)
							Pro Forma Adjustments (g)	Normalizing Adjustments (h)	
<b>PART 1 - ISSUES BY TYPE OF ADJUSTMENT</b>									
<b>1a(1), Test Year:</b>									
1	3b, U S WEST Direct Directory Growth	16a	(3,575)	--	(3,575)	(3,575)			
2	4d, Fax Services	20-20a	(824)	--	(824)	(704)	(120)		
3	6a/b/d, EAS and Access Revenue	27-28,30	1,049	1,049	--				
4	6c, Tariff, Price & Contract Changes	29	(9,351)	(286)	(9,065)		(9,065)		
5	7a(2), Unfunded SFAS 106 Postretirement Benefits	32a	(485)	--	(485)	(485)			
6	7b-e, Employee Benefits	34-36	4,560	4,560	--				
7	8b(1), 1996 Occupational Wage Increases	38	4,563	4,563	--				
8	8b(2), 1996-97 Wage & Salary Increases	38a	7,910	--	7,910	7,910			
9	8b(2)/9a, Wage Increases Related to Reengineering	38f	(798)	--	(798)		(798)		
10	8e, Bailot Measure 5 Property Taxes	41	(2,639)	(2,639)	--				
11	8g, Oregon Depreciation Represcription	43	19,989	19,935	54			54	
12	8j, Average Growth in Access Lines	46	(24,135)	--	(24,135)	(24,135)			
13	8l, Information Management Systems	48	(928)	--	(928)		(928)		
14	8n, PUC Fee	49a	232	--	232	232			
15	9a/8b(2), Service Reengineering Costs	50	(25,558)	--	(25,558)		(25,558)		
16	9b, Extraordinary Expenses	51	(6,650)	--	(6,650)		(6,650)		
17	<b>TOTAL</b>		<b>(36,640)</b>	<b>27,182</b>	<b>(63,822)</b>				
<b>2, Cost of Capital:</b>									
18	1a(2)/2c, Return on Annualized Test Year	1-14	(4,383)	2,014	(6,397)				
19	2c, Increase Rate of Return to 10.74%		--	5,024	(5,024)				
20	2c, Return on Annualized Test Year		(4,383)	7,038	(11,421)			(11,421)	
21	4a, Rent Compensation Study	17	4,394	4,626	(232)			(232)	
22	4e, Affiliated Interest Return Component	21	(104)	--	(104)			(104)	
23	4-8, Other Rate Base Adjustments	17-43	(221)	--	(221)			(221)	
24	9c, Service Quality	52	(9,900)	--	(9,900)			(9,900)	
25	<b>TOTAL</b>		<b>(10,214)</b>	<b>11,664</b>	<b>(21,878)</b>				
26	3a, Directory Revenue Imputation	16	(55,605)	(34,652)	(20,953)	(20,953)			
27	4g, Part 64 Still Regulated	23-23a	--	3,584	(3,584)	(3,556)		(28)	
28	4, Other Affiliated Interests and Corporate Allocations	17-26	15,985	21,080	(5,095)	(5,095)			
29	8a/8b(2), Team Awards & Officers' Incentives	37, 38e	(4,297)	--	(4,297)	(4,008)	(289)		
30	Other Adjustments	27-53	(9,635)	(5,471)	(4,164)	(4,164)			
31	<b>TOTAL REVENUE REQUIREMENT *</b>		<b>(100,406)</b>	<b>23,387</b>	<b>(123,793)</b>	<b>(37,776)</b>	<b>(21,046)</b>	<b>(43,119)</b>	<b>(21,852)</b>

\* Amounts are shown after Stipulation Nos. 1-2, based on the local net-to-gross factor (169.023%). See Staff Exhibit 89 Lambeth 1. Issue 14 is shown as revised by USWC on Dec. 16, 1996.

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Docket UT 125  
U S WEST Communications, Inc.  
**COMPARISON OF STAFF'S AND USWC'S PROPOSED INTRASTATE REVENUE REQUIREMENTS \***  
(\$ Thousands)

Line No.	Issue Number and Description (a)	Appendix A Column Number (b)	Staff's Proposal (c)	USWC's Proposal (d)	Difference (e)	Differences Between Staff and USWC			
						Issues Other Than Test Year & ROE (f)	Issue 1a(1), Test Year		Issue 2c, Return on Equity (i)
							Pro Forma Adjustments (g)	Normalizing Adjustments (h)	
<b>PART 2 - ADJUSTMENTS BY ISSUE NUMBER</b>									
<b>1. TEST YEAR</b>									
32	a(1), Pro Forma Adjustments		See column g, line 95						
33	a(1), Normalizing Adjustments		See column h, line 95						
34	a(2), Rate of Return on Annualized Test Year	1-14	(4,383)	7,038	(11,421)				(11,421)
35	a(2)-m(1) and n, Other Test Year Issues	1-14	-	-	-				
36	m(2), Switching Assets	14a	(617)	-	(617)	(617)			
37	TOTAL		(5,000)	7,038	(12,038)				
<b>2. COST OF CAPITAL</b>									
38	a-c, Rate of Return on Other Issues	16-53	See column i, line 95						
39	d, Interest Coordination	15	564	564	-				
40	TOTAL		564	564	-				
<b>3. DIRECTORY IMPUTATION</b>									
41	a, U S WEST Direct Directory Imputation	16	(55,605)	(34,652)	(20,953)	(20,953)			
42	b, U S WEST Direct Directory Growth	16a	(3,575)	-	(3,575)		(3,575)		
43	TOTAL		(59,180)	(34,652)	(24,528)				
<b>4. AFFILIATED INTERESTS &amp; CORPORATE ALLOCATIONS</b>									
44	a, Rent Compensation Study	17	20,448	22,459	(2,011)	(1,779)			(232)
45	b, UM 753 Affiliate & Certain Leases	18	(64)	249	(313)	(313)			
46	c, Strategic Marketing	19	(108)	(108)	-				
47	d(1), Fax Services	20	(120)	-	(120)			(120)	
48	d(2), Growth in Fax Services	20a	(704)	-	(704)		(704)		
49	d(3), Affiliated Interest Charges	20b	(169)	(169)	-				
50	d(4), FCC License	20c	(391)	-	(391)	(391)			
51	e, Affiliated Interest Return Component	21	(104)	-	(104)				(104)
52	f, Headquarters Allocations	22	(2,815)	(1,351)	(1,464)	(1,464)			
53	g, Part 64 Still Regulated	23-23a	-	3,584	(3,584)	(3,556)			(28)
54	h, Nonregulated Costs Removed in Col. 18-21	23b	12	-	12	12			
55	TOTAL		15,985	24,664	(8,679)	(7,491)			

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Docket UT 125  
U S WEST Communications, Inc.  
**COMPARISON OF STAFF'S AND USWC'S PROPOSED INTRASTATE REVENUE REQUIREMENTS \***  
(\$ Thousands)

Line No.	Issue Number and Description (a)	Appendix A Column Number (b)	Staff's Proposal (c)	USWC's Proposal (d)	Difference (e)	Differences Between Staff and USWC			
						Issues Other Than Test Year & ROE (f)	Issue 1a(1), Test Year		Issue 2c, Return on Equity (i)
							Pro Forma Adjustments (g)	Normalizing Adjustments (h)	
<b>5. DOCKET UP 96 SALE OF EXCHANGES</b>									
56	a, Sale of Exchanges	24	(3,180)	(1,371)	(1,809)	(1,809)			
57	b, Stipulation	25	(1,912)	(2,032)	120				120
58	c, Effect on Property Taxes	26	(393)	(393)	-				
59	TOTAL		(5,485)	(3,796)	(1,689)				
<b>6. OPERATING REVENUES</b>									
60	a-b, 1995-1996 EAS Conversions	27-28	1,387	1,387	-				
61	c, Tariff, Price & Contract Changes	29	(9,351)	(286)	(9,065)			(9,065)	
62	d, Switched Access Filings	30	(338)	(338)	-				
63	(not used)	31	-	-	-				
64	TOTAL		(8,302)	763	(9,065)				
<b>7. EMPLOYEE BENEFITS</b>									
65	a(1), SFAS 106 Postretirement Benefits	32	416	1,313	(897)	(897)			
66	a(2), Unfunded SFAS 106 Postretirement Benefits	32a	(485)	-	(485)		(485)		
67	b, AT&T Unfunded Postretirement Benefit Sharing	33	(375)	(375)	-				
68	c, Disability Pension Payment True-up	34	(209)	(209)	-				
69	d, Pension Accounting	35	5,450	5,791	(341)				(341)
70	e, End of Compensated Absences Accrual	36	(306)	(306)	-				
71	TOTAL		4,491	6,214	(1,723)				
<b>8. OPERATING EXPENSES &amp; TAXES</b>									
72	a, Team Performance Awards & Officers' Incentives	37	(4,008)	-	(4,008)	(4,008)			
73	b(1), 1996 Occupational Wage Increases	38	4,563	4,563	-				
74	b(2), 1996-97 Wage & Salary Increases	38a	7,910	-	7,910		7,910		
75	b(2), Payroll Tax Increases	38c	228	228	-				
76	b(2), Wage Base Related to Bonuses (Issue 8a)	38e	(289)	-	(289)		(289)		
77	b(2), Wage Base Related to Reengineering (Issue 9a)	38f	(798)	-	(798)			(798)	
78	c-d, SFAS 109 and 112 - Changes in Accounting	39-40	-	-	-				
79	e, Ballot Measure 5 Property Taxes	41	(2,639)	(2,639)	-				
80	f, ORS 291.349 Income Tax Refund	42	(748)	(811)	63	63			
81	g, Oregon Depreciation Represcription	43	19,989	19,935	54				54
82	h-i, Aircraft and Advertising	44-45	-	-	-				

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Docket UT 125  
 U S WEST Communications, Inc.  
**COMPARISON OF STAFF'S AND USWC'S PROPOSED INTRASTATE REVENUE REQUIREMENTS \***  
 (\$ Thousands)

Line No.	Issue Number and Description (a)	Appendix A Column Number (b)	Staff's Proposal (c)	USWC's Proposal (d)	Difference (e)	Differences Between Staff and USWC				
						Issues Other Than Test Year & ROE (f)	Issue 1a(1), Test Year		Issue 2c, Return on Equity (i)	
							Pro Forma Adjustments (g)	Normalizing Adjustments (h)		
83	j, Average Growth in Access Lines	46	(24,135)	--	(24,135)					
84	k, Marketing Accrual Reversal	47	(403)	--	(403)	(403)				
85	l, Information Management Systems	48	(928)	--	(928)			(928)		
86	m, Purchase Rebates	49	(573)	(573)	--					
87	n, PUC Fee	49a	232	--	232		232			
88	<b>TOTAL</b>		<b>(1,599)</b>	<b>20,703</b>	<b>(22,302)</b>	<b>(4,348)</b>				
<b>9. SERVICE QUALITY &amp; REENGINEERING</b>										
89	a, Service Reengineering Costs	50	(25,558)	--	(25,558)			(25,558)		
90	b, Extraordinary Expenses	51	(6,650)	--	(6,650)			(6,650)		
91	c, Service Quality	52	(9,900)	--	(9,900)				(9,900)	
92	<b>TOTAL</b>		<b>(42,108)</b>	<b>--</b>	<b>(42,108)</b>					
93	<b>10. SEPARATIONS</b>	53	228	--	228	228				
94	<b>14. EFFECTS OF DOCKET UM 351 ON ACCESS REVENUES</b>	--	--	1,889	(1,889)	(1,889)				
95	<b>ADJUSTED TEST YEAR</b>		<b>(100,406)</b>	<b>23,387</b>	<b>(123,793)</b>	<b>(37,776)</b>	<b>(21,046)</b>	<b>(43,119)</b>	<b>(21,852)</b>	

\* Amounts are shown after Stipulation Nos. 1-2, based on the local net-to-gross factor (169.023%). See Staff Exhibit 89 Lambeth 1. Issue 14 is shown as revised by USWC on Dec. 16, 1996.

Docket UT 125  
U S WEST Communications, Inc.  
**INTRASTATE REVENUE REQUIREMENT AS ORDERED \***  
(\$ Thousands)

Line No.	Issue Number and Description (a)	Appendix A Column Number (b)	TOTAL AMOUNT (c)	1, Test Year & Annualiz. Methods (d)	2, Cost of Capital (e)	3, U S WEST Direct Directory (f)	4, Affiliated Interests & Corporate Allocations (g)	5, Docket UP 96 Sale of Exchanges (h)	6, Operating Revenues (i)	7, Employee Benefits (j)	8, Operating Expenses & Taxes (k)	9, Service Quality & Reengineering (l)	10, Intra-state Separations (m)	14, Effect of UM 351 on Access Revenues (n)
1	<b>1. Test Year &amp; Annualization Methods:</b>													
	Settled Issues		25,140		564	-	2,766	(112)	1,049	(1,690)	22,553			
	Disputed Pro Forma Adjustments:													
2	3b, U S WEST Direct Directory Growth	16a	(3,575)			(3,575)								
3	4d(2), Growth in Fax Services	20a	(704)				(704)							
4	7a(2), Unfunded SFAS 106 Postretirement Benefits	32a	(485)											
5	8b(2), 1996-1997 Wage & Salary Increases	38a	7,910							(485)	7,910			
6	b(2), Wage Increases Related to Bonuses	38e	(289)								(289)			
7	8j, Average Growth in Access Lines	46	(24,135)								(24,135)			
8	8n, PUC Fee	49a	231								231			
	Disputed Normalizing Adjustments:													
9	4d(1), Fax Services	20	(120)				(120)							
10	6c, Tariff, Price & Contract Changes	29	(9,351)						(9,351)					
11	4g(2), VMS Revenues	-	97				97							
12	8l, Information Management Systems	48	(928)								(928)			
13	9a, Service Reengineering Costs	50	(25,558)									(25,558)		
14	8b(2), Wage Increases Related to Reengineering	38f	(771)								(771)			
15	9b, Extraordinary Expenses	51	(6,650)									(6,650)		
	<b>2. Cost of Capital:</b>													
16	1a(2)/2c, Annualized Test Year	14	(4,383)		(4,383)									
17	2c, Increase from 10.06% ROR to 10.74% ROR	-	-											
18	4a, Rent Compensation Study	17	4,394				4,394							
19	4e, Affiliated Interest Return Component	21	(104)				(104)							
20	4g(1), Part 64 Still Regulated	23	513				513							
21	5b, UP 96 Stipulation	25	(2,193)					(2,193)						
22	7d, Pension Asset	35	6,250							6,250				
23	8b, Depreciation Reserve	43	(995)								(995)			
24	9c, Service Quality	52	(9,920)									(9,920)		
25	<b>3a, U S WEST Direct Directory Imputation</b>	16	(55,605)			(55,605)								
	<b>4. Affiliated Interests and Corporate Allocations:</b>													
26	a, Rent Compensation Study	17	16,829				16,829							
27	b, UM 753 Affiliate & Certain Leases	18	(64)				(64)							
28	d(4), FCC License	20c	-				-							
29	f, Headquarters Allocations	22	(1,115)				(1,115)							
30	g(2), Revenue Requirement Part 64 Still Regulated	23a	(3,556)				(3,556)							
31	h, Nonregulated Costs Removed in Columns 18-21	23b	12				12							
	<b>8. Operating Expenses and Taxes:</b>													
32	a, Team Awards & Officers' Incentives (Bonuses)	37	(4,008)								(4,008)			
33	f, ORS 291.349 Income Tax Refund	42	(738)								(738)			
34	k, Marketing Accrual Reversal	47	(403)								(403)			
	<b>Other Issues:</b>													
35	1m(2), Switching Assets	14a	(617)	(617)										
36	5a, UP 96 Sale of Exchanges	24	(3,180)					(3,180)						
37	7a(1), SFAS 106 Postretirement Benefits	32	416							416				
38	10, Separations	53	218										218	
39	14, Effects of Docket UM 351 on Access Revenues *	-	-										-	
40	<b>TOTAL REVENUE REQUIREMENTS</b>		<b>(97,437)</b>	<b>(617)</b>	<b>(3,819)</b>	<b>(59,180)</b>	<b>18,948</b>	<b>(5,485)</b>	<b>(8,302)</b>	<b>4,491</b>	<b>(1,563)</b>	<b>(42,128)</b>	<b>218</b>	<b>-</b>

\* The net-to-gross factor for local revenues (169.023%) was used to compute the intrastate revenue requirements.

x11

97-171

Docket UT 125  
U S WEST Communications, Inc.  
**COMPARISON OF INTRASTATE REVENUE REQUIREMENTS \***  
(\$ Thousands)

Line No.	Issue Number and Description (a)	Appendix A Column Number (b)	Proposed Amounts ** After Stipulations 1-2 & Revised Testimony		Order (e)
			Staff (c)	USWC (d)	
<b>1. Test Year &amp; Annualization Methods:</b>					
1	Sellied Issues		25,140	25,140	25,140
Disputed Pro Forma Adjustments:					
2	3b, U S WEST Direct Directory Growth	16a	(3,575)	--	(3,575)
3	4d(2), Growth in Fax Services	20a	(704)	--	(704)
4	7a(2), Unfunded SFAS 106 Postretirement Benefits	32a	(485)	--	(485)
5	8b(2), 1996-1997 Wage & Salary Increases	38a	7,910	--	7,910
6	b(2), Wage Increases Related to Bonuses	38e	(289)	--	(289)
7	8j, Average Growth in Access Lines	46	(24,135)	--	(24,135)
8	8n, PUC Fee	49a	232	--	231
9	Total Disputed Pro Forma Adjustments		(21,046)	--	(21,047)
Disputed Normalizing Adjustments:					
10	4d(1), Fax Services	20	(120)	--	(120)
11	6o, Tariff, Price & Contract Changes	29	(9,351)	(286)	(9,351)
12	4g(2), VMS Revenues	--	--	--	97
13	8i, Information Management Systems	48	(928)	--	(928)
14	9a, Service Reengineering Costs	50	(25,558)	--	(25,558)
15	8b(2), Wage Increases Related to Reengineering	38f	(798)	--	(771)
16	9b, Extraordinary Expenses	51	(6,650)	--	(6,650)
17	Total Disputed Normalizing Adjustments		(43,405)	(286)	(43,281)
18	Total Test Year Issues		(39,311)	24,854	(39,188)
<b>2. Cost of Capital:</b>					
19	1a(2)/2c, Annualized Test Year	14	(4,383)	2,014	(4,383)
20	2c, Increase from 10.06% ROR to 10.74% ROR	--	--	5,024	--
21	4a, Rent Compensation Study	17	4,394	4,626	4,394
22	4e, Affiliated Interest Return Component	21	(104)	--	(104)
23	4g(1), Part 64 Still Regulated	23	513	541	513
24	5b, UP 96 Stipulation	25	(2,193)	(2,312)	(2,193)
25	7d, Pension Asset	35	6,250	6,590	6,250
26	8b, Depreciation Reserve	43	(995)	(1,049)	(995)
27	Subtotal		3,482	15,434	3,482
28	9o, Service Quality	52	(9,900)	--	(9,920)
29	Disputed Cost of Capital		(6,418)	15,434	(6,438)
30	<b>3a, U S WEST Direct Directory Imputation</b>	18	(55,605)	(34,652)	(55,605)
<b>4. Affiliated Interests and Corporate Allocations:</b>					
31	a, Rent Compensation Study	17	16,054	17,833	16,829
32	b, UM 753 Affiliate & Certain Leases	18	(64)	249	(64)
33	d(4), FCC License	20c	(391)	--	--
34	f, Headquarters Allocations	22	(2,815)	(1,351)	(1,115)
35	g(2), Revenue Requirement Part 64 Still Regulated	23a	(3,556)	--	(3,556)
36	h, Nonregulated Costs Removed in Columns 18-21	23b	12	--	12
37	Disputed Affiliated Interests and Corporate Allocations		9,240	16,731	12,106
<b>5. Operating Expenses and Taxes:</b>					
38	a, Team Awards & Officers' Incentives (Bonuses)	37	(4,008)	--	(4,008)
39	f, ORS 291.349 Income Tax Refund	42	(748)	(811)	(738)
40	k, Marketing Accrual Reversal	47	(403)	--	(403)
41	Disputed Operating Expenses and Taxes		(5,159)	(811)	(5,149)
<b>Other Issues:</b>					
42	1m(2), Switching Assets	14a	(617)	--	(617)
43	6a, UP 96 Sale of Exchanges	24	(3,180)	(1,371)	(3,180)
44	7a(1), SFAS 106 Postretirement Benefits	32	416	1,313	416
45	10, Separations	53	228	--	218
46	14, Effects of Docket UM 351 on Access Revenues *	--	--	1,889	--
47	<b>TOTAL REVENUE REQUIREMENTS</b>		<u>(100,406)</u>	<u>23,387</u>	<u>(97,437)</u>

\* The net-to-gross factor for local revenues (169.023%) was used to compute the intrastate revenue requirements.

\*\* Source: Staff Exhibit 89, Lambeth 1. Issue 14 is shown as revised by USWC on December 16, 1996.

Changes From Staff's Proposed Intrastate Revenue Requirement  
(based on the net-to-gross factor for local revenues)

Col.	Issue	Intrastate Amount	Explanation
17	4a - Rent Compensation Study	\$ 775,526	Staff's square footage adjustment was removed.
18	4f - Headquarters Allocations	1,699,179	Allocation factors were updated as follows: <ul style="list-style-type: none"> <li>• The factors have been recomputed in accordance with Stipulation No. 1, Paragraphs 7(a) and 7(b) and Exhibit Staff/84.</li> <li>• The basis of the factors has been adjusted to reflect the stipulated amount of Issue 7e, End of Compensated Absences Accrual (Stipulation No. 2).</li> <li>• The basis of the factors has been adjusted to reflect a correction to Issue 8a, Officers' Incentives. See Exhibits and USW/91 and Revised Staff/3, Lambeth/17.</li> </ul>
20c	4d(4) - FCC License	390,627	Staff's proposed adjustment was removed.
23a	4g(2) - Part 64 Still Regulated	96,815	In accordance with Stipulation No. 2, paragraph 3, 94,538 has been removed for VMS revenues in Column 23a2.
38f	8b(2) - 1996-1997 Wage & Salary Increases - Wage Base Related to Reengineering	27,137	The wage base was corrected and updated for the changes in the headquarters allocation factors (Issue 4f above and Exhibit Staff/84).
42	8f - ORS 291.349 Income Tax Refund	9,939	The state income tax adjustment was affected by all changes to revenues and expenses. This is consistent with Stipulation No. 2, paragraph 8.
49a	8n - PUC fee	(179)	The PUC fee was affected by the change in revenues, Issues 4d(4) and 4g(2) above.
52	9c - Service Quality	(20,025)	Rate of return was affected by the rate base change in Issue 4a, Column 17, above.
53	10 - Effects of Adjustments on Intrastate Separations	(9,705)	All changes in expenses and rate base affected this calculation. The adjustment is the difference between the factors used to initially separate the test year and the stipulated factors. See Stipulation No. 1, paragraph 25.
—		\$2,969,314	Total Changes from Staff's Proposed Intrastate Revenue Requirement

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ORDER NO. 97-171

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 125

In the Matter of the Application of U S WEST )  
Communications, Inc., for an Increase in Revenues. )

ORDER

**DISPOSITION: RATE OF RETURN AUTHORIZED; REFUND ORDERED**

**EXECUTIVE SUMMARY**

*In the current order, the Commission:*

- *reduces USWC's revenue requirement by \$97.4 million;*
- *adopts an authorized rate of return for USWC of 10.2 percent; and*
- *orders USWC to refund \$102 million to ratepayers.*

In 1991, the Oregon Public Utility Commission (Commission) adopted an Alternative Form of Regulation (AFOR) plan for U S WEST Communications, Inc., (USWC). Order No. 91-1598. The AFOR plan became effective on January 1, 1992, and was due to expire on December 31, 1996. USWC was required to submit a general rate filing with the Commission under ORS 759.180 at least nine months before the end of the AFOR. Order No. 91-1598 at 29. USWC submitted its revenue requirement filing to the Commission on December 18, 1995. In the filing, USWC requested a revenue requirement increase of \$28 million.

When USWC made its revenue requirement filing, the Commission had two pending cases dealing with telecommunications systems costs, UM 351 and UM 773. USWC's revenue requirement and rate design phases were put on separate schedules. The revenue requirement phase concludes with this order. The rate design phase was deferred in order to incorporate the Commission's decisions in UM 351 and UM 773.

USWC has had service quality problems since the inception of its AFOR. The Commission adopted the AFOR on the condition that USWC would maintain the level of service it offered in 1991. USWC failed to do so. We terminated USWC's AFOR effective May 1, 1996. Order No. 96-107. As of that date, USWC's rates became interim rates subject to refund.

Commission Staff (Staff) reviewed USWC's filing and engaged in settlement discussions with the company. Staff and USWC reached agreement on a number of issues that are laid out in two stipulations adopted in the current order. They were unable to reach agreement on many issues, however. Staff's prefiled testimony recommended a revenue requirement reduction of approximately \$100 million. In its subsequent testimony, USWC appeared to be asking for a revenue requirement increase of about \$23 million.

Evidentiary hearings were held in November and December 1996, and January 1997. The major unresolved issues and the Commission's disposition of each are as follows:

Issue	Change from USWC's Proposed Revenue Requirement
Construction of the test year (Issue 1)	
• Average growth on access lines (Issue 8j)	\$( 24)
• Reengineering and service quality (Issue 9)	( 42)
• Other	( 8)
Cost of capital (Issue 2)	\$( 12)
U S WEST Direct Directory imputation (Issue 3) (Directory growth included in Issue 1)	\$( 21)
Average growth in access line adjustment (Issue 8j)	Included in Issue 1
Adjustments related to USWC's reengineering program and its service quality (Issue 9)	Included in Issue 1
Other issues	\$( 14)
<b>Total:</b>	<b>\$(121)</b>

*Construction of the Test Year (Issue 1).* The purpose of a test year is to reflect the period in which rates will be in effect. Staff assumes that rates from this docket will be in effect from May 1, 1996, (when USWC's AFOR was terminated) to December 1998. USWC and Staff agreed to use the first 9 months of USWC's operations in 1995,

annualized, as a starting point for determining USWC's revenue requirement. However, Staff and USWC disagree about the adjustments that should be made to the test year to make it representative of the entire period when rates will be in effect. Staff proposed numerous adjustments to include the effects of changes that have occurred or are reasonably certain to occur after the test year. Staff also proposed adjustments that removed one time costs that occurred during the historical period from USWC's revenue requirement. USWC opposes these adjustments. We reviewed each of Staff's proposed adjustments to the test year and determined that they were reasonable.

*Cost of Capital (Issue 2).* The Commission must set rates at a level that allows a utility's investors an opportunity to earn a return commensurate with the return earned by enterprises of similar risk. The return must also be sufficient to allow the company to attract capital. In its rebuttal testimony, USWC proposed a rate of return on equity of 13.75 percent. Staff proposed a rate of return of 11.6 percent, midpoint of a return on equity range of 10.2 percent to 12.9 percent. Staff also recommended that the Commission choose the low point of the range because of USWC's service quality problems. After examining USWC's and Staff's methods of obtaining their return on equity recommendations, we adopted Staff's recommended return on equity and also adopted the low end of the range (see discussion of Issue 9 below).

*US WEST Direct Directory Imputation (Issue 3).* After the breakup of AT&T, the local telephone companies retained the lucrative Yellow Pages operations and used the revenues from that operation to defray the utilities' revenue requirements. In 1986 USWC's precursor created U S WEST Direct (USWD), an affiliate that became the directory publisher. In Order No. 88-488, we determined that we would impute to USWC's precursor, and now to USWC, revenues from the directory publishing operation. We reasoned that directory publishing rights were valuable assets that USWD derived from its association with the local exchange company, and that ratepayers deserved compensation for use of the asset.

In return for approval of its AFOR in 1991, USWC agreed not to challenge the Commission's right to impute Yellow Pages revenues to it for the term of the AFOR and for five years thereafter. USWC now argues that the sum that should be imputed for Yellow Pages revenues is the same sum as determined in Order No. 91-1598 (\$34.7 million). Staff argues that we should impute \$59.2 million in revenue to USWC to reflect the growth that USWD has experienced since the 1991 order. That sum includes Staff's recommended growth adjustment of \$3.5 million to reflect reasonably certain continued growth of Yellow Pages revenue. We adopted both adjustments.

*Average Growth in Access Line (Issue 8f).* Staff adjusted the test year to recognize that the number of USWC access lines and the amount of revenues from access lines are increasing. Staff increased local revenues by three percent per year to reflect the average level during the period when rates from this docket are expected to be in effect. USWC opposes adjustments to account for events after the test period. We found that Staff's proposed adjustment is conservative in view of the growth figures in the record.

For example, in third quarter 1996, USWC experienced a 5.1 percent increase in access lines and a 9.3 percent increase in local service revenues over the preceding 12 months. To prevent USWC from overearning while rates from this case are in effect, we adopted Staff's adjustment. This adjustment reduces revenue requirement by approximately \$24.1 million.

*USWC's Reengineering Program and Its Service Quality (Issue 9).* The recorded data for the test period include service reengineering costs of about \$25.5 million. Staff normalized the test year as if reengineering had not occurred, in order to make the test period representative of the time when rates from this case are expected to be in effect. Staff reasoned that the major reengineering program, which involved consolidation of 560 service centers into 26 centers, was essentially completed and would not recur. USWC argues that reengineering expenses are ongoing. We were persuaded that USWC's reengineering consolidation was a one time event and adopted Staff's proposed adjustment. We also adopted Staff's proposal to exclude \$6.7 million in extraordinary expenses associated with reengineering. Finally, due to continuing USWC service problems with no quick solutions in sight, we adopted the low end of Staff's proposed reasonable range of return on equity, 10.2 percent, as USWC's approved rate of return. We adopted this rate of return in anticipation that USWC's quality of service will not rise to its pre-AFOR level while rates from this docket are in effect. The low end of the rate of return range reflects USWC's lowered service quality.

USWC's rates became interim rates subject to refund on May 1, 1996. Because we have decreased USWC's revenue requirement, a refund is in order. Staff argues that we should follow Commission Order No. 96-183 and base the refund on the total revenue requirement established in this docket. Staff believes that the company will be made whole over the period that rates are in effect only if all test year revenues and costs are included in calculating the refund. We agree with Staff and order a refund of \$102 million, covering the period from May 1, 1996, through April 30, 1997. Additional refunds will be ordered in the rate design order. Additional interest on the refund amount will be calculated in a supplemental order for the period from May 1, 1997, to the date when the first customer receives a refund. The refund will appear as a lump credit on customer bills.

In the second phase of this case, USWC will file its rate design proposal based on the revenue requirement determined in this first phase. The Commission will evaluate USWC's and Staff's cases and issue a rate design order in the first half of 1998. The new rates will incorporate the revenue requirement determined here and the cost information from the UM 351 and UM 773 dockets. Because the rate design record has not been created, we caution parties and customers not to make assumptions regarding future rates for USWC services.

### BACKGROUND OF THE DOCKET

In 1991, the Public Utility Commission of Oregon (Commission) adopted an Alternative Form of Regulation (AFOR) plan for U S WEST Communications, Inc. (USWC or the company), pursuant to ORS 759.195. UT 80, Order No. 91-1598. Under the AFOR, USWC was granted pricing flexibility, subject to a price cap, for services that were subject to competition. The AFOR took effect on January 1, 1992, and was due to expire on December 31, 1996.

One of the conditions on which the Commission approved the AFOR was that USWC would comply with quality of service standards as of April 1, 1991. Should USWC fail to comply with those standards, Order No. 91-1598 provides that the Commission had the power to terminate the AFOR after providing the company with notice and a reasonable opportunity to cure the deficiency. *Id.* at 22.

Under the AFOR, USWC was also required to submit a general rate filing with the Commission under ORS 759.180 at least nine months before the end of the AFOR. Order No. 91-1598 at 29. USWC submitted its revenue requirement filing to the Commission on December 18, 1995. In that filing, USWC requested a rate of return on rate base of 10.06% and a revenue requirement increase of \$28 million.

USWC's filing was docketed as UT 125. The revenue requirement and rate design phases of the docket were put on separate schedules, so that the rate design phase could implement the Commission's decisions in pending dockets UM 351 and UM 773.

During the AFOR, USWC experienced a severe increase of service quality problems, relating to both customer service and technical service. In December 1995, the Commission Staff (Staff) determined that USWC was in violation of one of the technical service quality standards set forth in the AFOR. Staff concluded that the number of customers reporting problems with their phone service exceeded a prescribed limit for 24 of USWC's 77 central offices. In January 1996, Staff concluded that USWC had violated a second technical service standard relating to transmission loss level variation. Order No. 96-107 at 2-3.

Because of USWC's service quality problems, the Commission terminated its AFOR plan prematurely, on May 1, 1996. Order No. 96-107. USWC's rates became interim rates subject to refund on that date. *See* Order Nos. 91-1598 at 27-29, 96-107, and 96-286.

On June 11, 1996, Staff published its settlement proposal. On June 24-26, 1996, Staff, USWC, and intervenors met and discussed various issues in a settlement conference. On August 2, 1996, USWC and Staff entered into the First Stipulation, which resolved numerous issues including cost of debt and capital structure. That stipulation is attached to this order as Appendix B and incorporated herein by reference.

On November 27, 1996, USWC and Staff entered into the Second Stipulation, which resolved or partially resolved additional issues. That stipulation is attached to this order as Appendix C and incorporated herein by reference.

Evidentiary hearings in this phase of the docket were held on November 4-8, 1996; November 14, 1996; December 16, 1996; and January 29, 1997. All hearings were held in Salem, Oregon, before Ruth Crowley, Administrative Law Judge.

The following Attorneys at Law entered appearances for USWC: Molly Hastings; Douglas Owens; Sherilyn Peterson; Kimberly Jones; Richard Coyle; and James M. Van Nostrand.

The following Assistant Attorneys General entered appearances for Commission Staff: W. Benny Won; Joseph McNaught; and Michael T. Weirich.

At the December 16, 1996, hearing on cost of capital, AT&T Communications, Inc., (AT&T), an intervenor, also appeared through Keith L. Kutler, Attorney at Law.

USWC, Staff, and AT&T filed briefs on the cost of capital (Issue 2). USWC and Staff filed opening and reply briefs on the other unresolved issues, with the exception of issues 12 and 13 (Cash Flow and Business Valuation). Those two issues were briefed separately in one simultaneous round of briefs.

*Summary of the Case.* A summary list of issues addressed in this order, with the dollar amounts involved and the disposition of each issue, follows the Table of Contents (pages i-vii). A dollar amount comparison of Staff's and USWC's proposed intrastate revenue requirements, including the results of Stipulations 1 and 2, is found at pages viii-xi. The comparison addresses issues by type of adjustment (page viii) and by issue number (pages ix-xi). The effects of the current order on USWC's intrastate revenue requirement are found at page xii. Page xiii gives a one-page summary comparison of the intrastate revenue requirement amounts as proposed by USWC and Staff and as determined by this order. Finally, page xiv shows changes from Staff's proposed intrastate revenue requirement based on the net to gross factor for local revenues. The column numbers on the left hand side of the page refer to the columns in Appendix A, Results of Operations.

#### **USWC'S BURDEN OF PROOF ARGUMENT**

Throughout its testimony and briefs, USWC has argued that Staff has the burden of proof when it proposes to disallow expenses or to make adjustments to the test year. USWC acknowledges that it has the burden of proof in general, however. It stated in its Opposition to Staff's Motion to File Surrebuttal Testimony at 2 (October 28, 1996):

As the petitioner in this rate case, USWC bears the burden of proof. ORS 757.210 provides that, in a rate case, "the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable."

Staff argues that USWC has the burden of proof, as well as the burden of going forward, to demonstrate that its expenses are reasonable. We conclude that the term "burden of proof" is confusing and serves to obscure the actual course of a rate case.

USWC filed its rate case under ORS 759.180. ORS 759.180(1) (which is similar to 757.210) provides in part:

[W]henver any telecommunications utility files with the commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine the propriety and reasonableness of such rate or schedule. . . . At such hearing the telecommunications utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable.

The statutes do not use the term "burden of proof." We find the language of the statutes appropriate, because the term "burden of proof" has two discrete meanings. As the Oregon Supreme Court has stated:

The phrase "burden of proof" has two meanings: One to express the idea that a named litigant must in the end establish a given proposition in order to succeed; the other, to express the idea that at a given stage in the trial it becomes the duty of a certain one of the parties to go forward with the evidence. *Hansen v. Oregon-Washington R. & Nav. Co.*, 97 Or 190, 210 (1920), *reh den* 97 Or 190 (1920).

The Commission is charged with ensuring adequate and safe utility service at rates that are just and reasonable. ORS 756.040(1); 759.035. A utility's revenue requirement is determined on the basis of the utility's costs. *See, e.g., American Can Co. v. Lobdell*, 55 Or App 451, 454-55, *rev den* 293 Or 190 (1982). Rates are then set to allow the utility to recover its revenue requirement. The Commission must make four basic determinations in the revenue requirement phase of a rate case:

1. What are the utility's gross utility revenues?
2. What are its operating expenses appropriately incurred to provide utility service?
3. What utility property provides the service for which rates are charged and thus represents the "rate base" on which a return should be earned? and

4. What percentage figure ("rate of return") should be applied to the rate base to establish the return to which the stockholders of the utility are reasonably entitled?

*Pacific Northwest Bell Tel. Co. v. Sabin*, 21 Or App 200, 205 n. 4, *rev den* (1975). The purpose of answering these questions is to determine the utility's reasonable costs of providing service and expected revenues, so the Commission can set utility rates at just and reasonable levels.

USWC as the proponent of the rate increase must submit evidence showing that its proposed rates are just and reasonable. Once USWC has presented its evidence, the burden of going forward then shifts to the party or parties who oppose including the costs in the utility's revenue requirement. Staff or an intervenor, if it opposes the utility's claimed costs, must in turn show that the costs are not reasonable. Each time the burden of going forward shifts, the burden of persuasion shifts as well. That is, each party who has the burden of going forward must, in order to prevail, persuade us by competent evidence that its position with respect to that set of costs should prevail.

As the Court of Appeals for the District of Columbia Circuit observed:

Expenses (using that term in its broad sense to include not only operating expenses but depreciation and taxes) are facts. They are to be ascertained, not created, by the regulatory authorities.

*Mississippi River Fuel Corp. v. FPC*, 163 F2d 433, 437 (D.C.Cir. 1947). We add that these facts, like all other facts in our contested cases, are to be ascertained on the basis of a competent record and by the preponderance of the evidence.

The Commission's role is to weigh the evidence presented on each issue in the case and determine where the preponderance lies. We make that decision on the record as a whole. The basic decision we make with respect to each issue in this case is whether the utility has produced persuasive evidence that its revenue requirement is reasonable. A component of that decision is whether Staff has persuasively rebutted USWC's revenue requirement evidence. We reject USWC's arguments that Staff has the "burden of proof" with respect to disallowances and test year adjustments, because the arguments distort the way evidence is presented and decisions are made in a rate case.

#### ISSUE 1: TEST YEAR

##### *Completely Settled Issues:*

- *Issue 1a(2), Annualization Methods (Adjustment 1)*. Staff and USWC agree to start with total Oregon data recorded during the 9 months ending September 30, 1995, and add annualizing adjustments, to estimate the last 3 months. See Appendix B, First Stipulation, paragraph 1a.



- *Issue 1b, Net to Gross Factors.* Staff and USWC agree to use the revenue sensitive factors shown in Staff Exhibit 3, Lambeth 4, Columns d-f. See Appendix B, First Stipulation, paragraph 1b.
- *Issues 1c-m(1), Side Records and Annualizations (Adjustments 2-13).* Except for USWC's inclusion of costs related to switching assets that are no longer in service (Issue 1m(2)), Staff and USWC agree on the annualization of side records, revenues, expenses, and rate base. See Appendix B, First Stipulation, paragraph 1a.
- *Issue 1n, Separations.* Staff and USWC agree on the intrastate factors to apply to the base period and adjustments. However, Staff and USWC disagree about the underlying expenses, rate base, and taxes used to compute the final factors (Issue 10). See Appendix B, First Stipulation, paragraphs 1a, 25.

***Disputed Issues:***

- *Issue 1a(1): Test Year.* The Commission "normally establishes utility rates prospectively based upon a test year reflecting the restated and normalized operating results during such period. The test year may be adjusted for abnormal or nonrecurring items and for known changes occurring after the test period" (Order No. 77-125). Staff and USWC agree that "the purpose of a test year is to be representative of the period in which rates will be in effect." See Revised Staff Exhibit 1, Lambeth 17-19; USWC Exhibit 1, Inouye 15.

Staff attempted to determine on a going forward basis the amount of revenue and the rate levels that are necessary to provide USWC with the opportunity to earn a fair return on its investment. Staff believes that USWC's adjustments to the annualized test year are not sufficient to represent the period when rates from this docket will be in effect. USWC has made adjustments only for some events that will have occurred by the time rates become effective (May 1, 1996). Staff used the 32 month period from May 1, 1996, to December 31, 1998, to represent the period when rates from this docket will be in effect. Rates became effective on May 1, 1996, and Staff assumes that USWC will file a new rate case in time for new rates to become effective January 1, 1999.

Staff maintains that the purpose of a rate case, whether it uses a historic or a future test year, is to determine whether the reported results of operations are reasonably representative of future operating conditions. USWC contends that use of a historic test year presumes that the past represents the future. USWC also argues that forecasting methods are so complicated and uncertain that forecast adjustments should not be applied to historic data. In past orders, the Commission has disagreed with USWC's argument.

USWC disagrees with Staff's test year and claims that Staff has inappropriately adjusted for changes in operations that will occur (or have occurred) after December 31, 1995. The primary disputes are about pro forma adjustments (including forecasts and other estimates) and normalizing adjustments, which develop or restore normal recurring cost and revenue relationships representative of the period when rates from this docket will be in effect. Normalizing adjustments also remove unusual events, which Staff believes USWC's reengineering program is.

- *Issue 1m(2), Switching Assets (Adjustment 14a).* Staff disagrees with the inclusion of costs related to switching assets that are no longer in service.

#### Issue 1a(1): Test Year

A fundamental issue in this case is how the test year should be constructed. In *Pacific Northwest Bell Telephone Company*, UT 43, Order No. 87-406 at 11-12, we set out the purpose and characteristics of the test year in ratemaking:

The starting point for setting rates is either the results of operations for a historical 12 month period or forecasted results of operations for a future period. The period chosen is called a "test year."

Results of operations are useful only as a starting point because they normally include (1) expenses that will not be incurred in the future, and (2) revenues that will not be realized in the future. Since the utility can be expected to overearn if nonrecurring expenses are covered by the recurring revenues resulting from a rate increase, nonrecurring expenses are eliminated from consideration. To avoid underearnings, nonrecurring revenues also are excluded.

Ratemaking is done on a prospective basis. Therefore, recurring increases in revenues and expenses that are reasonably certain to occur are added to the test year.

Another common adjustment in development of the test year is annualization of recurring revenues or expenses that begin partway through the 12 month period. An example would be a new wage contract that takes place in July of a January to December test year. By annualizing the wage increase, the test year will reflect that the higher wages will be in effect for the entire 12 months of a future year.

USWC and Staff agree that the purpose of a test year is to represent the period in which rates will be in effect. They agreed to use historic data as a starting point for development of the test year for this proceeding. They agreed that their starting point should be USWC's recorded results of operations for the nine months ended September 30, 1995. They further agreed that the last three months of 1995 should be estimated and added to the nine months of data to obtain an annualized test year.

Staff and USWC disagree, however, about the adjustments that should be made to the annualized test year to make it representative of future operations. The adjustments USWC proposes would increase its revenue requirement by approximately \$23 million; Staff's adjustments would decrease USWC's revenue requirement by approximately \$100 million.

*Adjustments to the Test Year.* USWC has largely limited its test year adjustments to events that occurred on or before January 1, 1996, the effective date for the new rates. Staff's position is that USWC's proposed adjustments are not sufficient to make the annualized test year representative of the period during which rates will be in effect.<sup>1</sup> Specifically, Staff believes that:

- USWC's future revenues will be significantly higher than USWC claims. See, e.g., Issues 3a and 3b (Yellow Pages imputation and growth), 6c (price and contract changes since January 1, 1995), and 8j (access line growth). These Staff adjustments account for \$57 million of the difference between Staff's and USWC's revenue requirement estimates.
- USWC's recurring expenses will be less than USWC claims. This bears particularly on Issues 9a and 9b, reengineering and extraordinary expenses, which account for \$32 million of the difference between Staff's and USWC's estimated revenue requirement.

Staff has recommended both pro forma and normalizing adjustments to the test year. Pro forma adjustments restate the test year to include the effects of changes that have occurred or are reasonably certain to occur after the test year.<sup>2</sup> Directory revenue growth (Issue 3b) and access line growth (Issue 8j) are examples of pro forma adjustments. Normalizing adjustments develop or restore normal recurring cost and revenue relationships representative of the period when rates from this docket will be in effect. In Issue 7e, for instance, Staff removed part of an accrual that will end soon after rates in this proceeding go into effect. Some of Staff's adjustments are for events that happened after the historic test period (January 1 to September 30, 1995). That is the case with Issue 6c, where Staff annualized the effects of tariff, price, and contract revisions USWC has made since January 1995.<sup>3</sup>

<sup>1</sup> Staff used the 32-month period from May 1, 1996, through December 31, 1998, for the period during which rates from this proceeding would be in effect. USWC's rates became interim rates subject to refund on May 1, 1996, when the Commission terminated USWC's Alternative Form of Regulation (AFOR) plan by Order No. 96-107. May 1, 1996, is therefore the effective date for rates from this proceeding. Because USWC has opposed many of the revenue requirement recommendations Staff has made in this proceeding, Staff assumes that USWC will file for new rates to be effective no later than January 1, 1999.

<sup>2</sup> See Order No. 87-406 at 11.

<sup>3</sup> Disputed pro forma adjustments include: Issue 3b, U S WEST Directory Growth; Issue 4d2, Fax Services Growth; Issue 7a2, SFAS 106 Postretirement Benefits; Issue 8b2, Other Payroll Changes; Issue 8j, Average Growth in Access Lines; and Issue 8n, PUC Fee.

USWC opposes Staff's pro forma and normalizing adjustments. USWC argues that it and Staff agreed to a 1995 test year, and contends that Staff has improperly made projections to August 1997. USWC argues that the Commission should largely ignore changes in its operations that occur after the end of the historic test year (December 31, 1996). For instance, USWC objects to Staff's adjustment for tariff increase effects (Issue 6c).

USWC also objects to adjustments based on forecasts, claiming that the Commission does not use forecasted test years or forecasts for adjustments to historic test year data. For this reason, USWC objects, for instance, to test year adjustments to reflect revenues from access line growth (Issue 8j), what Staff contends are nonrecurring expenses related to reengineering (Issues 9a and 9b), and cost savings from new information management systems (Issue 8l).

USWC argues that adjustments to test year data are permitted only under limited circumstances: "to remove abnormal events not expected to recur and . . . to include the effect of known changes in data which are expected to persist into the future." *Portland General Electric*, UF 3518, Order No. 80-021 at 24. In USWC's view, use of recent historic test year data provides the most accurate means of estimating a utility's operations.

USWC proposes that adjustments may be made to the test year only (1) to annualize the effects of specific events that occur during the test year and (2) for known changes that occur after the test year, but whose effects are reasonably measurable. USWC maintains that the first type of adjustment should be made only for items that are not linked, logically and economically, with other revenues, expenses, or investments. That caveat serves to minimize interdependencies and to maintain the match among revenues, expenses, and investments in the test year. USWC takes the second category of adjustment to preclude adjustments based on forecasting.

USWC also challenges Staff's proposed disallowance of certain expenses (for instance, Issue 8a, Bonuses; Issue 4a and 4b, Lease Rates; Issue 5a, UP 96 Sale of Exchanges). USWC argues that the Commission may not disallow actually incurred expenses unless they were imprudently incurred, and no allegation of imprudence was made with respect to these expenses.

Staff points out that USWC has been inconsistent in its position. USWC proposed adjustments to the test year to include an adjustment for increased depreciation expense (Issue 8g).<sup>4</sup> Staff argues that this adjustment reflects shortened asset service life

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... Disputed normalizing adjustments include: Issue 4d1, Fax Services; Issue 5a, UP 96 Sale of Exchanges; Issue 6c, Tariff, Price, and Contract Changes; Issue 8l, Information Management Systems; Issue 9a, Service Reengineering Costs; and Issue 9b, Extraordinary Expenses.

<sup>4</sup> Staff agreed to this adjustment, which reflects the results of docket UM 767. See Appendix B, First Stipulation, Paragraph 21.

projections and resulting higher depreciation rates, based on forecasts of future changes in telecommunications technology. Staff argues that USWC also wishes to include an adjustment for the future adverse effects of the orders in Commission docket UM 351 (Issue 14).

Staff also takes issue with USWC's contention that this Commission does not use forecasted test years or forecasts for adjustments to historic test year data. Staff points out that through the late 1970s and early 1980s, when the per unit cost of electricity was rising, the Commission used present or future test periods rather than historic test periods, and forecast adjustments to the test year to prevent the utility from underearning during the period in which rates were to be in effect.<sup>5</sup> Staff argues that USWC is in the opposite position. That is, USWC is facing increasing revenues and stable or decreasing ongoing expenses per access line. Staff believes this fact explains why USWC urges the Commission to rely on historic data and make few adjustments for the future.

**Disposition.** The purpose of a test year is to provide a basis for determining a utility's revenue requirement. All test years are estimates of future conditions for the utility. When, as here, the test year is based on an historical period, that period is merely a starting point for determination of the revenue requirement. The Commission must ensure that the historical period is reasonably representative of the period during which rates will be in effect. The point is to prevent overearning or underearning during that period.

USWC challenges many of Staff's normalizing adjustments on grounds that they may distort the relationship among investments, revenues, and expenses. We have reviewed each of Staff's proposed normalizing adjustments, issue by issue, and disagree with USWC. We find that Staff has been careful to match investments, revenues, and expenses for its proposed adjustments. We will deal with these arguments as they arise in the context of the individual issues.

USWC challenges many of Staff's pro forma adjustments because they are based on forecasts. USWC sets up a "known and measurable" standard for adjustments to the test year data for future events, and argues that that standard precludes use of forecasted adjustments. We disagree. The standard USWC proposes for pro forma adjustments is more restrictive than the one we set forth in *Pacific Northwest Bell*, UT 43, Order No. 87-406. In that case we stated that because ratemaking is prospective, "recurring increases in revenues and expenses that are reasonably certain to occur are added to the test year." *Id.* at 11. The "reasonably certain" standard, rather than the "known and measurable" standard, is the correct one for judging whether a given adjustment is appropriate. That standard does not preclude forecasts. We use the same standard to exclude nonrecurring revenues and expenses. We have reviewed each of Staff's proposed

<sup>5</sup> Staff cites to *Portland General Electric Co.*, UF 3518, Order No. 80-021 at 1, 23-24; *Portland General Electric Co.*, UF 3339, Order No. 77-776 at 7; *Portland General Electric Co.*, UF 3218, Order No. 76-601 at 4, 8.

pro forma adjustments under this standard. Moreover, we note that USWC has proposed forecasted adjustments of its own: the proposed depreciation expense adjustment and the adjustment for the future adverse effects of the orders in Commission docket UM 351.

Finally, USWC argues that actually incurred expenses may not be disallowed absent a finding of imprudence. We disagree. As we stated above, in the section called "USWC's Burden of Proof Argument," USWC must show that its expenses are reasonable for us to allow them as part of the revenue requirement calculation.

*Reasonableness of Staff's Adjusted Test Year.* USWC contends that Staff's test year adjustments are improper because the results of Staff's adjustments are unreasonable. USWC supports its argument with reference to its calculation of Oregon revenue and expense per access line. USWC submits Exhibits 156 (revenues) and 157 (expenses), which graph revenues and expenses per access line from 1992 through 1995 and show Staff's 1997 projections. USWC's calculations on Exhibit 156 show actual revenues in 1995 of \$285, while Staff's calculation of revenue per access line for 1997 is just under \$300. USWC Exhibit 157 shows 1995 expense per access line at approximately \$233, while Staff shows 1997 expense per access line at about \$204. According to USWC, the disparity between its calculations and Staff's demonstrates that Staff's results are unreasonable.

Staff responds that USWC's exhibits are based on unanalyzed recorded results of operations, whereas Staff's results are based on analyzed and adjusted test year results. Moreover, Staff argues that USWC's actual 1995 Oregon revenue per access line figure reflects only \$34.8 million of U S WEST Direct's Oregon directory revenues, while Staff's 1997 figure reflects \$57.8 million in directory revenues, the sum of Staff's recommended adjustments in Issue 3a and 3b.

Further, Staff argues that its results are reasonable because the difference between USWC's actual Oregon revenue per access line in 1995 and Staff's estimate for 1997 as depicted on USWC Exhibit 156 is less than 6%. That equates to an average revenue growth of less than 3% per year for 1996 and 1997. Staff argues that U S WEST Direct's Oregon directory revenues are increasing by 7% or more per year, and USWC's local service revenues are increasing by 7 to 9.5% per year. USWC access lines are increasing by 3 to 5% per year, so Staff concludes that USWC's revenue per access line is increasing several percent per year. Therefore, Staff contends, Staff's adjusted test year revenues for USWC are reasonable.

As to expenses, Staff again argues that its results are analyzed and adjusted, whereas the USWC figures have not been analyzed, normalized, or adjusted for reasonably certain future changes. Moreover, Staff contends, the recorded expense figures on which USWC relies are subject to change from events such as accounting changes or changes in separation factors.

Staff prepared two exhibits to clarify the pattern of expense growth. Based on evidence in the record, Staff produced Appendices B and C to its opening brief. Appendix B shows recorded and adjusted test year expense per line on the same basis as USWC Exhibit 157, but unlike USWC Exhibit 157, Appendix B provides the recorded results for 1989 through 1991 and sets the origin to zero. Appendix C to Staff's brief shows the recorded and adjusted test year expense in total rather than on a per access line basis. Appendix C shows comparable expense levels from 1989 to 1991, a spike in expenses in 1992, perhaps associated with the change in accounting for retirement benefits, and comparable results for 1992, 1993, and the test period.

Staff contends that its Appendices B and C show relatively flat expense growth over time except for a spike in 1992 and higher expenses in 1994 and 1995, the period with nonrecurring reengineering expenses and extraordinary expenses.

USWC claims that some of Staff's adjustments double count and overlap. Staff responds that it held many meetings to coordinate its review of USWC's case and that it made adjustments wherever it discovered errors in its calculations. Staff asserts that USWC's claim is without merit.

USWC also claims that Staff did not take into account increased expenses related to some of its revenue adjustments. Staff contends that USWC has not presented persuasive evidence to support these claims.

*Disposition.* We conclude that the results of Staff's adjusted test year and USWC's calculations on Exhibits 156 are not inconsistent, given the growth rates in directory revenues and in access lines. Staff's growth rate assumptions are conservative compared to the increases in Oregon directory revenues and local service revenues that Staff cites. Staff's explanation of the difference between its calculations and USWC's is persuasive.

We are also persuaded by Staff's explanation of the difference between its expense projections and USWC's recorded expenses. USWC's Exhibit 157 includes nonrecurring reengineering and extraordinary expenses in the test period (see discussion at Issue 9 below). Staff has normalized and adjusted expenses to arrive at its projection. We conclude that the disparity between revenue and expense figures that USWC presents in Exhibits 156 and 157 does not prove that Staff's case is unreasonable.

As to USWC's argument that Staff has double counted or allowed overlaps of expenses, we note that Staff has amended its testimony where errors have been pointed out to it. We also note that USWC alleges double counting with respect to Issues 6c and 8j, but that is based on a misunderstanding of Issue 8j. See discussion of that issue below. We are persuaded by Staff's defense of its calculations.

**Issue 1m(2): Switching Assets**

The step by step and crossbar equipment under discussion in this issue are electromechanical switching assets that were last used in January 1987. The total Oregon step by step and crossbar depreciation reserve accounts for these assets currently have negative balances totaling approximately \$5.938 million. USWC's total Oregon plant in service account also includes \$243,000 for this unused equipment. A negative depreciation account balance increases the rate base on which USWC may earn a rate of return.

Staff argues that the step by step and crossbar accounts were scheduled to be completely amortized for intrastate purposes by June 30, 1989. Staff therefore proposes to reduce the total Oregon rate base in this case by \$6.181 million, the sum of the negative depreciation account balances and the \$243,000 in the Oregon plant in service account.

USWC contends that the negative depreciation reserves are largely due to unexpectedly high costs of removal of the equipment. USWC admits that its negative depreciation reserve balance should be decreased by \$2.236 million because USWC charged Oregon for State of Washington reclamation costs. USWC proposes to transfer the remaining negative depreciation reserve balance to the digital switch reserve account.

*Background.* In 1985, the Federal Communications Commission (FCC) approved a 4.5 year amortization of the step by step and crossbar accounts to address imbalances in the depreciation account reserves. FCC Order No. 85-656, 103 FCC 2d 185, 190-191 and 220. The Order, at 190, notes that the Commission and Pacific Northwest Bell (now USWC) agreed that the amortization procedure should be used so the utility would have a chance to recover its embedded costs. The intrastate amortization was scheduled to end by June 30, 1989.

On January 13, 1989, Mr. Conrad, USWC's Director of Capital Recovery, wrote a letter to Commission Staff that stated in part:

Based upon an analysis of year end balances, it appears that the Step account will be fully amortized, except for minor trueups, at the end of the scheduled amortization. For the Crossbar account however, the additional six months of amortization will likely create an overaccrual situation of approximately \$1M. As you suggested, we will allow the amortization to run its course, as prescribed, and true up any overaccrual in year end 1989 business. This will allow us to take into account any other entries, such as gross salvage and cost of removal, that will be made during the year.

USWC argues that no explicit order or directive mandated an earlier elimination of the negative reserve balances. USWC characterizes the FCC's order as a guideline



only, and contends that Mr. Conrad's letter is open to interpretation. We find Mr. Conrad's letter clear enough. It projects full amortization of the step by step account except for minor trueups and an overaccrual in the crossbar account, which will be amortized and trued up at year end 1989. The letter indicates that USWC was well on its way to reducing or eliminating the negative balances in these accounts. Instead, ten years after the equipment was retired, these accounts still have a negative balance of about \$6.181 million.

*Discussion.* At issue here is not whether USWC was required to bring these account balances to zero at the end of the scheduled amortization period. At issue is whether the approximately \$6.181 million, less the misallocated \$2.236 million, should be included in rate base. USWC is permitted to earn a return on rate base, which is, with narrow exceptions, utility property that provides the service for which rates are charged. See *Pacific Northwest Bell Tel. Co. v. Sabin*, 21 Or App 200, 205 n. 4, rev. den. (1975). These reserve balances relate to plant that has long been out of service.

USWC had many options for dealing with the negative reserve balances in these accounts. Under the accounting procedures in place when the equipment was retired, dead or dying depreciation account reserve imbalances that were not material (that is, not greater than 1% of current depreciation expense) were to be charged to operating expenses for the then current period. Material amounts could be amortized if the company proposed an amortization schedule. Therefore, any immaterial negative reserve balances in the accounts as of the end of 1989, or later additions to those accounts, could have been eliminated year by year, by charges to ongoing expenses under accepted accounting procedures. If the negative reserve balances were material, USWC could have proposed an amortization schedule during its 1991, 1993, or 1995 depreciation dockets.<sup>6</sup>

USWC has determined that the negative depreciation reserves result from four sources:

1. power equipment reclassification;
2. directly charged cost of removal expenses
3. retirement activity; and
4. allocated cost of removal expenses.

We address each of these categories and determine how the amounts in question should be handled.

1. *Power equipment reclassification.* During the last six months of 1989, USWC transferred power and other support equipment from the retired step by step and crossbar accounts to the digital switch account. This transfer occurred after the step by step and crossbar account reserves were to have been fully amortized under the agreement

<sup>6</sup> The docket and order numbers relating to those cases are, in order: UM 400, Order No. 91-1276; UM 694, Order No. 94-2064; and UM 767, Order No. 96-177. Pursuant to OAR 860-014-0050, we take official notice of these orders.

reflected in FCC Order No. 85-656. The step by step reclassification was \$.3 million and the crossbar reclassification was \$1.1 million.<sup>7</sup>

The transfer itself is not at issue here. However, the transfer increased the negative balance in the step by step and crossbar accounts. The increased negative balance could have been dealt with in the trueup Mr. Conrad foresaw for the end of 1989 or in the 1991, 1993, or 1995 depreciation dockets. The increased negative reserve could also have been handled as part of the previously approved amortization of the imbalances in the accounts. The 1987 FCC amortization of the remainder of the reserve accounts took just two years; the Oregon amortization of the accounts was 4.5 years. If USWC had acted promptly under procedures that were available to it, the effects of the plant equipment reclassification on the negative reserves could have been eliminated long ago.

2. *Directly charged costs of removal.* The second source of the increase in the negative reserves is labor and material removal costs that were directly charged to the step by-step and crossbar accounts from 1989 through 1992. These charges, which amount to \$2.7 million and \$1.2 million respectively, were incurred in connection with a cleanup project to bring certain central offices up to code and remove cut dead equipment. The 1989 charges should have been dealt with in the 1989 trueup. The subsequent years' costs should have been expensed, not added to rate base.

3. *Retirement activity.* This category involves plant retirements for the step by step and crossbar plant, which occurred through 1989 with a clean up of records through 1991 and subsequent years. The retirements should have been dealt with in a 1989 trueup or amortization. Subsequent retirements due to record clean up should have been charged to depreciation expense each year, not added to rate base. The retirement amounts should not be in rate base for purposes of this case.

4. *Allocated costs of removal expenses.* USWC admits that it made two accounting errors with respect to this category of charge. First, from 1991 through 1995, it charged amounts to these accounts that should have been allocated to other accounts. Second, from 1989 through 1995, it allocated Washington reclamation costs to Oregon. Those errors account for \$2.236 million, and USWC agrees that rate base should be reduced by that amount. However, USWC argues that the remaining \$1.2 million in reclamation costs should be assigned to the digital switch account.

We conclude that USWC has not established that such a transfer is appropriate. First, USWC should have written off as depreciation expense the actual step by step and crossbar reclamation costs. USWC could also have expensed or amortized those costs.

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<sup>7</sup> A capital asset transfer occurred with respect to these accounts, but USWC's witness on this issue, Ms. Mulcahy, was uncertain as to when it took place. The crossbar account began 1989 with a plant balance of about \$211,000. The January 1, 1989, crossbar asset account balance was therefore not large enough to allow a plant transfer commensurate with the reserve account transfer of \$1.1 million that occurred during the last six months of 1989.

Second, USWC admits that the 1991-1995 reclamation charges were not tracked to specific equipment. Because all the Oregon step by step and crossbar equipment was removed by 1989, we cannot determine that any portion of these later reclamation charges are related to equipment used in Oregon. USWC has not shown these to be reasonable Oregon costs.

Third, USWC's warehouse record keeping creates an allocation problem. The Portland warehouse where the reclamation occurred serves Oregon and Washington, but did not allocate reclamation costs by state. It is possible that other Oregon accounts, such as the digital switch account, have improperly been charged with Washington expenses. The warehouse also processed central office equipment other than step by step and crossbar equipment. Thus the reclamation costs in the years after 1989 likely involved these other types of equipment. The inadequacy of USWC's record keeping presents a reasonable likelihood that the claimed expenses are misstated due to geographical allocation errors. Therefore, we decline to assign the portion of the negative depreciation account reserve to a successor account for purposes of this rate case.

*Disposition.* In the past we have allowed utilities to include unrecovered investment in prematurely retired plant in the cost of replacement equipment. See, e.g., UM 528, Order No. 93-1678. The underlying basis for such allowance is that customers are better off because the dollars saved by prematurely retiring plant are greater than the cost of building new plant. See UE 88, Order No. 95-322 at 33. Here, however, the company seeks to recover not capital assets but removal costs, particularly those that accrued after an amortization.

We have also recognized that a company may seek adjustments in depreciation rates when an unanticipated premature retirement becomes likely, to avert reserve deficiencies. See UM 204, Order No. 90-837. Here, however, USWC does not assert that the step by step and crossbar equipment was prematurely retired. Instead, USWC claims that the negative reserves are due largely to high removal costs. The removal and reclamation costs thus have nothing to do with the replacement technology or the accelerated application of new technology. Moreover, a depreciation reserve transfer should follow capital assets that have been transferred to a successor account, which is not the case here.

We conclude that it is inappropriate to include the negative depreciation account reserve balances in rate base. This conclusion is consistent with our prior decisions, as noted above. None of our decisions permit a depreciation reserve account deficiency transfer more than seven years after the conclusion of an original amortization and nine years after the assets were last used and useful. We therefore disallow the \$6.181 million amount of the negative depreciation reserves. In permitting the 1985 through 1989 amortization of the step by step and crossbar reserve imbalances, we gave USWC the opportunity to address potential reserve deficiencies in advance, as contemplated by UM 204 and Order No. 90-837. USWC had ample opportunity to true up, expense, or amortize these accounts before now. USWC has not justified transfer of the 1991-95

misallocated reclamation costs to other accounts. We find that USWC has failed to establish that it is reasonable for it to earn a return on these items.

## ISSUE 2: COST OF CAPITAL

### *Completely Settled Issues:*

- *Issues 2 a-b, Cost of Debt and Capital Structure.* Staff and USWC agree to a cost of debt of 6.98 percent with a capital structure of 44.5 percent debt and 55.5 percent equity. See Appendix B, First Stipulation, paragraphs 2a-b.

### *Significantly Undisputed Issue:*

- *Issue 2d, Interest Coordination (Adjustment 15).* Staff and USWC agree that interest coordination should be computed using the weighted cost of debt (3.1061 percent) times net rate base. See Appendix B, First Stipulation, paragraph 2c.

### *Disputed Issue:*

- *Issue 2c, Cost of Equity.* USWC proposed a return on equity of 12.5% in its original filing. The company subsequently revised its requested return on equity to 13.75%. That amounts to a return on rate base of 10.74%. Staff recommends a range of return on equity of 10.2% to 12.9%, with 11.6% as the midpoint. Staff's recommendation amounts to a range of return on rate base of 8.77 to 10.27%. The amounts of three adjustments depend on the resolution of this issue:
  - Issue 4a, Rent Compensation Study (Adjustment 17)
  - Issue 4e, Affiliated Interest Return Component (Adjustment 21)
  - Issue 4h, Nonregulated Costs Removed in Adjustment 21 (Adjustment 23a)

### Issue 2c: Cost of Equity

**Rate-making Standard:** The rates the Commission sets in this case must provide the utility's investors an opportunity to earn a return that is commensurate with those earned in enterprises of similar risk and sufficient to enable the company to attract capital. *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310 (1989); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n*, 262 U.S. 679, 689-90 (1923).

**Cost of Equity:** The cost of equity capital, or required return on equity, is the rate of return expected by investors on alternative investments of equivalent risk. USWC and Staff were unable to agree on the appropriate cost of equity capital.

USWC's original recommendation for the return on equity was 12.5%. In its rebuttal testimony, filed in October 1996, USWC updated its rate of return

recommendation to reflect the developments that have occurred in the telecommunications industry and the financial markets since its direct testimony was filed. Those events are the Telecommunications Act of 1996, which opened local telecommunications markets to competition, and the FCC's Interconnection Order, which implemented the interconnection provisions of the Act. USWC argues that these events have increased its risk and caused it to revise its cost of equity estimates upward. The updated testimony also adds a direct analysis of USWCG's stock. The updated return on equity recommendation is 13.75%.

Staff's recommendation is a return on equity of 11.6%, or 10.2% if the Commission accepts Staff's proposal of a service quality adjustment.

Both USWC and Staff use the Discounted Cash Flow (DCF) and Capital Asset Pricing Model (CAPM) methods to determine the cost of equity capital. Staff and the company differ significantly on a number of variables in each method, however.

#### Discounted Cash Flow Method

The DCF method is one standard way of determining the cost of equity. This method assumes that a firm's current stock price is equal to the present (that is, discounted) value of all expected future dividends from the investment. The constant growth DCF method computes an investor's expected return on equity using current stock price, the expected dividend in the coming year, and the expected growth rate of future dividends. The basic constant growth DCF formula is:

$$k = D_1 / P_0 + g,$$

where "k" is the cost of equity capital, "D<sub>1</sub>" is the expected cash dividend per share for the next period, "P<sub>0</sub>" is the current stock price, and "g" is the expected long run growth rate in cash dividends.

Although Staff and USWC agree generally that the DCF method is an appropriate tool to determine a utility's cost of equity, they disagree on some key issues. They disagree on the sample of comparable firms and about the effect of the Telecommunications Act and the FCC Interconnection Order on stock prices.

*Telecommunications sample, comparable companies, and targeted stock.* Both the DCF model and the CAPM method involve applying a financial model to data from a company or a group of companies. In his opening testimony, Mr. Cummings, USWC's cost of capital witness, applies the DCF model to two groups of proxies for USWC: a sample of telecommunications companies and a sample of companies with risks thought to be comparable to USWC's. Mr. Cummings states that he uses data from two sets of companies because broader market evidence limits the potential for error or bias inherent in using data from just one company. In November 1995, U S WEST, Inc., issued targeted stock for its two main business groups, Communications Group (USWCG) and

Media Group. In his rebuttal testimony, Mr. Cummings applied the model to USWCG targeted stock as well.

Staff applied the DCF model to a sample of 10 telecommunications companies. Mr. Thornton, Staff's cost of capital witness, used this sample rather than analyzing USWC itself because the new USWCG financial reports and stock prices are not comparable to the U S WEST, Inc., financial reports and stock prices that existed before targeted stock was issued. Mr. Thornton contends that applying the CAPM and DCF models to samples of firms in the same industry mitigates measurement errors that may arise in estimating a single company's return on equity in isolation. Mr. Thornton's sample companies include only companies:

- covered by Value Line in the "Telecommunications Services Industry" reviews,
- that are primarily local exchange carriers,
- that have not omitted an annual dividend in the past five years,
- which Value Line forecasts continued dividend payments,
- for which it was possible to calculate CAPM betas, which measure relative riskiness, for consistency with Mr. Thornton's CAPM analysis.

Staff takes issue both with USWC's selection of comparable companies and with USWC's treatment of its telephone company sample. The comparable companies include, for instance, Anheuser Busch, a brewer, can manufacturer, and theme park operator. Staff argues that USWC's comparable companies are on average riskier than USWC.

As to the telephone company sample, Mr. Cummings' final DCF estimate for his group of telephone companies is 13.7%. Mr. Cummings originally included nine telephone companies in his DCF estimates and determined a range of DCF estimates for those companies of 7.5 to 15.3%, with an average of 12.9%. Mr. Cummings then eliminated the minimum and maximum values of the population sample to arrive at the truncated mean for the sample, 13.3%. Mr. Cummings then eliminated four companies from his sample because they announced merger intentions in April 1996, and computed a truncated mean on the reduced sample to yield the 13.7% figure. Because it derives from a truncated mean, the 13.7% figure is an average of only three companies. Staff argues that this procedure illustrates Mr. Cummings' tendency to bias results upwards.

We share Staff's concerns about Mr. Cummings' treatment of his telephone company sample. We are also persuaded that Mr. Thornton's group of telecommunications firms is more similar to USWC than Mr. Cummings' group of other firms, that Mr. Thornton's reasons for not analyzing USWCG itself are sound, and that Mr. Thornton's larger sample of ten telecommunications companies does more to mitigate measurement errors than Mr. Cummings' sample of three. We therefore conclude that Staff's selection of companies for its application of the DCF model is preferable to USWC's selection of companies.

*Effect of Telecommunications Act and Interconnection Order.* USWC argues that cost of equity estimates should be updated to reflect events since the company filed its direct testimony in December 1995. Specifically, USWC contends that the Telecommunications Act of 1996 and the FCC Interconnection Order have increased the risk to which USWC is subject. Mr. Cummings testified that Regional Bell Operating Company (RBOC) stocks were up 3.6% from the first of the year prior to the passage of the Telecommunications Act in February 1996. Between the passage of the Act and issuance of the FCC order in August 1996, RBOC stocks fell 12.1%. At the time Mr. Cummings prepared his testimony, toward the end of October 1996, RBOC stocks were down 9.8%, while the Standard & Poors (S&P) 500 stocks and the market index, were up 13.8%.

Staff investigated Mr. Cummings's claims and determined via statistical analysis that 76% of the change in RBOC stock prices after issuance of the FCC order appears to be related to interest rate changes, indicating that the drop in RBOC stock prices was largely related to rising interest rates. Staff further notes that the FCC interconnection order has been stayed indefinitely. Staff also states that the decline in RBOC stock performance follows an overperformance in the last half of 1995. Staff cites a Merrill Lynch analyst's report written after issuance of the FCC order:

RBOCs are down 10% as the market is up 7% this year. This year to date 17% underperformance of the RBOC group is due mostly to the down trend in the bond market (down 11% ytd) and the group's rally in the second half of 1995 (30%+ outperformance of the S&P 500).

In rebuttal testimony, Mr. Thornton stated that lower RBOC prices may be due to expectations of potentially lower earnings and dividend growth rates, not increased risk. Mr. Cummings replies that analysts' earnings growth rate expectations for RBOC stocks are not significantly changed from September 1995 to November 1996. Mr. Thornton responds that the steady earnings growth expectations for the RBOCs support his position that risk has not increased due to the Act and order.

Staff also points out that Mr. Thornton's telecommunications company sample raw beta, calculated from data through 1994, is .80; Mr. Cummings' unadjusted beta for his telecommunications company sample calculated from data available through August 1, 1996, is .78.

AT&T cost of capital witness Carter also argues that the Act and the FCC order have not increased the risk of USWC stock. Mr. Carter bases his conclusions on the facts that Value Line's beta and safety rank measures of risk have not increased for the sample telecommunications companies. Moreover, Mr. Carter points out that USWC's provision of local service will remain a monopoly at least at the wholesale level in the near future. Finally, Mr. Carter notes that the Commission has previously found that any increase in risk that might occur from competition will be reflected in the data underlying the DCF and CAPM analyses.

We conclude that there is no need to update Staff's analyses. We are persuaded that the 1996 Telecommunications Act and the FCC order have had little effect on the riskiness of telecommunications stocks. With the stay of the FCC order, we are persuaded that the risk represented by competition will be slow in appearing. We also find it plausible that increased interest rates and overperformance account for much of the fluctuation in RBOC stocks from 1995 to 1996. Finally, we agree that any increased risk from competition will be captured in the underlying data used for the DCF and CAPM analyses.

*Technical Differences between USWC and Staff in the DCF Model:* USWC and Staff have a number of technical differences with respect to the use of the DCF model:

1. Mr. Thornton uses the annual DCF model, whereas Mr. Cummings uses an unadjusted quarterly DCF method to measure dividend cash flows to the investor;
2. To determine the current stock price input, Mr. Thornton uses a spot price, whereas Mr. Cummings uses a two week average of prices;
3. To estimate next year's dividends, Mr. Thornton uses Value Line's expectations of dividends over the next 12 months, whereas Mr. Cummings uses his own dividend forecast; and
4. To estimate future dividend growth rates, Mr. Thornton uses an internal growth approach for his constant growth model and uses Value Line historical dividend growth for his nonconstant growth model, whereas Mr. Cummings uses short to intermediate term earnings growth forecasts as a proxy for infinite dividend growth.

1. *Quarterly v. Annual DCF.* USWC modifies the standard DCF model to account for quarterly dividend cash flows to the investor, as they are actually paid out. Staff uses the model that assumes dividends are paid once a year. USWC argues that modeling cash flows quarterly, as investors receive them, is more accurate than Staff's approach.

Staff replies that the annual model is appropriate in this case and cites UT 113, Order No. 94-336 at 14-15, where the Commission dealt with this issue and resolved it in favor of the annual model.<sup>8</sup> Staff also concedes that both models have shortcomings. The annual model does not capture the quarterly payment of dividends. The quarterly model can correctly estimate an investor's effective required rate of return. But Staff relies on an academic article by Linke and Zumwalt<sup>9</sup> to show that the quarterly model

<sup>8</sup> We take official notice of Order No. 94-336 pursuant to OAR 860-014-0050.

<sup>9</sup> "Estimation Biases in Discounted Cash Flow Analyses of Equity Capital Cost in Rate Regulation," *Financial Management*, Autumn 1984.



should not be applied to a regulatory rate base without a three step downward adjustment, which Mr. Cummings did not perform. The adjustment steps, described in Linke and Zumwalt at 19, account for the reinvestment assumption and for the regulatory rate base to which the allowed return on equity is applied.

In defense of its use of the annual model, Staff notes that the annual model can produce the correct return on equity estimate, even without capturing the quarterly payment of dividends, assuming the utility reinvests its retained earnings on a quarterly basis and earns on the increased investment. Therefore, Staff concludes that the annual DCF model is appropriate for beginning of period ratemaking.

The current case is based on average of period ratemaking. The end of period rate base here is higher than the beginning of period rate base. According to Mr. Thornton, the annual DCF model estimate must be adjusted downward if applied to an average of period rate base. Staff did not make this adjustment. Therefore its annual DCF model is biased in USWC's favor.

USWC's quarterly DCF model also does not take into account the fact that USWC receives monthly revenues from its customers. That gives USWC the opportunity to reinvest its monthly earnings and to earn more than its authorized return on equity. Staff demonstrates that a nominal rate earned on a monthly basis will produce the effective (quarterly DCF) rate over a year when applied to beginning of month book values (rate bases). Assuming that Mr. Cummings' 12.1% quarterly DCF estimate for telephone companies is correct, Staff argues that the estimate should be reduced to 11.5%, the nominal return that would earn the company 12.1% if compounded monthly beginning with the original investment. The existence of monthly revenues to USWC therefore also requires a downward adjustment, which Mr. Cummings did not make.

On review of the record and the arguments advanced by USWC and Staff, we conclude that both the annual and the quarterly DCF models require adjustments to eliminate bias and error. USWC did not adjust its quarterly model to account for the application of the quarterly model to regulatory rate base or for the monthly receipt of revenues. Staff did not adjust its annual DCF model downward to account for average of period rate base. If it had, the higher return produced by considering quarterly dividends would have been more than offset. Both the USWC and Staff DCF approaches give too high a result, but we conclude that Staff's recommendation is the more reasonable approach in this docket.

2. *Current Stock Price Input.* There are two subissues with respect to this dispute. First, there is a question whether it is appropriate to average stock prices over a ten day period or choose a spot price from a single day; second, there is an issue of whether the stock price should be updated to account for events that have transpired since testimony was filed.

For the current price variable in the DCF model, USWC used an average of the daily closing stock prices for the ten trading days, November 1 to November 14, 1995. Mr. Cummings chose a ten day average to guard against the possibility that the selected stock price might be anomalous in reaction to a news story or other external event.

Mr. Thornton chose the spot prices closing on July 2, 1996, as reported in the July 3, 1996, *Wall Street Journal*. Staff argues that the most current spot prices are the appropriate prices to use for the  $P_0$  term in the DCF model, because under the efficient markets hypothesis as advanced by modern corporate finance theory, those prices include all information incorporated into historical prices, plus the most recent information.

In UT 113, Order No. 94-336, we considered whether a spot price or an average of prices was superior. We stated, at 13:

Conceptually, the stock price to use is the current price of the security at the time of estimating the cost of equity. In an efficient market, the current stock price provides the best indication of future prices. An efficient market implies that prices adjust instantaneously to the arrival of new information. Therefore current prices reflect the fundamental economic value of the security.

Here, as in that docket, we conclude that Staff's method of calculating stock price based on spot prices is more reasonable than averaging prices because it is more consistent with the theory of efficient markets. We have already addressed the problem of updating stock price information, under the discussion of risk from competition above.

3. *Estimation of the Next Year's Dividend.* To estimate next year's dividends, the " $D_1$ " term of the DCF model, Mr. Cummings makes his own forecast using historical dividends and expected earnings growth rates.

Mr. Thornton uses Value Line's expectations of dividends over the next 12 months for the " $D_1$ " term. Staff took the ratio of  $D_1$  to  $P_0$ , the current stock price, for each company in his sample and averaged the ratios to arrive at an average required dividend yield of 3.5%. Staff asserts that its method is more direct than USWC's and that USWC's method is flawed in using forecasted earnings growth to forecast dividend growth over the coming year.

Staff supports its position with the argument that near term earnings growth forecasts are unduly influenced by earnings cycles, making them unreliable as predictors of earnings growth in the long term. Dividend growth is a function of earnings growth in the long term. Near term dividend growth may not even be related to near term earnings growth, Staff argues, because companies smooth dividend payments in the face of earnings cycles.

We are persuaded by Staff's argument. The horizon for the earnings growth forecast is too short and is subject to the possible distortions of earnings cycles. We find that Staff's approach to estimating next year's dividends is more reasonable, and adopt it.

4. *Estimation of Future Dividend Growth Rate.* To estimate the expected dividend growth rate, the "g" term of the DCF model, Mr. Cummings uses Institutional Brokers' Estimate System (IBES) analysts' expectations of earnings growth one to five years forward. His result is a 6% growth rate. In support of his method, Mr. Cummings quotes from a research study that USWC provided to Staff in response to a data request:

We have compared the accuracy of four methods for estimating the growth component of the discounted cash flow yield on a share: past growth rate in earnings (KEGR), past growth rate in dividends (KDGR), past retention growth rate (KBRG), and forecasts of growth by security analysts (KFRG). . . . For our sample of utility shares, KFRG performed well, with KBRG, KDGR, and KEGR following in that order.

The superior performance by KFRG should come as no surprise. All four estimates of growth rely upon past data, but in the case of KFRG, a larger body of past data is used, filtered through a group of security analysts who adjust for abnormalities that are not considered relevant for future growth.<sup>10</sup>

Staff uses two different annual DCF models in its analysis: the constant growth model and the nonconstant growth model. In the constant growth model, Mr. Thornton uses the internal growth approach to estimate future dividend growth. This approach is based on the observation that dividends grow by a firm's book return on equity ( $b$ ) times the amount of equity retained in the firm, also called the retention ratio ( $r$ ). The  $b * r$  growth model is based on a review of historical data from Value Line, of which investors are aware. The  $b * r$  approach is appropriate if the retention ratio for a firm is fairly constant and the market to book (M/B) ratio is expected to be 1.0. Mr. Thornton notes that the retention ratio has been reasonably constant in the telecommunications industry, but the M/B ratio is well above 1.0, based on investors' expectation that the telecommunications services industry will earn substantially more than its cost of capital.

To correct for this expectation, Mr. Thornton added a second growth term to his  $b * r$  growth rate range, the term " $v * s$ ." The variable " $v$ " represents the fraction of funds raised from common stock sales that accrues to old shareholders. The variable " $s$ " represents an expected rate of increase in common equity from stock sales. Mr. Thornton then adds his  $v * s$  estimate to his  $b * r$  growth rate range to calculate his constant growth rate range. Mr. Thornton's  $v * s$  estimate is 1.8%; his  $b * r$  growth rate range is 2.6% to 8.9%. Accordingly, his range of DCF estimates based on the constant growth approach are 7.9% to 14.2%, which averages to 11.1%.

<sup>10</sup> David A. Gordon, Myron J. Gordon, and Lawrence I. Gould, "Choice among Methods of Estimating Share Yield," *The Journal of Portfolio Management*, Spring 1989, pp. 50-55.

The nonconstant growth DCF model estimates investors' forecasts of dividend growth and allows expected annual dividends to grow at different rates over time. This approach allows an analyst to incorporate near term dividend growth rates that are much lower or higher than a long run expectation.

Mr. Thornton used two nonconstant analyses to estimate growth. Both are based on a finding that dividend growth in the telecommunications industry has been relatively stable. Therefore, Mr. Thornton forecasts future growth based on historical dividend growth, using up to 19 years of data.

For his first nonconstant growth analysis, Mr. Thornton uses historical dividend growth as a proxy for future dividend growth. His result is 9.3%. For his second analysis, Mr. Thornton uses Value Line forecasts of dividend growth through the year 2000, and then uses historical dividend growth beyond that. His result using this method is 9.2%. The results average to 9.3%.

Mr. Cummings takes issue with Staff's numbers in its use of  $b * r$  growth rates. Mr. Cummings notes that Staff's work papers show a large difference between the average historical  $b * r$  growth rates from 1988 to 1995 and the forecasted  $b * r$  growth rates for 1996, 1997, and 1999-2001. The numbers change from 5.71% for 1988-1995 to 14.74% for 1999-2001.

Given such growth, Mr. Cummings notes that Staff provides no explanation why an average of 1988 to 1995  $b * r$  growth rates would reflect investors' expectations for future growth, and also calls the accuracy of the numbers into question. Mr. Cummings believes that analysts' forecasts are a better proxy for future growth in dividend cash flows than an average of historical growth, which Mr. Thornton uses in his nonconstant growth model.

We conclude that Staff's analysis of the growth rate is more direct than USWC's. Staff relies on historic and forecasted *dividend* data, and USWC relies on near and short term *earnings* growth forecasts. Over a period of five years or less, the growth in dividends paid by a company may not always equal earnings growth, although it must in the long run. Staff's general approach is, thus, superior to USWC's.

To validate its method over Staff's, USWC relies on a passage Gordon, Gordon, and Gould, set out above. This passage is too vague to serve as an argument in favor of its method in this case. Moreover, the company argues that it uses long term forecasts of earnings in its analysis, but the record indicates that it uses growth forecasts only one to five years forward. We conclude that Staff's use of dividend data is more reliable than USWC's use of earnings data.

Staff performed a constant growth analysis and two nonconstant growth analyses to arrive at its estimate for "g." Staff's procedure was thus more thorough and contained

more internal checks than USWC's. USWC objects to the forecasted growth numbers in Mr. Thornton's work papers, but does not specify the basis for its objection. USWC only notes that it questions why an investor's expectations would be based on past growth rates when future growth rates are greater. We believe that Staff cured any potential flaw in its inputs by using a combination of several approaches to determine its "g" estimate. We adopt Staff's ranges for the growth term.

*Final DCF Range of Estimates.* Staff's final DCF range of estimates is 9.2% to 14.2%, with a midpoint of 11.7%. Mr. Thornton derived this range by eliminating his lowest estimate (7.9%), on the ground that he did not expect the cost of USWC's equity to be as low as that.

USWC's final DCF range of estimates is 12.6% to 13.7%, and a point estimate for USWCG of 13.9%.

**DCF conclusion:** Incorporating the dividend yields and growth term ranges derived by Staff and adopted above, the Commission concludes that an appropriate range for DCF is 9.2% to 14.2%, with a midpoint at 11.7%.

### Capital Asset Pricing Model

The CAPM is a risk premium analysis that calculates the expected equity return by estimating a risk free rate of return and adding a risk premium. Staff and USWC agree that the basic CAPM formula is:

Expected return for a stock = risk free return + (relative risk [beta] for the stock \* market risk premium).

The CAPM is a holding period model that requires estimates of the risk free interest rate, the relative risk, or beta, for a stock, and the market risk premium over the assumed holding period. The analyst must select the holding period. The holding period assumption dictates consistent estimation choices for the risk free interest rate and market risk premium. The CAPM model expresses the average beta as 1.0.

USWC and Staff disagree on each aspect of CAPM in this case:

1. The assumed holding period;
2. The risk free rate of return;
3. The estimate of beta, including the propriety of weighting betas; and
4. The market risk premium.

*1. The Assumed Holding Period.* The holding period is assumed prior to the determination of the risk free interest rate and the market risk premium in the CAPM model. The risk free rate is estimated with reference to the yields of U.S. Treasury securities. The yields for U.S. Treasury securities vary directly with the term of the

securities. Short term and intermediate term securities normally have a lower yield than long term securities.

Mr. Thornton assumes an intermediate term holding period for his CAPM analyses, in conjunction with his use of intermediate term U.S. Treasury securities for his risk free rate of return. Mr. Thornton makes this choice of holding period because he believes that the intermediate term corresponds more closely to the typical period for which rates are in effect. In this case, rates will likely be in effect from May 1996 through December 1998. Moreover, Mr. Thornton believes that intermediate term U.S. Treasury securities avoid both the volatility of short term U.S. Treasury bills and the risk premia of long term U.S. Treasury bonds.

Mr. Cummings also uses intermediate term Treasury securities as a risk free rate. However, USWC also uses a long term risk free rate in its CAPM estimates. Mr. Cummings chooses U.S. Treasury security rates with three to thirty years' maturity for his risk free rate; Staff argues that that indicates an assumed holding period of three to thirty years. According to Staff, Mr. Cummings' attempt to estimate both intermediate term and long term market risk premia suggests assumed intermediate and long term holding periods.

Mr. Cummings testified that for telecommunications industry stocks, the expected holding period is less than three years. He distinguishes between portfolio turnover and investment horizon, noting that investors turn over their portfolios every one to three years, not every thirty years. He states that equity investors rebalance their portfolios often but have a long term focus for their portfolio investment. Therefore, he concludes that equity investors' holding periods do not have to be thirty years long to use a thirty year U.S. Treasury bond as a risk free rate.

In his direct testimony, however, Mr. Cummings equates investment horizon and holding period: "In practice, however, common stock investments are actively traded in the capital markets, indicating that investors have relatively short investment horizons or expected holding periods."

We conclude that Mr. Cummings has inconsistently assumed conflicting holding periods. This inconsistency biases his cost of equity estimates upward. Staff's holding period assumption is more reasonable, because it is internally consistent and because it tracks better than USWC's with the time the rates from this case will be in effect.

2. *Risk Free Rate of Return.* As noted above, the CAPM requires an estimate of the risk free rate of return. Staff's analysis assumes an intermediate holding period and relies on the average of spot yields for intermediate term U.S. Treasury securities.<sup>11</sup> Staff's risk free rate estimate is 6.6 %.

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<sup>11</sup> Staff's intermediate term securities are five, seven, and ten year securities. Mr. Thornton took the rates from the July 3, 1996, edition of the *Wall Street Journal*, as noted in the DCF discussion above. The rates

Mr. Cummings' risk free rate is 7.09%. He uses thirty year U.S. Treasury securities for his risk free estimate. Staff argues that Mr. Cummings' use of long term securities is inappropriate because it is inconsistent with his holding period assumption, as noted above, because it causes an upward bias in his market risk premium estimation for holding periods greater than one year (see discussion at 3. below), and because long term bonds include a liquidity risk premium that must be extracted before they are used in a CAPM analysis. Mr. Cummings disagrees that a risk premium must be extracted from long term bonds.

As discussed above, the holding period assumption should be much shorter than thirty years in this case, where rates will likely be reexamined in late December 1998 and the cost of capital will be reestimated based on market conditions at that time. An investor with a short holding period is exposed to large potential gains or losses by purchasing a long term instrument, because the instrument will be sold before it matures. For CAPM analysis, therefore, a U.S. Treasury security with a maturity greater than the assumed holding period should not be used as a proxy for the risk free rate.

We agree with Staff that the long term Treasury rate includes a liquidity risk premium. As Mr. Thornton pointed out, it is possible to correct the long term Treasury yield by subtracting the liquidity risk premium.<sup>12</sup> Mr. Cummings did not make this correction. We conclude that Staff's risk free rate is the more appropriate.

3. *Beta*. Beta is a measure of that portion of a company's risk that cannot be diversified away. The market risk premium is multiplied by the company's beta to determine investors' required return above the risk free rate.

Mr. Thornton used the Fisher-Kamin regression technique to calculate his beta estimate.<sup>13</sup> He estimated the beta of his sample telecommunications companies to be .80, based on data through 1994. (When he included 1995 data, the beta dropped to .72.) To arrive at his beta estimate, Mr. Thornton regressed his sample companies' stock returns minus the risk free rate on the New York Stock Exchange returns, also minus the risk free rate. The pertinent data for beta estimation includes market portfolio returns, company stock returns, and risk free rates. Mr. Thornton used the Center for Research in Securities Prices (CRSP) value weighted index of New York Stock Exchange stock returns as a proxy for the portfolio returns and for data on his sample's stock returns. Mr. Thornton drew his risk free data from Ibbotson Associates' publication, *Stocks, Bonds, Bills, and*

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averaged 6.66 %. Because this case is based on an average of period rate base, which requires a downward adjustment (see discussion of DCF model above), Mr. Thornton adjusted the rate downward to 6.57 %, then rounded to 6.6%.

<sup>12</sup> Staff/4, Thornton/43, citing Brealey and Myers, *Principles of Corporate Finance*, 3d ed., McGraw-Hill Book Co., New York (1988), p. 184.

<sup>13</sup> The Commission has previously approved this beta calculation method. See, e.g., Order No. 94-336 at 25; Order No. 87-406 at 66; and Order No. 80-634 at Appendix, 21-22.

*Inflation 1995 Yearbook*. Both CRSP and Ibbotson data series ran from 1926 through 1994.

To estimate USWC's beta, Mr. Cummings uses daily data, based on 219 trading days. Value Line uses five years of weekly data to estimate beta. The shorter data frequency on which Mr. Cummings relies biases his beta estimate upward. Mr. Cummings argues that he corrects for the daily beta bias statistical problem by using the Dimson and modified Scholes-Williams regression methods. Mr. Cummings chooses the S&P 500 as a proxy for the market portfolio, and derives beta estimates of .75 and .76 from that group of companies, with an average of .76.

In keeping with the practice of Merrill Lynch, which weight raw betas 1/3 toward 1.0, Mr. Cummings adjusts his .76 average USWC beta toward 1.0, yielding a .84 beta. Then, in a manner similar to Value Line, which weights its betas toward 1.06, Mr. Cummings further rounds upward to .85.

Staff and USWC have a number of technical differences involving the derivation of their respective betas, but their raw betas are almost identical. The betas of Staff and USWC differ because they employ different methods to adjust their raw betas. Mr. Thornton takes an average of telecommunications industry stocks and does not adjust his average beta, arguing that use of the industry average renders adjustment unnecessary. USWC adjusts its beta toward 1.0, the average of all betas (or toward 1.06, using the Value Line adjustment).

We conclude that Staff's telecommunications industry average beta is more reasonable than a beta adjusted toward the average of all betas or toward an even higher standard, such as Value Line uses. As Nobel laureate economist William F. Sharpe says:

Information of the type shown in Table 13-4 [industry average betas] can be used to "adjust" historic beta values. For example, the knowledge that a corporation is in the air transport industry suggests that a reasonable estimate of the beta value of its stock is greater than 1.0. It thus makes more sense to adjust a historic beta value toward a value above 1.0 than to the average for all stocks.<sup>14</sup>

Mr. Sharpe's support of the adjustment toward industry average is borne out by empirical studies that Staff has performed. Over a number of years, Mr. Thornton testified that Staff has concluded that weighting public utility betas toward 1.0 is inferior compared to weighting betas toward the average industry beta.

Conversely, it makes more sense to adjust a historic company's beta toward a value below 1.0 if it is in the telecommunications services industry, because the record reveals that telecommunications services companies are less risky than the average stock. Thus, if any adjustment to the raw beta is appropriate, it should be toward the industry

<sup>14</sup> *Investments*, 2d ed., Prentice-Hall, Inc., Englewood Cliffs, 1981, p. 344.



average rather than toward a generic average of all stocks. Staff points out that if Mr. Cummings' truncated telecommunications company sample average relied on raw betas, rather than betas adjusted toward 1.0 or 1.06, the average beta would be .78, lower than Mr. Thornton's estimate of .80. Because Mr. Thornton's sample takes the average of telecommunications services companies, we conclude that no adjustment to his raw beta is necessary.

4. *Market Risk Premium.* The CAPM multiplies the estimated beta by the market risk premium, which must also be estimated. To estimate the market risk premium, Mr. Thornton uses an unbiased estimation method, whereas Mr. Cummings uses a method which he admits is biased upward for holding periods greater than one year.

Mr. Thornton's method assumes that the average market risk premium over a large number of historical intermediate term holding periods is a reasonable estimate of the expected intermediate term market risk premium. He estimates the average historical intermediate term market risk premium by calculating the difference between expected compounded returns on the market portfolio and the compounded returns on the risk free asset over an intermediate period (the holding period assumption discussed in paragraph 1 above). In other words, the market risk premium is the difference in returns between an investor's two accounts, the one invested in the stock market and the other invested in U.S. Treasury securities, over an intermediate period. The difference is then annualized.

Mr. Thornton used CRSP's 1926-1995 New York Stock Exchange/AMEX/NASDAQ return series as a proxy for the theoretical market portfolio returns (a sample of approximately 8,000 stocks in his last month of data). He used 1926-1995 data in intermediate term U.S. Treasury securities rates from Ibbotson Associates' *Stocks, Bonds, Bills, and Inflation 1996 Yearbook* to represent the risk free rates over that period. Mr. Thornton used two different series from the *Yearbook*: yield (ex ante rates) and total returns (ex post rates). He performed separate analyses on each of the series and generated two series of estimates. He then separated his 1926 to 1995 data into holding periods of five to ten years each, such that all his data were used only once. He then calculated the average rate of return difference between holding the market portfolio and holding the risk free rate over the intermediate term. Finally, Mr. Thornton averaged the market risk premium estimates for each of the holding periods. His estimate of the historical market risk premium using ex post U.S. Treasury security returns is 5.8%; of historical market risk premium using ex ante returns, 6.3%.

Mr. Cummings uses an arithmetic average approach to market risk premia. His estimates are the arithmetic difference between annual stock returns and annual bond returns. All of Mr. Cummings' ex post market risk premium estimates are based on arithmetic averages of annual data. The market risk premium range in USWC's rebuttal testimony is 7.5% to 7.7% for intermediate term risk free rates and 7.1% to 7.3% for long term risk free rates. The ex post and ex ante estimates are very close. USWC argues that this indicates that the estimation of the market risk premium is sound.

USWC objects to the fact that Staff uses only historical data to estimate the market risk premium, whereas USWC uses an average of an historically derived (ex post) and current expected (ex ante) market risk premium. USWC argues that Mr. Thornton's range is biased downward because his calculation is based on differences of geometric means and the use of bond total returns rather than bond income returns. USWC contends that the theoretical literature and the provider of the data (Ibbotson Associates), as well as investors in U.S. Treasury bonds and the S&P 500 stocks, support the validity of the arithmetic mean procedure.

Staff argues that Mr. Cummings' estimates are biased upward because, as he admitted on cross examination, a method like his that relies on the arithmetic average of annual data will produce an upwardly biased estimate if the holding period is assumed to be more than one year. Staff reminds us that Mr. Cummings implicitly assumes an intermediate term and long term holding period by his choice of risk free rates. Staff also points out that Mr. Cummings admitted that Staff's method is an unbiased estimator method.

Moreover, Staff takes issue with Mr. Cummings' ex ante market risk premium. Ex ante has a different meaning in Mr. Cummings' calculation than the yield that Mr. Thornton used as a term of his analysis. Mr. Cummings uses the term to mean a current market risk premium. Staff points out that Mr. Cummings stated in his direct testimony that the best estimate of the market risk premium, which varies over time around an average or mean, is the average risk premium over the longest period for which data are available. Nonetheless, Mr. Cummings gives equal weight to his ex ante analysis, which involves performing a DCF analysis on the S&P 500 and subtracting intermediate term or long term interest rates. Staff argues that Mr. Cummings' application of the DCF to the S&P 500 is inappropriate, because he relies in the IBES short term and near term earnings forecasts as proxies for indefinite future growth. This choice skews his results upward, Staff contends.

We are persuaded that Mr. Thornton's method of estimating the market risk premium is superior to Mr. Cummings'. Mr. Thornton uses an unbiased estimator, as Mr. Cummings admits. Appendix IV to Mr. Cummings' direct testimony (USWC Exhibit 14) cites an article by Fuller and Hickman as the source of an unbiased estimation procedure.<sup>15</sup> Mr. Thornton testified that the procedure in that article is substantially the same as the procedure he used in this case to estimate the market risk premium.

USWC argues that the theoretical literature supports Mr. Cummings' position on the arithmetic mean, but the articles included in his Appendix IV indicate that if an analyst has annual data and assumes a holding period of greater than one year, the analyst should compound returns over the assumed holding period before taking an average. This is what Mr. Thornton did with his monthly data. Mr. Cummings' analysis biases

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<sup>15</sup> "A Note on Estimating the Historical Risk Premium," *Financial Practice and Education*, Fall/Winter 1991, pp. 45-48.

his results upward. We conclude that Mr. Cummings' results are less accurate as an estimate of the market risk premium, and adopt Mr. Thornton's estimates.

**CAPM conclusion:** We have adopted Staff's recommendations on each of the contested issues in the CAPM analysis. Therefore, we adopt Staff's CAPM cost of equity estimates. They are 11.2% for the ex post U.S. Treasury security returns and 11.6% for the ex ante (yield) returns. These estimates average to 11.4%.

### Flotation Cost Adjustment

Mr. Cummings proposes to adjust his CAPM and DCF return on equity ranges upward by a factor of 1.0115 to provide USWC with a return on estimated historical stock issuance costs. Staff recognizes that flotation costs are a necessary cost of business, but recommends that issuance expenses be recovered as an expense item, not through an increase in return on equity. Staff contends that Mr. Cummings' proposed approach improperly gives stockholders a one time gain. Staff also presented evidence that USWC does not expect to require large amounts of new equity financing.

*Disposition.* We consider stock issuance costs to be expenses. Therefore, such costs must be included in rates when the expenses are incurred. See Order No. 94-336 at 28. Recovery of past issuance expenses in future rates would be retroactive ratemaking. See *id.*; see generally Letter of Advice dated March 18, 1987, to Charles Davis, Public Utility Commissioner (OP-6076).

Mr. Cummings' proposal amounts to a perpetual return on historical estimated issuance expenses. Under regulatory schemes, bond costs are embedded and have fixed lives. Common stock, however, does not have a fixed life. Bonds are thus not analogous to stock in this context. Approval of the amortization of embedded costs such as fixed life bond expenses over the life of a bond does not justify a perpetual return on estimated historical stock issuance expenses.

We note also that Mr. Cummings' flotation cost adjustment method has no basis in the financial or economic literature. The record discloses that when asked about support for his adjustment method, Mr. Cummings provided an article by Brigham and Gapenski discussing the cost of capital adjustment method (which is also what Mr. Cummings called his method). However, Mr. Cummings did not use the method prescribed in the Brigham-Gapenski article. The article discusses no adjustment to the CAPM for flotation costs. Mr. Cummings admitted that he had seen no professional literature containing mathematical proofs justifying the application of a flotation cost adjustment to the CAPM.

Moreover, a flotation cost adjustment is internally inconsistent with the CAPM. The CAPM assumes that transaction costs are irrelevant, but flotation costs are transaction costs. For the above reasons, we reject Mr. Cummings' proposed flotation cost adjustment.

### Coverage Ratio

At Issues 12 and 13, below, we discuss the implications of our decision on USWC's cash flow and business valuation. However, we must also discuss here one aspect of USWC's argument about its viability in view of our decision. Mr. Cummings argues that Staff's case will cause a negative pretax interest ratio for USWC. Mr. Cummings supports his contention by hypothesizing a stand alone entity, USWC-Oregon. Mr. Cummings prepared an exhibit, USWC Exhibit 120, to demonstrate the effect of Staff's case on USWC's pretax interest coverage ratio. Mr. Cummings states that bond rating agencies calculate interest coverage as follows:

$$\text{Pretax Interest Coverage} = \frac{\text{Pretax Income} + \text{Interest}}{\text{Interest}}$$

Staff contends that this exhibit compares an unadjusted USWC test year with Staff's adjusted test year. Staff moreover points out that USWC's calculations do not account for USWC's proposed \$34.9 million U S WEST Direct revenue imputation, any revenue requirement adjustments due to the sale of exchanges to PTI, any revenue requirement adjustments due to extraordinary 1995 customer service and maintenance expenses, any adjustments for tariff changes, or any adjustments for reengineering savings. Thus, Staff argues, USWC's Exhibit 120 does not even reflect USWC's adjusted version of the rate case.

Staff has compared Mr. Cummings' pretax interest coverage formula for the hypothetical USWC-Oregon under Staff's adjusted test year after the second stipulation, both before and after revenue requirement reductions. Staff argues that it is clear that USWC-Oregon, if it were a stand alone entity, would have a financially sound interest coverage ratio. Staff notes that Mr. Cummings does not calculate pretax interest coverage in a manner consistent with the formula he provides, which is set out above. Instead, he merely divides pretax net operating income by interest expense.

Staff included an Appendix A to its Cost of Capital brief in which showed the interest coverage ratio calculations for Staff's fully adjusted test year (including a 10.2% return on equity), before and after a rate reduction. Staff uses both the method Mr. Cummings attributes to bond rating agencies and the method he actually uses in USWC Exhibit 120. Appendix A to Staff's Cost of Capital brief demonstrates the following about pretax interest coverage ratios under Staff's case after the second stipulation:

#### *Pretax Interest Coverage Before Rate Reduction*

Rating agency method:	9.02
USWC Exhibit 120 method:	8.02

*Pretax Interest Coverage After Rate Reduction*

Rating agency method:	4.88
USWC Exhibit 120 method:	3.88

Staff points out that a pretax interest ratio coverage of 4.88 places USWC-Oregon above the Standard and Poor's AA benchmark of 4.5 for telecommunications companies, and a ratio of 3.88 places the entity within the A benchmark. Both AA and A ratings are superior to mere investment grade ratings. Staff concludes that a 10.2% return on equity, together with the rest of Staff's adjustments, will allow the hypothetical USWC-Oregon to maintain its financial integrity.

*Disposition.* Staff's arguments persuade us that Mr. Cummings' pretax interest coverage ratio exhibit, USWC Exhibit 120, does not reflect even USWC's adjusted case. Moreover, as Staff points out, Mr. Cummings does not use the bond rating agency formula to calculate interest coverage. We find that Staff's calculations in Appendix A to its Cost of Capital brief are methodologically correct and demonstrate that USWC-Oregon, if it existed, would have a pretax interest coverage even after rate reduction sufficient to maintain its financial integrity.

**Conclusion.** Under *Duquesne*, the rates we set in this case must give USWC's investors an opportunity to earn a return commensurate with those earned in enterprises of similar risk and sufficient to enable the company to attract capital. Based on the considerations set out above, we find that Staff's cost of equity analysis is superior to USWC's in meeting these criteria. Mr. Thornton's telecommunications company sample better reflects the risk USWC faces. Mr. Cummings' selection of comparable companies are, on average, riskier than USWC. We find Mr. Cummings' analysis biased upward. Therefore, his analysis fails to meet the *Duquesne* criterion of setting a return like those earned by enterprises of similar risk.

Further, we are satisfied that Staff's recommended return will maintain USWC's financial integrity. Finally, we are persuaded that the return is high enough to attract capital. Therefore, we adopt Staff's recommendation of 10.2% to 12.9% as the reasonable range of return on equity. The midpoint of that range is 11.6%.

**Proposal to Set Allowed Return at Low End of Reasonable Range:** After establishing a range of a return on equity the midpoint of which is 11.6%, Staff recommends a service quality adjustment to lower the return on equity to 10.2%. We adopt this recommendation. See discussion at Issue 9 below.

**ISSUE 3: U S WEST DIRECT DIRECTORY REVENUE IMPUTATION***Disputed Issues:*

- *Issue 3a, U S WEST Direct Directory Imputation (Adjustment 16).* Staff and USWC agree that the test year should be adjusted but disagree about the

amount of the adjustment and the method used to calculate the imputation. Staff used the method and publishing fee rate adopted in docket UT 85 to calculate revenues from U S WEST Direct. USWC used the \$34.7 million directory revenue imputation that was in the UT 85 revenue requirement.

- *Issue 3b, U S WEST Direct Directory Growth (Adjustment 16a).* Staff included growth at the level expected to occur during the period when rates from this docket are in effect. Staff and USWC disagree about the need for pro forma adjustments (*see* Issue 1a, Test Year). If the Commission includes Staff's adjustment in the test year, the final amount depends on the resolution of Issues 3a, Directory Imputation, and 8j, Access Line Growth.

### **Issue 3a: U S WEST Direct Directory Revenue Imputation**

Before the divestiture of AT&T, the local Bell telephone companies published and distributed alphabetical and classified telephone directories (the white and yellow pages) within their service territories. Historically, the publication of telephone directories has been part of the local telephone company's service obligations, and the revenues from directory publishing and advertising have been used to defray the utility's revenue requirement and maintain affordable local telephone rates.

After the breakup of AT&T, directory operations remained with the local telephone companies. Since that time, some of the Bell operating companies, including USWC, have transferred their directory operations to nonregulated affiliates. USWC's current directory publishing affiliate is U S WEST Direct (USWD), which was created in 1986. *See* Order No. 88-488, UI 54, in which the Commission authorized USWC (which was then known as Pacific Northwest Bell, PNB) to enter into various publishing agreements with USWD. But for imputation, the transfer of assets from the regulated utility to a nonregulated affiliate would have diverted the publishing revenues from ratepayers to shareholders.

USWD's directory operation is highly lucrative. The USWD directory dominated the field in 1988, when the Commission approved the publishing agreements, and USWD dominates the field today. Its revenue growth rate has consistently been high; see discussion at Issue 3b below.

Like a number of other states, Oregon opposed this attempt to transfer the assets of the regulated telephone company to nonregulated affiliates without customer compensation. We reasoned that the value of the directories is connected directly to the regulated operations of the local telephone company. The relationship between telephone service and yellow pages advertising in the directories is symbiotic. As we said in Order No. 88-488, at 7:

[T]he Commission believes that the thing of value which is being transferred, and which makes these Yellow Pages different and much more valuable than others, is their connection with the local exchange telephone company . . . . The

distribution of the classified advertising with the necessary white pages by, with the blessing of, or in association with the local exchange company sets [the Yellow Pages] apart from any other classified advertising efforts.

We further reasoned that the local exchange company's position as incumbent telecommunications service provider was conferred on it by the State of Oregon through the Commission. ORS 759.020, 759.025. We concluded that the directory publishing rights, opportunities, and profits are valuable assets that have been derived by the local exchange company in connection with its state authorized position as a monopoly or regulated local telecommunications service provider. In considering PNB's publishing agreements with USWD, we stated (Order No. 88-488 at 8):

The Commission is not disposed to permit the parent company to spin off the money-making ventures of its operating companies, one by one, thus increasing the net revenues required to support local service. This is especially true when those revenues result from a venture which receives its value from its close association with the communications services provided by the local exchange company.

Accordingly, when we approved the publishing agreements between PNB and USWD, we provided that "the revenues which will be credited to PNB as a result of the transfer will be based on the difference between the revenues received from the publication venture, and the reasonable costs of publication." Order No. 88-488 at 9. In that same docket (UI 54), PNB represented that regardless of the transfer of the directory publishing operation to USWD, regulated ratepayers would continue to benefit from such publishing.

In other words, we have imputed to PNB, now USWC, directory revenues. This imputation lowers USWC's revenue requirement. In PNB's last general rate case in Oregon, UT 85, we determined that

a level of directory publication expense equal to [\*\*\*]<sup>16</sup> percent of USWD's [Oregon] net revenues is fair and reasonable for purposes of this proceeding. The remaining [\*\*\*] percent of USWD's [Oregon] net revenues should be imputed to PNB, lowering its revenue requirement by \$29.066 million. Order No. 89-1807 at 34.

Imputation of directory revenues to USWC is the form of annual compensation that was adopted by the Commission to remunerate the utility's ratepayers for USWD's use of their directory related assets. See Order No. 89-1807 at 28-42. Those assets are USWD's right to publish directories on behalf of USWC and the associated opportunities, goodwill, reputation, and profits that derived from PNB's position as a regulated

<sup>16</sup> The bracketed data are confidential.

telecommunications service provider. In Order No. 89-1807, we determined that those assets belong to USWC's ratepayers.

In UT 85, Order No. 89-1807, we adopted a revenue retention ratio for determining the amount of directory revenues to impute to PNB. The ratio is derived by determining directory expenses as a percentage of USWD's net revenues (i.e., gross revenues less uncollectibles) and then imputing the remaining percentage of USWD's net revenues (directory profits) to USWC. Order No. 89-1807 at 29-30. Also in Order No. 89-1807, we adopted a 4.1% growth adjustment for PNB, because "the evidence indicates that there is a substantial likelihood that growth in directory revenues will equal or exceed 4.1% in the foreseeable future." At 41-42.

In UT 80, Order No. 91-1598, we adopted an Alternative Form of Regulation (AFOR) plan for USWC. As part of the plan, the utility agreed that

[it] will not challenge, through legislation or litigation, the Commission's authority to impute Yellow Pages revenues for ratemaking purposes. This agreement is binding for the five-year term of the Plan and for five years after the end of the Plan. However, USWC is not prohibited from challenging the methodology and amount of imputation after the term of the Plan has expired.

Order No. 91-1598 at 8-9. On May 1, 1996, the Commission terminated the AFOR plan by Order No. 96-107. The five year post AFOR period during which USWC is prohibited from challenging our authority to impute Yellow Pages revenues for ratemaking purposes runs through April 30, 2001.

Despite this agreement, USWC spent considerable time at hearing and in its briefs arguing against the rationale for imputing Yellow Pages revenues, against the legality of such imputation given the Telecommunications Act of 1996, and against the policy of imputation in the current deregulatory, procompetitive climate.

We will not address USWC's arguments about the rationale for Yellow Pages imputation. We believe we have set out our arguments clearly in the orders cited above. The directory publishing assets belong to the ratepayers. The ratepayers should be compensated for the profitable enterprise that PNB transferred out of its regulated operations.

As to USWC's legal arguments, we find them to be not only direct challenges to the Commission's authority to impute Yellow Pages revenues for ratemaking purposes, in violation of the AFOR provision quoted above; we also find them to be incorrect. We address them summarily.

USWC argues that the Telecommunications Act of 1996 requires that universal service support mechanisms be competitively neutral or they are subject to FCC preemption. 47 USC §253. The record in this case does not indicate that Yellow Pages



imputation supports universal service entirely. Instead, it shows that profits from Yellow Pages are used to meet USWC's total revenue requirement. It is also premature to claim that USWC's local rates would be subsidized illegally as a result of imputation, because the Commission will not decide on particular service rates until the end of the rate design phase of this case. Finally, USWC in its comments to the FCC in FCC docket No. 96-98 raised the directory revenue imputation issue. The FCC did not adopt USWC's suggestion that state imputations of directory revenues be preempted. *See* FCC Order 96-325 (the Interconnection Order).

Even if directory revenue imputation were prohibited by the universal service provisions of the Act or by the provisions prohibiting barriers to competition, which USWC also argues, we would not simply allow USWC's shareholders to keep the directory profits. Ratepayers would have to be compensated for the valuable intangible assets (directory publishing rights, opportunities, reputation) that USWC has acquired in connection with USWC's position as a regulated telecommunications service provider.

USWC argues that it is unfair to use revenues from an advertising business conducted by another company, which never even appear on USWC's books, to depress USWC's retail rates. This claim ignores the historical relationship of PNB and the directory assets, which we have determined belong to ratepayers.

USWC contends that ORS 759.050, the Competitive Zone statute, prohibits directory revenue imputation. USWC reasons that imputation creates a subsidy of the utility's local residential telephone rates, which will inhibit competitive entry. We do not consider imputation a subsidy, as we have stated, but compensation for assets that belong to ratepayers. Moreover, we note that although a number of potential competitors of USWC in the local exchange market have intervened in this docket, they have been silent as to the detrimental effects of directory revenue imputation on local competition.

USWC asserts that ORS 759.030(5) prohibits directory revenue imputation. This argument was considered and rejected by the Commission in UT 85, Order No. 89-1807 at 12-13, and will not be addressed again here.

USWC maintains that directory revenue imputation is prohibited by 47 USC §254k. That section provides:

**SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.** A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The [Federal Communications] Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

This section does not apply to directory revenue services, which are nonregulated services legally subject to competition. USWC errs in relying on Staff's factual assertion that USWD dominates the directory publishing industry in Oregon.

Finally USWC argues that directory revenue imputation trenches on USWD's free speech rights. USWD, a separate entity from USWC, is not a party to this proceeding. USWC has no standing to assert USWD's rights here. Moreover, even if USWC did have standing, the First Amendment argument is meritless. USWC asserts that imputation, by extracting a subsidy from the directory advertising business, deters the exercise of the expressive and creative activities in that business. The implication is that absent imputation, USWD would more aggressively increase its Yellow Pages revenues, concomitantly exercising editorial creativity and the expression of ideas. As we have stated many times, imputation compensates USWC ratepayers for use of assets that belong to them. If USWC feels that this arrangement impedes its affiliate's creativity and expression, USWC and its affiliate should arrange for some other form of compensation for ratepayers. The First Amendment does not contemplate uncompensated use of another's assets in the exercise of editorial creativity or the expression of ideas.

In the present case, USWC proposes a directory revenue imputation amount of \$34,829,500 for the test year. This is the amount the Commission has imputed to USWC annually since January 1, 1992. Staff, arguing that USWD's Oregon revenues have grown substantially since 1992, recommends an imputation amount of \$54,297,600. Staff calculated this amount by applying the [\*\*\*\*] percent directory revenue retention ratio approved by the Commission in UT 85 to USWD's 1995 Oregon net revenues of \$[\*\*\*\*].

USWC contends that the following sources of directory revenues should not be imputed to it: sale of advertising to non USWC subscribers (national advertisers); sale of foreign directories; and recycling of directories. We reject this argument. These sources of revenues exist because USWC provides local telecommunications service. Regardless who purchases an advertisement, the point is to sell whatever is advertised to the subscribers of USWC, who receive the telephone directory. The value of the directory is directly linked to the regulated operations of the telephone company. Revenues from sale of foreign directories and from directory recycling also arise in connection with USWC's directory publication and distribution obligations as a regulated telephone company.

Staff argues that the revenue retention ratio it used in UT 85 is still reasonable today. USWD's financial worksheets for 1995 show that its Oregon net operating revenues after expenses were greater than Staff's recommended imputation amount.<sup>17</sup> Moreover, the factors relevant to the retention ratio have either not changed or have

<sup>17</sup> This assumes that a confidential amount in unspecified U S WEST Inc., budgeted (not actual) expenses allocated to USWD's Oregon operations were proper costs. There is some indication that USWD's Oregon costs for 1995 may be inflated by unidentified "other general and administrative expense." There is also some indication that USWD underreported its Oregon revenues.

improved for USWD in Oregon. USWD still dominates the directory publishing market, with more than an 80% share. USWD's rates for advertisements have increased faster than the rate of inflation. USWD's Oregon revenues, net operating revenues, and net income have grown steadily since 1992 and USWD's returns on equity are very high. We conclude that the retention ratio used in UT 85 is reasonable for purposes of this case. We adopt Staff's recommended imputation amount of \$54,297,600.

### Issue 3b: U S WEST Direct Directory Revenue Growth

Staff recommends a directory revenue growth adjustment of \$3,491,100 to Account 5230 (Directory Revenues) for the period rates resulting from this proceeding are expected to be in effect. This amount is 3.8% of the 1995 base directory revenue amount of \$54,297,600, which equals the 6.8% growth, figured as a geometric average, of USWD's Oregon net directory revenues between 1992 and 1995, less the 3% access line growth adjustment Staff advocates in Issue 8j, Access Line Growth. Staff used August 31, 1997, the midpoint of the 32 month period when rates are expected to be in effect, to calculate the directory growth adjustment.

Staff argues that its directory revenue growth adjustment is reasonable in light of USWD's consistent record of directory revenue growth since 1992 and of the forecasts of outside financial analysts. Staff notes that USWD continues to dominate the directory publishing markets in Oregon. In 1995, USWD's publishing revenues grew by 7%; in second quarter 1996 they increased by 8% compared to the same period in 1995. For third quarter 1996 they increased 7% over against the same period in 1995. USWD also experienced a 4% increase in revenues per advertiser. Finally, Oregon is one of the ten fastest growing states in the nation, and USWC is facing strong demand for its telecommunications services in Oregon.

USWC argues that Staff's growth adjustment is one-sided because Staff did not include any expenses in the adjustment. Staff responds that directory expenses are factored into the revenue retention ratio adopted in UT 85, which Staff has used in this rate case. The ratio determines directory expenses as a percentage of USWD's net revenues. Only USWD's profits are imputed to USWC. Staff notes that USWC did not prove that USWD's future expenses for Oregon directory operations will be greater than the expense amounts factored into Staff's revenue retention ratio. As USWD's Oregon directory revenues grow, the amount of expenses incorporated in the retention ratio increases by a percentage of the revenue increase equal to 100 minus the retention ratio.

We adopted a 4.1% growth adjustment for PNB in UT 85, Order No. 89-1807, because of substantial likelihood that growth in directory revenues would equal or exceed 4.1% in the future. The same reasoning applies here. The evidence strongly points to continued growth for USWD directory revenues. Staff's proposal of 3.8% is conservative given USWD's growth to date. We adopt Staff's proposed growth adjustment. USWC's argument that Staff's calculation failed to include expenses is mistaken.

**ISSUE 4: AFFILIATED INTERESTS AND CORPORATE ALLOCATIONS*****Completely Settled Issues:***

- *Issue 4d(3), Affiliated Interest Charges (Adjustment 20b).* Staff and USWC agree to remove charitable contributions, dues and memberships, lobbying and certain other affiliated interest charges. First Stipulation, Para. 5.
- *Issue 4c, Strategic Marketing (Adjustment 19).* Staff and USWC agree to restate expenses to recognize the break up of Strategic Marketing. First Stipulation, Para. 4.
- *Issue 4g(1), Part 64 Still Regulated (Adjustment 23).* The FCC deregulated certain services and required below the line accounting. That is, nonregulated and nonoperating income amounts are shown below the net operating income line on the income statement. Some of these services remain regulated in Oregon. Staff and USWC agree on amounts to add back, but disagree about whether revenues should be imputed to render these services revenue neutral (Issue 4g(2)).

***Significantly Undisputed Issues:***

- *Issue 4e, Affiliated Interest Return Component (Adjustment 21).* Staff and USWC agreed to remove the rate of return that USWC had recorded in excess of the midpoint of Staff's rate of return range. For the final adjustment, Staff and USWC agreed to use the rate of return authorized in this docket. The final amount therefore depends on the resolution of Issue 2c, Cost of Equity. Appendix B, First Stipulation, paragraph 6.
- *Issue 4f, Headquarters Allocations (Adjustment 22).* Staff and USWC agree to (a) restate the test year to reflect the corporate allocation factors that became effective January 1, 1996, and (b) consider the effects of the exchange sales that occurred after the development of the factors that become effective January 1, 1996. The final amount depends on the resolution of disputed expense issues. Appendix B, First Stipulation, paragraph 7.
- *Issue 4h, Nonregulated Costs Removed in Columns 18-21 (Adjustment 23b).* Staff's test year is based on total Oregon data subject to separations. However, three of Staff's adjustments contain small amounts of unregulated costs, which Staff has removed. Staff and USWC agree that this adjustment should be made if the Commission adopts Staff's adjustments in Issues 4b through 4e, affiliated interests. Therefore, the final amounts depend on the resolution of Issues 4b through 4e.

***Disputed Issues:***

- *Issue 4a, Rent Compensation Study (Adjustment 17).* Staff and USWC agree on this adjustment except that USWC disagrees that the Commission should disallow any costs related to square footage. Staff and USWC agree to replace the rent compensation carrying charge (a reduction to Miscellaneous Revenues) with rate base and expense amounts. The final amount also depends on the resolution of Issue 2c, Cost of Equity. In calculating the

carrying charge, USWC used an overall company achieved rate of return of 10.81 percent. Staff recommends using the midpoint of the authorized rate of return range. The final amount also depends on the resolution of Issue 4b (UM 753 Lease Expenses) and the final allocation factors from Issue 4f (Headquarters Allocations).

Staff made the following adjustments to the July 1995 Rent Compensation Study:

- Removed 3.8958 percent of the headquarters, centralized and cross boundary amounts. This percentage represents the nonregulated portion.
- Adjusted the headquarters and centralized rent compensation floor space to reflect a composite amount of 300 square feet per employee.
- Adjusted the headquarters and centralized allocation factors based on labor dollars to reflect the UP 96 sale of exchanges to Telephone Utilities of Eastern Oregon, Inc., d.b.a. PTI Communications.
- Adjusted the operating rent amounts to reflect adjustments prepared by Staff in Docket UM 753.
- *Issue 4b, UM 753 Lease Expenses (Adjustment 18)*. Four leases were moved from docket UM 753 for litigation in this docket, and Staff has adjusted expenses accordingly. Staff also reduced lease expenses to reflect Order No. 96-179 in UM 753.
- *Issue 4d(1) and 4d(2), Fax Services (Adjustments 20-20a)*. Staff argues that fax services are regulated telecommunications services under the Commission's jurisdiction. Staff therefore restated revenues to recognize the June 1, 1995, service agreement. Staff also increased the revenues to reflect the level expected during the period when rates from this docket will be in effect. USWC considers these fax services issues to be growth adjustments outside the test year. Staff disagrees; it argues that Issue 4d(1) is a normalizing adjustment.
- *Issue 4d(4), FCC License (Adjustment 20c)*. Staff restated the test year to recover the value of an FCC license sold by USWC. USWC disagrees with Staff's adjustment, arguing that it was already included in a rate case.
- *Issue 4g(2), Part 64 Still Regulated Revenue Imputation (Adjustment 23a)*. USWC disagrees that revenues should be imputed to render these services revenue neutral. If the Commission includes Staff's revenue imputation adjustment, then Staff and USWC agree that the final amount depends on the resolution of Issue 6c, Tariff, Price, and Contract Changes. The final amount also depends on Issue 2c, Cost of Equity.

#### **Issue 4a: Rent Compensation Study – Excess Building Space**

USWC has telephone operations in fourteen states, of which Oregon is one. Within those states, USWC houses headquarters and centralized employees with

multistate job functions and duties. Because of the multistate nature of the functions, USWC must perform studies to allocate the associated costs among the states it serves.

Staff proposes to adjust USWC's state composite headquarters and centralized employee space allowance to 300 square feet per employee. Staff's position is that building space expenses should be recognized in rates only if the expenses are reasonable. Staff's purpose in making the adjustment was to ensure that Oregon ratepayers do not bear costs for excess building capacity. Staff's adjustment would decrease USWC's proposed total Oregon rate base by \$2,151,561 and total Oregon operating expenses by \$735,484.

To establish its standard for square feet per employee, Staff compared USWC's rent compensation studies for 1992 and 1995. In its rent compensation study, USWC adjusts total building costs to remove nonadministrative space.<sup>18</sup> Staff determined that USWC's square footage per employee increased from 309 in 1992 to 347 in 1995. Total employees in the studied locations decreased by 6,284 from 1992 to 1995, but the number of headquarters and centralized employees at the studied locations increased by 7,785 during the same period.

Staff determined that the ratio of headquarters and centralized employees to total employees in a building is increasing, as is the square footage per employee. Staff concludes that with these increases, more dollars are assigned to the headquarters and centralized category for allocation among the 14 states. Staff argues that the increase in square feet per employee indicates that there is idle capacity and the fixed costs associated with it are being passed through for recovery in rates.

Staff notes that it selected 300 square feet per employee as a reasonable amount because that was approximately the amount calculated from the 1992 rent compensation study and because it was a conservative amount, being more than the Building Owners Management Association (BOMA) recommendation of 250 to 270 square feet per employee and more than the Public Utility Commission building use of 278 square feet per employee. Staff believes that because the 1995 study captures USWC's reorganization and downsizing, the proposed adjustment more accurately represents where USWC's building cost level will be during the time rates are in effect.

USWC argues that the Commission may not disallow the expenses in question without a showing that they have been imprudently incurred. USWC notes that Staff does not claim that USWC acted imprudently in acquiring or failing to dispose of building space. USWC maintains that it made a good faith decision to acquire space when it was needed, and that it should now be allowed to recover costs for idle building space just as it is allowed to recover other telephone investment.

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<sup>18</sup> To achieve this, USWC deducts from total usable space vertical penetration (stairwells, elevator shafts), core areas (restrooms, lobbies, corridors, mechanical rooms), network equipment space, space rented to affiliates, third-party leased space, and computer space to arrive at administrative space.

USWC also argues that Staff's calculation of square footage relies on USWC's rent compensation studies, which were designed to allocate building investment and lease expense for space used in providing service for more than one state. The data in those studies, USWC maintains, were not collected to measure average floor space per employee, and the studies do not use the BOMA definition of usable administrative space. Therefore, USWC argues, Staff draws incorrect inferences from the study and makes comparisons to external measures that Staff cannot show to be reasonably comparable. USWC contends that space for parking and cafeterias is included in its rent compensation studies but not in the external measures Staff uses, while contract employees and employees of vendors are not included in Staff's calculations, although they are present in USWC's buildings. USWC argues that these factors result in an overstatement of the company's space per employee. USWC argues that, taking these factors into account, its "usable administrative space" is within Staff's 300 square feet per employee standard.

USWC also charges that Staff's 300 square feet per employee standard is arbitrary. Staff responds that it did not set the 300 square foot per employee limit solely based on the Commission building or the BOMA standards. Staff used those external comparisons only as guidelines. If it had, the limit could have been 270 or 275 square feet per employee. Instead Staff set the limit at 300 square feet, which, it argues, accommodates the existence of contract employees.

USWC notes that it provided actual data for its major buildings that should be used for this analysis, rather than the inapplicable rent compensation study. USWC asserts that its affiliate Business Resources, Inc., (BRI) tracks usable administrative square feet for major buildings, and this tracking shows the major building space per employee to be 269 square feet in September 1996. USWC Exhibit 75 summarizes BRI's results. This information, according to USWC, is traced in a manner consistent with the BOMA definition of usable space.

Staff contends that this exhibit omits minor buildings, which constitute about one third of USWC's total headquarters and centralized employee space. The average square footage per employee in the 1995 rent compensation study for minor buildings exceeds the average for major buildings by 48 square feet.<sup>19</sup> Staff argues that USWC Exhibit 75 does not establish USWC's reasonable use of "minor building" space or that its total composite state building space is reasonable.

Second, Staff notes that USWC Exhibit 75 contains no comparison with July 1995. Staff points out that a comparison of Exhibit 75 and the July 1995 rent compensation study shows that headquarters employees increased from 26,049 in 1995 to

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<sup>19</sup> According to Appendix D to Staff's Opening Brief, at 4, USWC's response to Data Request 89, the 1995 building study, indicates that the major buildings have a square footage per person average of 332, while the minor buildings average 380 square feet per person.

31,830 in USWC Exhibit 75. Staff argues that the increased concentration of headquarters employees in major buildings may have decreased the major building square footage per employee found in September 1996.

Moreover, Staff responds that USWC fails to recognize that the initial basis for Staff's adjustment was the comparison between the 1992 and the 1995 rent compensation studies. If the studies include any space that deviates from what would be included under the BOMA standards, this is largely irrelevant, Staff contends, because the additional space would be included in both the 1992 and the 1995 calculations. Staff gives weight instead to the increase in square feet per employee, which it contends is attributable to excess building capacity.

USWC responds that the Commission should give more weight to Exhibit 75 than to the rent compensation studies figures. First, the company argues that Exhibit 75 measures according to BOMA standards, so that it is clear what is included and what is excluded. Second, USWC adds the 48 square feet by which the minor buildings exceed the major building average in Staff's Appendix D to the 269 square foot average for the major buildings in Exhibit 75 to arrive at an average for the minor buildings of 317 square feet. USWC then weights this figure, multiplying the major buildings' 269 square feet by 67% and the minor buildings' 317 square feet by 33%, which yields a composite 285 square feet per employee.<sup>20</sup>

*Disposition.* We accept Staff's calculation of 300 square feet of administrative space per employee in headquarters and centralized buildings as reasonable. However, we believe that the record is unclear with respect to what the rent compensation studies include. Staff notes that the figures do not include contract workers, but argues that its 300 square foot figure is conservative enough to accommodate such workers. However, Staff does not answer USWC's contention that the rent compensation studies include space for parking and cafeterias, whereas the external measures do not.

Staff seems to argue against an adjustment based on Exhibit 75 because during the test year the square footage per employee in headquarters and centralized buildings could have exceeded 300 square feet. However, as we stated in the discussion of Issue 1A, the function of a test year is to represent expenses during the time rates will be in effect. Staff notes that the 1995 rent compensation study captured a point at which USWC had not completed its plan to position itself for competition. Therefore, we find it appropriate to consider the 1996 data represented by Exhibit 75. Not only do those data reflect a later period, in which we may assume that USWC has progressed in its plan for competition; we also have better assurances that those data reflect only administrative space.

<sup>20</sup> USWC also calculates the minor building average square footage on a percentage relationship. The rent compensation study gives 380 square feet as average for the minor buildings, which is 14% greater than the 332 square feet for the major buildings. Applying the same percentage relationship to the BRI major buildings yields 308 square feet for the minor buildings. If these figures are weighted by percentage, the composite is 282 square feet.



Following USWC's calculation of minor and major building square footage per employee, we conclude that USWC's average square footage per employee in headquarters and centralized buildings is under 300 square feet. USWC's rent expenses are, therefore, reasonable and will be allowed.

We note that our decision on this issue is limited to the facts before us. Where the use of space changes, we will not automatically approve continued expense. We approve the expenses in this issue because we find them reasonable.

#### **Issue 4a and 4b: Lease Expense**

Staff proposed adjustments for various aspects of USWC's lease expense for certain identified properties. USWC stipulated to each adjustment except for the one concerning the property called "1201 Farnham." At issue is the allocation of space at that property between office/administrative space and lab/computer space. The allocation is significant, because lab/computer space is more expensive than administrative space.

From a consultant's study provided by USWC, Staff determined that the Farnham space should be allocated roughly 80% to office use and 20% to computers. Staff proposes to disallow \$243,013 of lease expense for this property on a system wide basis. The Oregon share of this disallowance is approximately \$20,000. USWC claims that these percentages should be reversed. With its reply testimony USWC submitted an exhibit, USWC Exhibit 79, which USWC alleges shows the actual configuration of the property. USWC argues that Staff's allocation of space should have been revised in view of these actual data about the building's composition. USWC contends that it is arbitrary and capricious of Staff to ignore the actual evidence of its second exhibit.

Staff responds that it took the first data USWC submitted, the consultant's study, to be actual data with respect to the configuration of the Farnham property, and that the second document USWC submitted conflicted with the first. Staff further asserts that it had not had a fair opportunity to analyze, verify, and possibly normalize the data in the second document. Moreover, Staff argues, Exhibit 79 was not supported by any documentation.

**Disposition.** We conclude that USWC's evidence is insufficient to show that the actual configuration of the Farnham property is dedicated roughly 80% to lab/computer functions and 20% to administrative functions. It is reasonable for Staff to rely on the evidence USWC first submitted, because Staff has not had a reasonable opportunity to examine the second document USWC submitted, which conflicts with the first. If USWC can document its new numbers for the Farnham property, the lease expense should be higher in the next rate case.

**Issue 4d(1): Fax Services**

Staff recommends increasing Account 5260, Miscellaneous Revenue, by \$137,200 to account for revenues USWC receives from CSC Intelicom, Inc., (CSC) in conjunction with the provision of facsimile (fax) services. Staff takes the position that fax service is a regulated telecommunications service and that USWC is jointly providing fax services with CSC.

USWC argues that the Commission has no jurisdiction to regulate fax services. The company further argues that it is not providing fax services but merely providing marketing support for CSC, which owns the hardware and, according to USWC, controls the provision of the services.

USWC also argues that Staff's position on this issue is inconsistent with the position it takes on Issue 4g, Part 64 Still Regulated. Finally, USWC argues that Staff's adjustment is incorrectly calculated.

*Service Provision.* The contract between CSC and USWC is a confidential exhibit (Staff 81). The contract confirms USWC's claim that CSC owns the hardware involved in provision of fax services, and USWC is responsible for marketing. However, the contract reveals that USWC is also responsible for controlling significant aspects of the fax service provided over its telephone lines. We conclude, therefore, that USWC is jointly providing fax service with CSC.

*Jurisdiction.* Staff argues that the Commission has jurisdiction over USWC's provision of fax services because we have jurisdiction over the service a utility provides. Staff cites to Order No. 89-1807 (UT 85) at 9-13 (discussion of Commission jurisdiction over directory revenues).

USWC argues that the Commission has no jurisdiction over the provision of fax services. USWC argues that the FCC has deregulated fax services and that they should therefore not be regulated by the Commission. USWC also argues that since fax services are generally not regulated by the Commission, the fax services USWC provides with CSC should also not be regulated. USWC rebuts Staff's argument of jurisdiction by arguing that the Commission's conclusion that it had jurisdiction over directory revenues in Order No. 89-1807 was based on a finding that the directory was a facility used in conjunction with voice communications. USWC contends that there is no evidence in the record that fax services are used in the same way with reference to voice communications.

We conclude that it is irrelevant that the FCC has deregulated provision of fax services. Unless the FCC preempts state regulation, that regulation remains a matter for the states. See, e.g., the discussion of Part 64 Still Regulated, below.

The discussion in Order No. 89-1807 does not rely on a relationship between a service and voice communication for a finding of jurisdiction. Instead, at 10, it sets out the definition of "service" in ORS 756.001(12), which provides that "service" shall be used "in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or product." The order concludes that "the Commission possesses authority over not only the provision of natural gas, electricity, telephone messages, and the like, but also over those ancillary services which are closely related to the provision of public utility service." *Id.* The definition of "telecommunications service" or "service" in OAR 860-032-0001(10) supports the position that we have jurisdiction over fax services. That definition reads in part: "[S]ervice' means two-way switched access and transport of voice communications, and all services provided in connection with such services . . . ."

Fax services are provided in connection with telecommunications services in that they employ telephone lines to transmit data. We conclude that we have jurisdiction over USWC's fax services.

*Consistency of Staff's Position.* USWC notes that in Issue 4g, Staff imputed revenues equal to the services' costs to keep them revenue neutral for purposes of this rate case. USWC argues that fax service is a Part 64 service and should also be revenue requirement neutral. However, Staff did not impute costs for fax services.

Staff responds that its adjustment in Issue 4g is not a global adjustment for all Part 64 Still Regulated services, but applies only to specific services. This argument is set out in greater detail in the discussion of Issue 4g below.

We conclude that Staff is correct in its argument. Staff has recommended imputation of revenues for five enhanced services that are underearning. Fax services are not underearning and are, therefore, not included in the Part 64 group of services in Issue 4g.

*Calculation of Staff's Adjustment.* USWC asserts that the \$137,200 imputation for fax services is too high because it does not include actual costs. The company also contends that the test period is flawed, because it contains 20 months rather than 12. Finally, USWC suggests that the \$137,200 may contain interstate revenues.

Staff replies that USWC witness Carl Inouye stated on cross examination that the company had not provided cost information to Staff on fax services. Staff argues that the test period for fax revenues is correct. Staff used USWC's fax revenue estimates for post-June 1995, 1996, and part of 1997. Staff argues that the test period is not overstated. In fact, Staff reduced the level of 1996 and 1997 fax revenues in its adjustment because USWC had failed to meet its own revenue projections for 1995.

Staff notes that its adjustment accounts for interstate revenues because Staff uses a separations factor to separate intrastate revenues from interstate revenues on all

adjustments. Staff also notes that it used the company's own numbers to calculate the adjustment.

**Disposition.** We are persuaded by Staff's arguments. We conclude that the adjustment for fax services Staff has proposed is reasonable and should be accepted. The revenues from fax services will be imputed to USWC.

**Issue 4d(2): Growth in Fax Services**

**Growth Adjustment.** Staff recommends an increase of \$807,100 to Account 5260 to account for growth in fax services for 1996 and 1997. Staff points out that it reduced the level of 1996 and 1997 fax revenues in its adjustment because the company had not met its revenue projections for 1995. USWC opposes a fax services growth adjustment for the same reasons it opposes other adjustments to the test year. That is, USWC argues that the adjustment distorts the test year by failing to include expense or investment involved in generating the revenues at issue. USWC witness Inouye testified that because of its disagreement with Staff over test year construction, USWC did not intend to provide cost estimates for 1996 and 1997. Tr. 321-22.

**Disposition.** We support Staff's growth adjustment for the same reason we support other growth adjustments (see, e.g., discussion of Issue 3b above and 8j below). These adjustments make the revenues representative of the time that the rates from this docket are likely to be in effect.

USWC cannot both refuse to submit cost estimates and complain that Staff fails to include revenues and expenses in its test year adjustments. USWC has the burden to show that its costs are reasonable. ORS 759.180(1). Staff's growth adjustment is fair and reasonable and should be accepted. The revenues from fax service growth will be imputed to USWC.

**Filing a Tariff for Fax Services.** USWC currently offers fax services without a tariff. Staff asks the Commission to order USWC to file a tariff for fax services and to properly record the fax service revenues in the appropriate account.

**Disposition.** In view of our conclusion that we have jurisdiction over USWC's provision of fax services, we conclude that USWC must file a tariff for its fax services and record its fax service revenues in the appropriate above the line account. If USWC wishes to petition to have fax services deregulated, it may do so pursuant to ORS 759.030.<sup>21</sup>

<sup>21</sup> USWC argues that if the Commission orders USWC to file a tariff for its fax services, under the Equal Protection clause, we must also order the same for the hundreds of other sales agents who do precisely the same thing that USWC does with fax services in Oregon. We disagree for two reasons. First, we have found that USWC is not merely a sales agent but a coprovisioner of fax services. Second, USWC is a regulated utility subject to Commission jurisdiction over its telecommunications services and services

**Issue 4d(4): FCC License**

Staff proposes a \$448,185 increase in total Oregon miscellaneous revenues to account for the value of an FCC license that USWC (then Pacific Northwest Bell, PNB) sold to U S WEST NewVector Group, Inc., (NVG), an affiliated company.

In Order No. 90-1516, the Commission approved a sale of paging service assets by USWC to NVG. The assets included an FCC license. Staff takes the position that Order No. 90-1516 did not place a value on the FCC license, but left to "the next rate case" the issue of valuation and ratemaking treatment of the license. Staff has now calculated a value for the FCC license.

USWC takes issue with Staff's determination that the value of the license should be part of UT 125 and with the calculation of the value of the license.

Order No. 90-1516 approving the transfer of paging assets from PNB to NVG contains a stipulated settlement with regard to the transfer. The settlement provides, in relevant part:

1. Staff and ORCCA [Oregon Radio Common Carrier Association] recommend that the Commission approve both parts of PNB's application based upon PNB's agreement to conditions 2 through 7.
2. PNB will transfer the paging assets to NewVector at net book value determined as of the date of the Commission Order adopting the Settlement Stipulation.
3. NewVector will make an additional one time payment to PNB in the amount of \$135,400.
4. PNB will recognize the \$135,400 payment it receives from NewVector on its books of accounts as a liability.
5. The Commission shall determine the appropriate treatment of this liability described in No. 4 during PNB's next rate case.

Order No. 90-1516, Appendix A at 2. The Commission adopted the terms of the stipulation.

The sum of \$135,400 in addition to net book value of the paging assets represented the present value of an annual payment of \$28,443 for 10 years. \$28,443 was Staff's estimate of PNB's 1989 net revenue from the paging service; 10 years corresponded to the remaining life of the existing assets. *Id.* The purpose of the \$135,400 payment in addition to the transfer of the net book value amount was to compensate the utility for the potential loss of revenue resulting from the paging asset

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provided in connection with those services. See discussion at Issue 4d(1) above. That is not the case with the hundreds of other sales agents operating in Oregon.

transfer. Staff argued that the two components, net book value of the assets and compensation for potential revenue loss, gave a reasonable approximation of fair market value. *Id.*, Appendix A at 8 (testimony of Staff witness E. Michael Myers). Mr. Myers characterized this mechanism for approximating fair market value as one "by which the sale of the utility property which is the subject of UI 90/UP 53 is fair and reasonable and not contrary to the public interest." *Id.* at 7.

Staff argues that the \$135,400 was merely a placeholder for the minimal value of the paging assets and was to be revisited in the next rate case, at which time a more accurate value for the FCC license would be substituted for the placeholder value. Based on conversations with Staff members involved in the docket that resulted in Order No. 90-1516 (UI 90), Staff witness Marion Anderson concluded that Staff had been unable to assign a fair market value to the FCC license, because no market information was available. Therefore, he testified, the issue was put aside to be dealt with later.

Staff asserts that its calculation of the value of the FCC license, while likely not correct, is flawed due to USWC's failure to provide necessary information for the valuation to be accurately computed. Finally, Staff argues that UT 125 is the "next rate case," rather than UT 102, as USWC asserts.

USWC argues that Staff's proposed adjustment would violate the terms of the settlement agreement set forth above. USWC argues that according to the plain language of the settlement, the only issue preserved for the next rate case was the ratemaking treatment of the \$135,400 payment. USWC submits that that amount may not be reevaluated and reset in this docket. USWC points out that the radio licenses transferred in Order No. 90-1516 were specifically listed in the application seeking Commission approval; the option of reevaluating the FCC license was therefore not preserved by silence. Moreover, USWC notes that in the first paragraph of the stipulation, Staff specifically recommends that the Commission adopt both parts of PNB's application. That recommendation includes the FCC licenses.

USWC points out that with Staff's concurrence, the \$135,400 was returned to ratepayers along with approximately \$4.9 million in Ballot Measure 5 property tax savings, as a one time refund in the January 1995 billing cycle.

**Disposition.** According to Mr. Myers' testimony in support of the stipulated settlement of Order No. 90-1516, Staff believed it had found a mechanism for treating the transfer of paging assets, which included the FCC license, in a way that was fair and reasonable and in the public interest. Rather than being a placeholder value, the order at 3 and Mr. Myers' testimony show the figure to be the calculation of an income stream from the paging assets with the purpose of replacing revenues lost due to the transfer. The record shows that the paging assets were carefully valued. Order No. 90-1516 at 3.

We do not read either the stipulation or Mr. Myers' testimony to preserve the reevaluation of the \$135,400 in Paragraph 4. The agreement gives a liquidated amount

for the liability mentioned in Paragraph 5. The only undetermined issue with respect to the asset transfer is what ratemaking treatment the amount is to receive. Whether UT 102 or UT 125 is the appropriate forum for that decision is moot, since the issue was resolved by a one time refund in 1995.

We conclude that Staff's proposed adjustment should not be accepted.

#### **Issue 4g(2): Part 64 Still Regulated**

Part 64 refers to the FCC regulations codified at 47 CFR Part 64, Subpart I, §§64.901 through 64.904. These regulations govern the allocation of costs between regulated and nonregulated activities. Oregon has adopted similar cost allocation standards at OAR 860-027-0052 and OAR 860-035-0050. The allocation of joint and common costs between regulated and nonregulated operations under Part 64 is designed to prevent regulated ratepayers from supporting the costs of providing nonregulated services. Services purchased by the nonregulated operations from the regulated operations are purchased at tariffed rates. The remaining joint and common costs are allocated, to the extent possible, on a directly assigned or attribution basis. Only costs with neither direct nor indirect measures of attribution, such as certain general office expenses, are allocated on a general allocator, which is based on the expenses previously allocated by direct assignment or attribution.

Currently, enhanced services<sup>22</sup> are subject to Part 64 allocation. Part 64 deals with five categories of enhanced services, only two of which concern us here: services that have never been subject to federal or state tariff regulation, such as video dialtone, and federally deregulated services that remain regulated by the state jurisdiction.

The USWC services that are deregulated in the interstate jurisdiction but still subject to regulation in the state jurisdiction and subject to Part 64 allocation are:

1. Protocol Conversion: converts data transmission protocols in cases where the originating protocol is different from the terminating protocol.
2. Customer Dialed Account Recording (CDAR): allows customers to identify call billing details to various customer assigned account codes for their own internal purposes.
3. Voice Messaging Service (VMS): allows a customer to maintain a voice mail box to record, save, and retrieve phone messages.
4. Video Dialtone Service (VDT) (currently renamed Open Video Systems (OVS)): provides for broadband network deployment for interactive video and other multimedia customer services.

<sup>22</sup> OAR 860-035-0020(13) defines "enhanced service" as:

a service which employs computer processing applications that act on the format, content, code, protocol or similar aspects of the customer's transmitted information; provides the customer with additional, different, or restructured information; or involves customer interaction with stored information. . . .

5. **Planning for Enhanced Services:** encompasses various planning and market research activities but primarily appears to target screenphone services that allow the customer to take advantage of advanced network call handling and messaging features.

Staff recommends that the Commission impute \$3,377,859<sup>23</sup> in total additional revenue for the five categories of Part 64 services, in order to render the five services revenue requirement neutral for purposes of this rate case.

Staff and USWC agree that under Part 64 attributable cost accounting methods, these five enhanced services individually and collectively earn less than their costs. USWC and Staff also agree on the financial impact of the services.

Staff does not recommend a global policy of imputing revenues for all Part 64 services. Staff recommends addressing other services on a case by case basis. The enhanced services for which Staff recommends imputation in this docket are all underearning, and each has a unique context. Therefore, we discuss the services one by one.<sup>24</sup>

*1. and 2. Protocol Conversion and CDAR.* Both of these services appear to be moribund. Protocol Conversion was canceled in December 1995, and CDAR is neither tariffed nor price listed currently. Both services involve minimal revenues. Staff argues that it is unreasonable to continue to support these dying services until the next rate case, and recommends imputation to render the services revenue requirement neutral.

*3. VMS.* Revenue for this service is significantly below cost. However, VMS is the fastest growing enhanced service. VMS regulation is addressed by the 1996 Telecommunications Act and subsequent FCC action. Section 260(a)(1) of the Act provides that a local exchange carrier "shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access [service]." In its Order No. 96-490, ¶¶ 39-45, the FCC concluded that §260 extends to the prevention of improper cross subsidization related to intrastate service.<sup>25</sup> Staff argues that the VMS revenue imputation it proposes will help USWC comply with the Act and the FCC order.

*4. VDT/OVS.* This service is in the planning and development stages, with a successful trial underway in Omaha, Nebraska. There is no Oregon revenue and no Oregon tariff for this service. Without a revenue imputation to render this service revenue neutral for this rate case, Staff argues that other services will in effect pay the test

<sup>23</sup> Staff originally recommended that the Commission impute \$3,472,397, then recommended reducing that amount by \$94,538 to eliminate double counting of new USWC voice message promotions should we approve Staff's adjustment under Issue 6c. We approve Staff's 6c adjustment and use the reduced figure here.

<sup>24</sup> Staff's recommended imputation amount per service is confidential. See Confidential Staff Exhibit 11.

<sup>25</sup> We take official notice of FCC Order No. 96-490 pursuant to OAR 860-014-0050.



year VDT development costs in the amount Staff proposes to impute. This support would continue until the next rate case.

The 1996 Telecommunications Act addresses OVS at 47 USC §651 and 653. The FCC has published a Notice of Proposed Rulemaking (FCC Order No. 96-214<sup>26</sup>) indicating its intent to apply Part 64 cost allocation methods to protect regulated telecommunications services against cost misallocations due to the provision of OVS by local exchange carriers. In addition to the goal of ensuring that rates are just and reasonable, the FCC stated:

We also seek to ensure, as mandated under Section 254(k) of the 1996 Act, that incumbent local exchange carriers do "not use services that are not competitive to subsidize services that are subject to competition." Order No. 96-214 at 12.

Staff argues that the Commission should not support the VDT/OVS venture with revenues from other telecommunications services and ratepayers. In the current environment, Staff contends, it is appropriate that this new venture stand alone. The simplest way to accomplish that, according to Staff, is to impute sufficient revenues to render VDT revenue requirement neutral for purposes of this rate case. Staff argues that this action would leave the Commission positioned to respond to either federal preemption of VDT/OVS or to a USWC petition to deregulate the service without having to consider potential ratepayer claims to profits from the service.

5. *Planning for Enhanced Services.* As is the case with VDT/OVS, there is currently no Oregon revenue for this service. Staff's proposed imputation amount is considerably less than for VDT/OVS, however. Staff acknowledges uncertainty about the actual use of the service. If the service addresses only advanced network calling features, then it would be directed at a still regulated service. On the other hand, if it focuses ultimately on screenphones, which are a type of customer premises equipment, then it is preemptively deregulated by the FCC. Given the uncertainty surrounding this service and its absence of Oregon revenues, Staff recommends rendering it revenue requirement neutral for purposes of this rate case.

Staff argues in favor of imputing revenues from these five services in order to prevent cross subsidy of these competitive services by services that are not subject to competition; i.e., basic service.

USWC contends that Staff is inconsistent in its position on imputation. On the one hand, USWC argues, Staff wants to impute Yellow Pages revenues to USWC. USWC views this imputation as a cross subsidy of basic service by directory revenues. On the other hand, USWC maintains that Staff justifies its recommended imputation in this issue by saying it wishes to prevent cross subsidy of enhanced services by basic service. USWC also argues that it is unfair to select out a group of services subject to

<sup>26</sup> We take official notice of FCC Order No. 96-214 pursuant to OAR 860-014-0050.

competition and impute their revenues without subjecting all competitive services to the same imputation methodology.

USWC also objects to Staff's proposed imputation of revenues for the Part 64 services, in part because Staff applies the imputation on the basis of a fully distributed cost method instead of an incremental cost method. USWC argues that it is bound to price its services at incremental cost and Staff's imputation methodology is therefore unfair.<sup>27</sup>

We find the imputation of Yellow Pages revenues a different matter from imputation of revenues from these services to make them revenue requirement neutral for purposes of the rate case. As we discussed in Issue 3a, Yellow Pages imputation gives ratepayers a benefit for the use of assets that belong to them. In our view, Yellow Pages imputation is a solution to the historical effects of divestiture and PNB's spinning off the directory publishing affiliate. That makes Yellow Pages imputation unique. We do not consider Yellow Pages imputation a subsidy.

The imputation at issue for the five Part 64 Still Regulated services is designed to prevent subsidies flowing from basic service to services that are a) subject to competition and b) underearning. Staff's recommended imputation is fair in two ways. It protects customers from paying rates that reflect costs of services that are not paying for themselves, and it shields USWC from eventual claims by ratepayers to profits or development costs for these services.

USWC objects to Staff's imputation methodology, which applies the imputation on the basis of a fully distributed cost method. We find Staff's method reasonable for the following reasons. First, there is no Oregon total service long run incremental cost or other measure of incremental cost for nonexistent services, such as Planning for Enhanced Services, OVS, Protocol Conversion, or CDAR. Second, the FCC accounting rules and our own accounting rules provide that the fully distributed cost method should be used in accounting for these services. 47 CFR Part 64; OAR 860-027-0052; 860-035-

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<sup>27</sup> USWC also maintains that in Dockets CP 1, CP 14, and CP 15, USWC's competitors argued that the company should be prevented from having revenues granted in rate proceedings that could be used to support services subject to competition. USWC argues that the Commission rejected the competitors' arguments and reiterated its obligation to provide USWC with an opportunity to recover its capital and earn a fair rate of return. Order No. 96-188 at 98. USWC appears to have taken an argument out of context. The passage in question refers to the necessity of retaining a revenue requirement for the local exchange carriers as long as rate regulation is still in effect. The passage reads:

AT&T, MCI, and ELI argue that the concept of a revenue requirement has no validity in a competitive environment. Revenue requirement calculation is necessary as long as LECs are subject to rate of return regulation. Although competition is emerging in telecommunications, we continue to have a constitutional obligation to regulate LECs in a manner that provides them a fair opportunity to recover their costs and earn a reasonable return. *Duquesne Light Co. v. Barasch*, 488 US 299, 310, 109 S Ct 609, 102 L Ed2d 646 (1989).

0050. Finally, we note that Staff and USWC have stipulated to the financial impact of these services.

We conclude that Staff's imputation recommendation is reasonable in principle and applies the correct methodology. We accept Staff's recommendation on Issue 4g(2).

#### ISSUE 5: UP 96 SALE OF EXCHANGES

##### *Completely Settled Issues:*

- *Issue 5b, Stipulation (Adjustment 25).* In docket UP 96, USWC agreed to use part of the gain on the sale as a rate base reduction. Staff and USWC agree on the intrastate effects, but the total Oregon amount depends on the final factors in Issue 10, Final Test Year Separation Factors. This has no effect on revenue requirement. See Appendix B, First Stipulation at Paragraph 10.
- *Issue 5c, Effect on Property Taxes (Adjustment 26).* Staff and USWC agree to include the property tax savings resulting from the sale of exchanges to PTI. See Appendix B, First Stipulation at Paragraph 11.

##### *Disputed Issue:*

- *Issue 5a, Sale of Exchanges (Adjustment 24).* Staff and USWC disagree on plant specific, plant nonspecific, customer operation and corporate operation expenses. Revenues, property taxes, rate base, and other expenses were stipulated. See Appendix B, First Stipulation at Paragraph 9.

In October 1995, USWC sold 23 exchanges totaling about 16,000 lines to Pacific Telecom, Inc. (PTI). The Commission approved the sale in Docket UP 96, Order No. 95-526. To normalize the test year to reflect the financial effects of this sale, Staff proposes a controllable expense reduction of \$3.030 million. This adjustment includes labor expense reductions of \$1.991 million and associated nonlabor expense reductions of \$1.039 million.<sup>28</sup>

Staff's approach to normalizing the test year took three factors into account. First, in analyzing the financial impact of the sale, USWC estimated that the UP 96 controllable expense reduction would be about \$3.0 million. Second, Staff used information USWC provided during the UP 96 docket to project controllable expense savings from the PTI sale at \$2.998 million. Finally, Staff considered that USWC's Oregon direct employee count in 1995 dropped by over eight times the number of employees that Staff estimated were saved due to the UP 96 sale. Staff's approach is set out below.

<sup>28</sup> All other financial effects of the sale have been settled between Staff and USWC. The parties disagree on the amounts of adjustments for labor and associated nonlabor controllable expense components in Column 24, lines 9 (Plant Specific), 11 (Plant Nonspecific), 14 (Customer Operations), and 16 (Corporate Operations) of Appendix A, p.6.

*USWC's estimate of controllable expense reduction.* In developing its 1996 headquarters allocation factors, USWC computed savings due to the PTI sale. USWC estimated that UP 96 would effect a \$2.5 million reduction in plant specific, plant nonspecific, and customer operations for ten months of 1995. USWC's estimate was based on average per line costs. Annualized, this estimate comes to \$3.0 million.

*Estimate of savings developed during UP 96.* Staff compared USWC's savings estimate of \$3.0 million with Staff's estimate of expense reductions in the UP 96 case and found them nearly equal. Staff's estimate of \$2.998 million was based on a USWC financial model and information provided by USWC. In UP 96, USWC witness Carl Inouye testified that Staff's estimate of savings was a reasonable estimate of the effect of the sale a year or so after the sale. Staff argues that its current estimate of UP 96 savings is thus consistent with the figures USWC presented to Staff during UP 96 and used in part to justify the sale as being in the public interest.

*Employee reductions.* Staff's \$2.0 million labor reduction component of the UP 96 savings is equivalent to a reduction of 1.9 managers and 37.6 craft employees. These numbers, Staff notes, are comparable to the information provided to Staff in UP 96. As part of its analysis, Staff considered the overall loss of direct Oregon USWC employees between December 1994 and December 1995 to help evaluate whether the estimated loss of UP 96 employees was reasonable. Staff determined that the actual direct employee loss in 1995 was over eight times the 40 employees attributed to the UP 96 sale, and concluded that the 40 employee figure was reasonable or even conservative.

USWC identifies its controllable expense savings from the sale of the 23 exchanges as being \$157,207 (power costs of \$107,057 and maintenance costs of \$50,000). USWC argues that its ongoing expense level has not declined. It argues that any further adjustment, if allowed,<sup>29</sup> should be limited to recognizing elimination of four employees, a reduction of \$.226 million in labor expense.

The testimony of Mr. Inouye indicates that the labor expenses associated with the four employees were the actual expense reductions associated with the PTI transfer.<sup>30</sup> But USWC witness Michael Solso, to whose testimony Mr. Inouye refers, testified on redirect that his purpose in the rate case was to "identify the technicians that were associated with the sale of the exchanges." Tr 39. He identified six technicians, two of whom were redeployed.

Staff argues that not only did Mr. Solso fail to mention the acknowledged power and maintenance cost savings, or other savings such as plant and maintenance record savings, clerical and support staff savings, customer complaint savings, billing and

<sup>29</sup> This characterization of USWC's position is based on Mr. Inouye's written testimony on UP 96 in this docket, which does not acknowledge the existence of the power and maintenance cost savings.

<sup>30</sup> See USWC Exhibit 55, Inouye 111.

collection savings, and fractional technical employee savings, he did not even address all the technicians who served the sold exchanges. Staff points out that the six technicians identified by Mr. Solso were located at staffed wire centers in Burns, John Day, and Heppner. Of the remaining 20 wire centers in the exchange, 15 were served by other employees. Those 15 exchanges were responsible for more than half the lines sold to PTI. Additionally, Staff notes that technicians from Hermiston, Baker City, or Pendleton sometimes backfilled even the directly served exchanges because of illness or vacation.

Staff also notes that USWC did not update its 1993 power cost information to 1995 for the 23 sold exchanges, and did not include any power costs for the Durkee or Merrill exchanges or power for outside remote facilities.

In his prefiled testimony, Mr. Inouye compared USWC's "equivalent employee" counts in September 1995 (3,865) and December 1995 (3,891) and suggested that these figures indicate that Staff's direct employee reduction analysis is unreliable. The 3,891 figure, Staff objects, does not include changes in the Oregon allocated headquarters and centralized employee calculations due to the PTI sale. The revised factors incorporating the sale were not computed until January 1996. Staff points out that the March 1996 headcount is the first quarterly equivalent employee number available after the PTI sale that includes the impact of the sale. That number is 3,863, or 38 fewer employees than the December 1995 figure and 196 fewer employees than the March 1996 figure. Staff argues that a proper comparison of equivalent employee numbers supports Staff's estimate of UP 96 controllable employee cost savings.

Finally, USWC contends that Staff's UP 96 adjustment errs in using the USWC financial analyses that were based on "steady state operations." Staff acknowledges that other aspects of USWC's operations may change, but asserts that its proposed adjustment fairly captures USWC's savings on a going forward basis. Staff argues that USWC's Oregon equivalent employee counts are falling. Staff also notes that USWC's employee efficiency per access line is improving (down to 31.2 employees per 10,000 access lines in third quarter 1996, compared with 32.7 in third quarter 1995). Hence, Staff contends, steady state assumptions for purposes of a UP 96 adjustment are fair and reasonable to USWC.

**Disposition.** Staff presents its proposed adjustment as a normalizing adjustment to remove from the test year expenses that, due to the sale of 23 exchanges, USWC no longer incurs. We find such an adjustment reasonable, and USWC does not oppose such an adjustment in theory, it appears. The conflict is about how to measure the effects of the UP 96 sale. USWC objects to Staff's methodology on the ground that USWC's expenses for network technicians, among other categories of expense, continue to grow.

We find that USWC's objection misses the point of Staff's adjustment. The growth in network technician expense, as an example, is necessarily unrelated to the UP 96 sale of exchanges. That is, exchanges that USWC no longer owns cannot possibly account for increased network technician expenses. USWC's objection that its overall

expenses are increasing in various categories does nothing to address the question of how to adjust the test year to account for expenses it will not occur, due to the sale of exchanges to PTI.

We conclude that Staff's methodology for calculating controllable labor and nonlabor expense reductions due to the sale of exchanges is proper. Staff used USWC's own financial analyses to compute the costs savings. USWC's arguments in this docket attempt to minimize the costs, but we find them unpersuasive. Staff's proposed adjustment of reductions of controllable labor expenses of \$1,991 million and nonlabor expenses of \$1.039 million are adopted.

### ISSUE 6: OPERATING REVENUES

#### *Completely Settled Issues:*

- *Issues 6a-b, EAS Conversion (Adjustment 27).* Staff and USWC agree to include the annual effects of 13 new extended area service (EAS) routes, effective October 7, 1995, and 18 routes that will be converted on October 5, 1996. See First Stipulation, paragraphs 12-13.
- *Issue 6d, Switched Access Filing (Adjustment 30).* Staff and USWC agree to (a) restate the test year to include the final revenue requirement from the annual access filing that was effective February 21, 1996, and (b) add the effects of the 1996 Oregon Customer Access Fund filing on USWC's access expense. See First Stipulation, paragraph 14.

#### *Disputed Issue:*

- *Issue 6c, Tariff, Price, and Contract Changes Made after January 1, 1995 (Adjustment 29).* Staff adjusted the test year to include the effects of the many tariff and price list filings USWC made after the company filed its testimony in December 1995. USWC disagrees about the need for normalizing and pro forma adjustments. See discussion under Issue 1a(1) above. In addition, Staff annualized the effects of tariffs that USWC changed during January through September 1995. USWC disagrees with most of the filings Staff included in this adjustment.

#### Issue 6c: Tariff, Price, and Contract Changes

Issue 6c deals with revenue and cost changes resulting from 26 USWC tariff, price, and contract change filings.<sup>31</sup> Staff proposes a net increase to local revenues of \$7.92 million and a \$.029 million net decrease to long distance revenues.

<sup>31</sup> The tariff filings, their effective dates, the annual revenues (from USWC's work papers), annual expenses (also from USWC work papers), number of days to add to annualize the test year, and annualized adjustment after Staff's final revisions are attached as Appendix D and incorporated herein by reference.

The filings introduce new and revised services, local service contracts, rate increases, and local service promotions. Staff argues that its adjustment recognizes the reasonably anticipated changes to revenues, expenses, and capital costs arising from the filings. Staff argues that the impact of the filings on USWC's operations during the time rates will be in effect is reasonably certain and that Staff's adjustment accurately reflects that impact.

*Settled Filings:* Filings 7, 8, 10 (in part), 14, 22, and 24 are completely settled.

*Partially Settled Filings:* Filing 2: issue of use of 1995 actual data has been removed.

Filing 18: issue of double counting of revenues has been removed.

Filings 12 and 25: issue of migration effects has been removed.

Filing 19: issue regarding elimination of two promotions has been resolved.

**Areas of General Disagreement:** *The Test Year Issue.* USWC objects to most of Staff's adjustments. USWC's first class of objection has to do with test year construction. USWC does not object to post test year adjustments in general, but notes that volume changes are usually not adopted because they distort the relationship among expenses, revenues, and investments. Several adjustments are annualizations of in year volume changes (sales promotions and new service introductions). USWC argues that Staff's revenue adjustments for filings 1, 2, 3, 5, 6, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20, and 21 are flawed because there is no accounting for the related expenses and capital costs.

Staff responds that it twice revised its testimony in express recognition of the original testimony's omission of some volume related filing expenses and capital costs. Its revisions were based on additional information and corrections offered by USWC. Staff argues that its amended testimony corrects for the interdependency problem raised by USWC. Staff maintains that its final position properly recognizes the relationship among revenues, operating expenses, and capital costs associated with the filings.

*Disposition.* In our discussion at Issue 1a(1), we approved Staff's post test year adjustments as reasonable. We do so again here. Staff's adjustments serve to make the test year representative of the time when rates from this docket will be in effect. Staff has made considerable effort to revise its adjustments to reflect volume related filing expenses and capital costs. The record shows that after conferring with the company, Staff witness Mr. Ball twice revised his adjustments in the company's favor. We conclude that Staff's adjustments to the filings do not distort the test year as USWC alleges.

*Forecasted v. Actual Data.* USWC's second objection has to do with the fact that Staff relied on forecasted information when actual results were available, although Staff admitted that actual results were available. USWC notes that the test year already contains actual revenue for the period the price change was in effect. Therefore, USWC

argues, Staff's test year has a combination of actual and forecasted revenue. USWC contends that the Commission should not rely on a forecast when actual information is available.

Staff responds that it properly chose to use company supplied incremental costs (LRIC, or long run incremental costs) as a surrogate for operating expenses and capital costs for each filing. Staff also used USWC information, provided with the filings, for its estimate of revenues. Staff points out that USWC's actual data was unverified and presented late in the rate case. Therefore, Staff used the incremental costs.

*Disposition.* USWC relies on a court case and a number of cases from other commissions for the proposition that the Commission should not use a forecast when actual information is available.<sup>32</sup> These cases do not resolve our issue. The issue here is not whether actual data are preferable to forecasted data. That may well be the case, as a general rule. The issue is rather what it means to say data are available. If USWC produces data for Staff's consideration so late in the day that Staff has inadequate opportunity to verify and possibly normalize the data, they are not available for all practical purposes. Here, we find that USWC produced its actual data too late for verification. The actual data on these issues were, therefore, not available to Staff.

We find the use of LRIC as a surrogate for operating expenses and capital costs reasonable. Staff acted correctly in using the best information available to it. Moreover, Staff's witness Mr. Ball used company provided actual historical data along with company provided estimates as the basis for his adjustment.

**Areas of Specific Disagreement: Costs for Filings 2 and 3.** USWC contends that Staff did not include costs for filings 2 and 3. Staff replies that USWC failed to include any costs in the work papers it submitted in support of those filings. Staff contends that its approach is therefore consistent with USWC's filings.

*Disposition.* We conclude that USWC did not supply cost data with its work papers. Therefore, USWC may not now complain that Staff did not include costs for those filings. The company has not met its burden of producing cost data to show that its costs are reasonable.

*Overlap with Issue 8j.* Additionally, USWC asserts that this adjustment overlaps with Staff witness Ed Morrison's Issue 8j adjustment for average growth in access lines. USWC charges that Staff witnesses were aware of the possibility of overlap and distortion, but failed to coordinate regarding Issues 6c and 8j. The company argues that this lack of coordination results in an unreasonable overall final result for Staff's case. See discussion at Issue 1a(1) above.

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<sup>32</sup> *State Public Service Commission v. Mississippi Power Company*, 429 So2d 883 (Miss.), cert denied, 464 U.S. 819 (1983); *In re Missouri Public Service*, 152 PUR 4th 333 (1994); *In re Jamaica Water Supply co.*, 104 PUR 4th 273 (1989); and *In re Boston Edison Co.*, 53 PUR 4th 349 (1983).



Staff responds that Mr. Ball's predecessor as witness on this issue, Jon Wolf, was part of a group that included Mr. Morrison and which met to discuss the various Staff adjustments under consideration at the earliest stages of the case.

According to Staff, after Mr. Wolf left the Commission, Mr. Ball took over his duties on this case. Mr. Ball considered USWC's claim of overlap with Mr. Morrison's adjustment and was satisfied that there was no overlap. Mr. Morrison's adjustment was based strictly on access line growth. Mr. Ball's adjustment restates 1995 booked revenues, operating expenses, and capital costs to appropriate test year levels and then identifies 1996 annual revenues, operating expense, and capital costs associated with the 26 tariff filings on a prospective basis. Staff also points out that USWC does not explain how these adjustments overlap.

*Disposition.* As Staff has explained, Mr. Morrison's and Mr. Ball's adjustments address very different issues. USWC has not explained how these issues overlap. We are persuaded that they do not overlap.

*Additional Argument; Disposition.* Finally, we note that USWC summarily argues that Staff's adjustment annualizes some in year events, such as promotions and new service offerings, while ignoring others. USWC concludes that the adjustment is unbalanced and should be rejected. This argument is not developed and we cannot determine its reference. The argument is rejected.

**Filings with No Settled Issues:** Filings 1, 3, 4, 5, 6, 9, 10 (in part), 11, 13, 15, 16, 17, 20, 21, 23, and 26 are completely unsettled.

*Promotional Filings.* Filings 1, 5, 6, 11, 12, 15, 17, 19, 20, and 21 concern promotional filings. USWC argues that promotions are short lived and that their effects should therefore not be recognized in this rate case. USWC argues that Staff adjusts the test year as if the demand were present throughout the year, whereas, according to USWC, Staff admits that promotions do not cause a permanent change in demand units. Promotions, USWC contends, have service lives of 12 to 25.4 months. USWC points out that Staff witness Lance Ball testified that promotional activity would be relatively short lived.

Moreover, USWC argues that Staff has previously taken the position that promotions have a specific time frame. USWC refers to a Staff memo dated April 23, 1992 to support its position that changes due to promotions are temporary and should not be annualized.<sup>33</sup>

According to Staff, its review shows that the promotions at issue represent an express company action calculated to permanently change customer demand for service.

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<sup>33</sup> According to the memo, Appendix B to USWC's reply brief, "Promotions should be limited to 120 days per year for each service."

Confidential Staff Exhibits 91 and 92 show that USWC expects certain promotion units to remain in service for 12 to 25.4 months. Certain promotions are designed to have a longer term effect, as Mr. Ball testified:

In some revenue studies filed by U S WEST to support its tariff filings, the company forecasts revenues several years out. By doing so, the company is apparently trying to justify promotions that are heavily discounted in the near term (with the consequence of less near term revenues) with higher revenue streams in the longer term. Supplemental Staff/32, Ball 3-4.

*Disposition.* USWC is correct that Appendix B to its brief sets a time frame of 120 days for promotions. Thus it is accurate to say that promotions are short lived. However, USWC conflates the duration of promotions themselves with the impact of promotions. The record shows that the desired impact of promotions, which USWC projects in its promotional tariff filings, is to increase demand for the promoted service for a longer period than the period of promotion. USWC projects the effects of promotions mentioned in the record from one to several years. We conclude that Staff is correct in assuming a long term effect for promotions and that Staff's adjustment captures the reasonable financial effects of the promotions during the period rates will be in effect.

*Filings 25, 26.* USWC asserts that Staff failed to include the economic effects of migration between services that the filings cause. That is, if a filing results in a customer using a new service rather than an existing service, the effects of the filing for the new service may be overstated.

Staff responds that USWC failed to include any effects for alleged migration in the work papers it filed in support of filing 26. Where USWC work papers identified cross elastic or migration effects for other services, Staff asserts that it did incorporate all such effects as estimated by the company. Staff points out that USWC witness Inouye testified that Staff incorporated migration effects for filings 12 and 25.

*Disposition.* We are persuaded by Staff's arguments on the migration effects of the filings. Where USWC failed to provide information on projected effects of migration, Staff properly worked with the information available to it. Staff could not account for an effect USWC did not identify. Where USWC provided information on migration or cross elastic effects, Staff incorporated them. We conclude that Staff's treatment of migration or cross elastic effects for the filings was correct.

*Filing 16: Frame Relay Special Contract Issues.* Frame Relay is a five year special contract that took effect in 1996. This filing accounts for most of the dollar differences between Staff and USWC. Staff alleges that the difference is due to several mistakes USWC made in calculating the costs, revenues, and rate base associated with this filing.

Staff argues that USWC has front loaded all of the five year contract costs during the test year, so that the company shows a net revenue loss of \$7,233,482 for this contract during the test year.<sup>34</sup> Staff argues that it is improper to account for all costs in the beginning of a contract, as USWC has done with filing 16. The company shows employee related costs of \$6.5 million for the first year of the contract,<sup>35</sup> but at the April 2, 1996, Public Meeting, USWC informed the Commission that it was dedicating only 16 fulltime network technicians to the Frame Relay project.<sup>36</sup> Staff argues that USWC could not be expending \$6.56 million for 16 employees the first year of the contract and concludes that the contract expenses must have been improperly front loaded.

Staff also asserts that USWC incorrectly used a higher budgeted estimate of expense as a basis for its adjustment in USWC Exhibit 72. That exhibit shows an expense of \$7,625,782 (the sum of columns 7 and 8 on line 16). Staff Exhibit 96 shows that figure to be the total sum requested for 1996 for the Frame Relay project. USWC argues that although the figure appears in the column headed "requested," and the figure in the column headed "funded" is much lower, the \$7.6 million represents actual expenditures. That figure includes the \$6.56 million employee related costs.

Finally, Staff contends that USWC miscalculated the amount for "average total plant in service" (ATPIS) on USWC Exhibit 72. The methodology to calculate ATPIS is to calculate a monthly average for the TPIS and then average the months to determine the annual average. Staff argues that a comparison with confidential Staff Exhibit 96 reveals that this amount has not been averaged, but rather represents the entire funded amount. Staff contends that the average amount should be about one half the amount USWC uses. The effect, according to Staff, is to overstate the average rate base adjustment by almost \$4 million.

Staff argues that Mr. Ball's approach avoids the errors that USWC commits. Mr. Ball shows a slight positive net adjustment to revenues of \$159,084 for filing 16. Staff's conclusion, it argues, is consistent with the position it took at the April 2, 1996, public meeting and is consistent with the comments by the company's representative at that same meeting. Rather than front loading expenses, as USWC did, Staff contends that it normalized total revenues, expenses, and capital costs over the five year life of the contract. Therefore, Staff believes its estimates represent the average revenue, average cost, and average margin over the life of the agreement.

*Disposition.* We find that for filing 16, USWC has not shown that its costs are reasonable and has not reconciled its statement at the April 2, 1996, public meeting about the number of employees involved in the Frame Relay contract with the \$6.56 million

<sup>34</sup> This figure is from USWC Exhibit 72, line 16, col. 10.

<sup>35</sup> See Confidential Staff Exhibit 96 at 8, lines 13-14.

<sup>36</sup> We take official notice of the minutes of the April 2, 1996, Public Meeting, pursuant to OAR 860-014-0050.

figure on confidential Staff Exhibit 96. On the record before us we cannot find that the \$6.5 million are reasonable costs. We also find its calculation of ATPIS flawed, as Staff has argued. We conclude that USWC has front loaded its contract expenses into the first year of the contract. As Staff argues, it would be inappropriate to include more than annualized expenses for the contract in the test year. Staff's adjustment, on the other hand, is reasonable and should be accepted.

**Conclusion.** Staff's adjustments to the 26 filings involved in Issue 6c are reasonable and are adopted.

## ISSUE 7: EMPLOYEE BENEFITS

### *Completely Settled Issues:*

- *Issue 7b, AT&T Unfunded Postretirement Benefits Cost Sharing (Adjustment 33).* Staff and USWC agree to restate expenses to include annual reimbursements from AT&T, which were recorded in December 1995. See Appendix B, First Stipulation, paragraph 15.
- *Issue 7c, Disability Pension Payment Trueup (Adjustment 34).* Staff agrees with USWC's proposal to remove a duplicate accrual. See Appendix B, First Stipulation, paragraph 16.
- *Issue 7d, Pension Accounting (Adjustment 35).* Staff and USWC agree to leave the negative pension costs in operating expense, leave the related accumulated deferred taxes in the rate base, and add the pension asset to the rate base. See Appendix C, Second Stipulation, paragraph 4.
- *Issue 7e, End of Compensated Absences Accrual (Adjustment 36).* Staff and USWC agree to normalize expenses to reflect an accrual that will end in December 1997. See Appendix C, Second Stipulation, paragraph 5.

### *Disputed Issues:*

- *Issue 7a(1), Statement of Financial Accounting Standards (SFAS) 106 Postretirement Benefits (Adjustment 32).* Staff opposes USWC's proposal to add a nonrecurring December 1995 accrual for a curtailment loss associated with restructuring and recommends continued amortization. The final amount depends on whose adjustment the Commission adopts. See Issue 1a(1), Test Year. See also Appendix C, Second Stipulation, paragraph 4.
- *Issue 7a(2), Statement of Financial Accounting Standards (SFAS) 106 Postretirement Benefits (Adjustment 32a).* Staff and USWC agree that the rate base should reflect unfunded postretirement benefits but disagree about the amount. The final amount depends on whose adjustment the Commission adopts. See Issue 1a(1), Test Year.

### **Issue 7a(1): SFAS 106 Postretirement Benefits**

USWC and Staff have agreed on the amounts for this adjustment but not on how the amounts should be treated for ratemaking purposes.

In the past, USWC, like most companies, recognized the costs of providing postretirement benefits when they actually made the payments. This pay as you go approach was considered to meet generally accepted accounting principles when health care costs were not considered material. As health care costs increased, the Financial Accounting Standards Board (FASB) reconsidered how to account for postretirement benefits, benefits other than pensions (PBOPs), and other postemployment benefits. FASB concluded that companies should begin to accrue retiree postemployment benefits just as they accrue pensions. In December 1990, FASB issued SFAS 106, "Employers' Accounting for Postretirement Benefits other than Pensions."

SFAS 106 required USWC to recognize the accumulated obligation for PBOPs not recorded during prior periods. SFAS 106 permitted this obligation, called the Transition Benefit Obligation (TBO), to be amortized over 20 years or less. For regulatory monitoring reports, USWC has been amortizing the TBO over 17.3 years (from January 1, 1992 through March 31, 2009). For financial reporting, USWC made a one time writeoff of part of the TBO in 1992. USWC's 1995 results of operations include PBOPs expenses, both current period and the TBO amortization.

USWC's reengineering program caused the termination of around 9,000 employees who had been included in calculating the TBO's 17.3 year amortization. SFAS 106 requires USWC to recognize the remaining TBO of these employees as a one time curtailment loss. That is, USWC is to expense the curtailment loss when it becomes known. In December 1995, USWC recorded the curtailment loss for regulatory accounting purposes, in compliance with SFAS 106. As a result of expensing the curtailment loss due to reengineering program terminations, the remaining amount of the TBO to be amortized is reduced. Staff estimates that the 1995 curtailment loss will reduce the recurring TBO amortization by \$.586 million per year.

Staff considered three options for the ratemaking treatment of the curtailment expense:

1. Treat the curtailment loss as a recurring expense (USWC's proposal);
2. Amortize the curtailment loss over the remaining life of the TBO (Staff's proposal); or
3. Remove all the effects of the curtailment loss from the test year.

*Option 1—Treat the curtailment loss as a recurring expense.* USWC argues that the curtailment expense is one of several expenses that will recur during the period Staff expects rates to be in effect, but not over the entire period. Others such expenses are compensated absences (Issue 7e), PUC fee (Issue 8n), and the Western Electric side record (Issue 1c(2)(a)). For those costs, USWC argues that Staff sums the expenses that will occur and spreads them over the entire period when rates will be in effect.

For the current issue, USWC alleges that Staff proposes to disallow the entire amount. USWC asserts that it is unreasonable to assume, as Staff does, that reengineering and curtailment expenses were never incurred. USWC also asserts that it is arbitrary to treat the curtailment expense differently from the other expenses listed above. USWC recommends that the curtailment expenses be spread over the period of rates, just as Staff has done with the above costs.

USWC argues that it will record curtailment expenses in 1996 and 1997. The company is on record with the Securities and Exchange Commission (SEC) that the reengineering program, to which curtailment expenses are related, will continue through 1997. USWC informed the SEC that a \$210 million total curtailment expense will be recognized. The FCC required USWC to record the \$210 million as a below the line expense in account 7360 and to bring that amount above the line as employees leave the company before the end of 1997. As of the end of 1995, \$140.4 million of the \$210 million had been recognized. The remaining amount will be recognized in 1996 and 1997. Applying Staff's method to this remaining amount, USWC believes that the test-year adjustment should be an increase in expense of \$1.7 million.

USWC argues that the TBO must also be restated in Staff's adjustment. According to USWC, if Staff restates the test year as if reengineering never happened, then the 1994 curtailment expense also never happened. Reengineering is a multi year program that began before the 1995 test year. In turning back the clock to the time before this program, the 1994 TBO amortization should be reflected in the test year. The 1994 TBO is \$.4 million higher than the 1995 TBO. This amount, USWC contends, should be added to the test year if the Commission adopts Staff's recommendation.

USWC proposes that for the purpose of determining a refund and assuming the Commission uses 1995 financial data, the full amount of 1995 curtailment expenses, about \$5.6 million, should be added to the test year. Otherwise, USWC would be required to refund earnings it did not achieve. For the purpose of setting going forward rates, the spreading over the period for rates should be adjusted accordingly. In the alternative, USWC proposes to use 1996 and 1997 actual levels for the test year expense.

Staff points out that USWC has not adjusted the test year payroll costs for the curtailed employees. If USWC does plan to cut an additional 9,000 employees during 1996-1998, the test year should be adjusted to reduce the amortization of the TBO and to reduce payroll costs.

Staff argues that curtailment losses of this magnitude—involving 9,000 employees—are unlikely to recur each year during 1996, 1997, and 1998, when rates from this docket will be in effect. Probably reengineering will take place through most of 1996 and into 1997 (*see* Issue 9a below). The curtailment cost will not recur in all the months when rates from this docket will be in effect. Therefore, Staff argues, it would be inappropriate to include the curtailment loss in the test year.

*Option 2—Amortize the curtailment loss.* Staff's recommendation is to amortize the curtailment loss over the remaining 13.3 years of the TBO for ratemaking purposes. This has no revenue requirement effect. Rates from this docket would be set to allow USWC to recover the curtailment loss through continued amortization.

Staff points out that if USWC experiences additional curtailment losses of any size in the future, this option would leave the TBO amortization expense unaffected and would normalize expenses. Staff argues that this treatment of the curtailment loss is consistent with its treatment of the compensated absences, Western Electric Side Record, and PUC fee issues. That is, Staff spread those expenses over the period rates from this docket will likely be in effect. Here, Staff spreads the loss over the remaining life of the TBO.

*Option 3—Remove the curtailment loss.* Under Option 3, the curtailment loss would be treated as a one time nonrecurring expense to be removed from the test year. The 1995 curtailment loss will reduce the TBO recurring amortization expense for total regulated Oregon operations subject to separations by \$.6 million beginning in 1996. Option 3 would reflect this recurring expense level and reduce total Oregon operation expenses in the test year by \$.6 million.

*Disposition.* USWC proposes to include the curtailment expense related to termination of approximately 9,000 employees in the test year. Staff proposes to amortize the curtailment expense. We find USWC's proposal unfair to ratepayers and Option 3 unfair to USWC. We elect Staff's option of amortizing the remaining expense. This option recognizes the expense and allows USWC to recover it without revenue requirement consequences.

#### **Issue 7a(2): Unfunded SFAS 106 Postretirement Benefits**

In this adjustment, Staff proposes to reduce rate base for unfunded postretirement benefits. Staff notes that the Commission has determined to treat accumulated unfunded balances in postretirement benefits obligation accounts as rate base credits. *See* Order No. 91-186 (UE 79) and Order No. 91-1786 (UT 101).

USWC proposed a rate base adjustment for SFAS 106—to use the average 1995 unfunded balance. Staff adjusted USWC's rate base to reflect an average level during the period to be covered by the new rates from this docket. Staff calculated the average balance during the period rates are likely to be in effect. With expense and funding levels staying constant indefinitely, the unfunded total regulated Oregon operations subject to separations rate base reduction will continue to grow by \$418,600 per year indefinitely.

USWC responds that the issue is whether the Commission should reduce the rate base by a forecast of the September unfunded benefits. This issue relates to test year construction. If the Commission does not adopt Staff's forecasted adjustments that restate the test year to August 1997, it should also reject this adjustment.

**Disposition.** We have decided in principle to accept Staff's forecasted adjustments that restate the test year to August 1997. We find this proposed adjustment consistent with those adjustments and conclude that it should be accepted.

### ISSUE 8: EXPENSES AND TAXES

#### **Completely Settled Issues:**

- *Issue 8b(1), 1996 Occupational Wage Increases (Adjustment 38).* Staff and USWC agree to include 1996 occupational wage increases. See Appendix B, First Stipulation, paragraph 17.
- *Issue 8b(2), Other Payroll Changes (Adjustment 38c).* Staff and USWC agree to include 1996 payroll tax changes. See Appendix C, Second Stipulation, paragraph 7.
- *Issues 8c-d, Changes in Accounting—SFAS 109 and 112 (Adjustments 39-40).* Staff supports USWC's requests to adopt SFAS 109 and SFAS 112. SFAS 109 required changes in accounting for income taxes by 1993. SFAS 112 required changes in accounting for the employer's obligation to provide postemployment benefits for former or inactive employees, their beneficiaries, and their covered dependents by 1994. See Appendix B, First Stipulation, paragraphs 18-19.
- *Issue 8e, Ballot Measure 5 Property Tax Savings (Adjustment 41).* Staff and USWC agree to restate property tax expenses to reflect a full year at the final year's tax rates (1995/96). If the Commission orders a refund based on the revenue requirement established in this docket, Staff recommends that USWC's Measure 5 savings refund for May and June 1996 be used to reduce the amount of the UT 125 refund. See Appendix B, First Stipulation, paragraph 20.
- *Issue 8g, Docket UM 767 Oregon Depreciation Represcription (Adjustment 43).* Order No. 96-117 approved new depreciation rates retroactive to January 1, 1995. Staff and USWC agree to restate the test year to include one year's effect of the revised depreciation rates on expenses and average rate base. See Appendix B, First Stipulation, paragraph 21.
- *Issues 8h-i, Aircraft and Advertising (Adjustments 44-45).* Staff and USWC agree that aircraft and advertising expenses in the test year are reasonable and should not be adjusted. See First Stipulation, paragraphs 22-23.
- *Issue 8m, Purchase Rebates (Adjustment 49).* Staff and USWC agree to restate the test year to remove the effects of prior period rebates. See Appendix B, First Stipulation, paragraph 24.

#### **Significantly Undisputed Issue:**

- *Issue 8f, Oregon Revised Statute (ORS) 291.349 Income Tax Refund (Adjustment 42).* Staff and USWC agree to normalize the test year to



reflect periodic state income tax refunds received by USWC under ORS 291.349. The final amount depends on the resolution of disputed issues. See Appendix C, Second Stipulation, paragraph 8.

***Disputed Issues:***

- *Issue 8a, Team Performance Awards and Officers' Incentives (Adjustment 37).* In compliance with Commission policy, Staff removed bonuses based on corporate cash flow and earnings. USWC disagrees with Staff's adjustment. USWC contends that Staff has the burden to prove its proposed disallowance is justified and reasonable. Staff believes that the company has the burden to show that its costs are reasonable.
- *Issue 8b(2), Other Payroll Changes (Adjustments 38a, 38e, and 38f).*
  - *Adjustment 38a.* Staff added 1996 management salary increases and 1997 occupational wage and management salary increases. USWC agrees with the mechanics of Staff's adjustment but disagrees about the need for pro forma adjustments. The final amount depends on whose adjustment the Commission adopts as well as the resolution of Issue 4f, Headquarters Allocations.
  - *Adjustments 38e-38f.* Staff modified the wage and salary bases to remove the nonrecurring wages related to reengineering. USWC agrees with the mechanics of Staff's adjustments but disagrees about the need for the adjustments. See Issue 8a and Issue 9a, Reengineering. The final amounts depend on whose adjustments the Commission adopts and the resolution of Issue 4f, Headquarters Allocations.
- *Issue 8j, Average Growth in Access Lines (Adjustment 46).* Staff adjusted the test year to recognize that local revenues per access line have been relatively constant and that access lines are growing. Staff increased local revenues by 3 percent to reflect the average level during the period when rates from this docket will be in effect. USWC disagrees about the need for pro forma adjustments. If the Commission includes Staff's adjustment in the test year, the final amount depends on the resolution of Issue 6c, Tariff, Price, and Contract Changes Made after January 1, 1995.
- *Issue 8k, Marketing Accrual Reversal (Adjustment 47).* In its preannualization adjustments, USWC identified a reversal entry that is part of a series of accrual entries and actual claims paid for carrier accidents and damages.
- *Issue 8l, Information Management Systems (Adjustment 48).* Staff normalized costs by including the ongoing expense savings for two recently implemented information management projects (SAVER and bill reformatting). USWC disagrees about the need for normalizing adjustments.
- *Issue 8n, PUC Fee (Adjustment 49a).* Staff expects the PUC fee to increase from .20 percent to .25 percent for assessments due on and after April 1, 1997. USWC disagrees about the need for pro forma adjustments. USWC also disagrees that the change is probable.

**Issue 8a: Incentive Plans (Bonuses)**

USWC proposes to include in the test year \$4 million in bonuses that were paid to its management and executive employees in 1995 under three incentives programs: (1) Team Performance Award Plan (TPA); (2) Executive Short Term Incentive Plan (STIP), and (3) Executive Long Term Incentive Plan (LTIP).

Bonuses paid under these plans were based on the achievement of certain financial, business, and corporate goals. The 1995 TPA bonuses were paid for meeting or exceeding goals regarding (1) Earnings before Interest, Taxes, Depreciation, and Amortization (EBITDA); (2) USWC Net Income; and (3) Business Unit Results & Strategic Measures, and Customer Service. The 1995 STIP bonuses were paid for meeting or exceeding goals regarding (1) Financial Performance (new product development, net income, EBIDTA); (2) Reengineering Benefits; and (3) Customer Loyalty. The 1995 LTIP bonuses were paid for meeting or exceeding goals regarding (1) increase in the price of USWC stock; and (2) stock dividend growth.

Staff takes the position that these bonuses should be excluded from the test year because the financial, business, and corporate goals on which the bonuses were based primarily benefited USWC's shareholders. Therefore, Staff reasons, the shareholders should pay for the bonuses.

Staff notes that in the past, the Commission has not allowed a utility's revenue requirement to include employee bonuses that were based on the utility's financial results of operations. See, e.g., *Pacific Northwest Bell Telephone Company*, UT 43, Order No. 87-406 at 42, where we stated:

Only expenditures necessary for furnishing utility service should be reflected in rates. *Portland General Electric*, UF 3218, Order No. 76-601 at 13; *Cascade Natural Gas*, UF 3246, Order No. 77-125 at 10.

Staff contends that USWC's base salaries for management and executive employees are reasonable, but maintains that USWC has not shown that the goals on which the bonuses were based were justified by benefits to ratepayers. For instance, Staff notes that although quality of service deteriorated in 1995, the total TPA did not decline.

Staff concludes that the performance goals under USWC's management incentive plans were designed to benefit shareholders but were not in the ratepayers' interests. Staff argues that it is inappropriate for USWC's Oregon ratepayers to pay for bonuses for the utility's management and executive employees at a time when USWC's service quality problems in Oregon have increased significantly and when, as Staff believes, USWC is overearning by \$100 million. Including the bonuses in the revenue requirement in this situation, Staff argues, would add insult to injury for ratepayers.

Finally Staff notes that although it recommends excluding USWC's executive and management bonuses from the test year in this case, in future rate cases it would consider including employee incentive plans with goals that would benefit both ratepayers and shareholders.

USWC argues that its overall level of compensation, including bonuses, is not only reasonable but is below market. USWC argues that Staff is asking the Commission to preclude recovery of expenses that the record shows were actually incurred by the company, and that are reasonable. USWC also argues that excluding bonuses would amount to micromanaging the company.<sup>37</sup> That is, the Commission would be deciding what form compensation of company management should take.

USWC further argues that paying market wage levels, including incentive compensation is necessary for the provision of utility service. If bonuses were eliminated, USWC points out, salaries would have to be raised an equal amount to attract employees. Therefore, USWC argues, Staff's proposed disallowance is arbitrary, because it is based only on the manner in which compensation is administered.

USWC maintains that Staff has never previously challenged manager bonuses, and asserts that the facts in UT 43, the case on which Staff relies, are distinguishable from those in this case. USWC contends that use of incentive pay is common in the industry and encourages enhanced USWC employee performance toward ratepayers. If Staff's proposal is adopted, USWC maintains, it will send a signal to the company that it should not try to provide financial incentives for employee performance.

Finally, USWC argues that the Commission should allow recovery of bonuses to prevent discriminatory treatment of USWC in a competitive environment. USWC notes that its major competitors rely on incentive pay to compensate their employees. According to USWC, this indicates both that the practice of offering incentive pay is widespread and that the Commission should allow USWC's bonuses because to do so would be competitively neutral.

**Disposition.** The record shows that USWC's base salaries before bonuses are within a reasonable range, as is USWC's compensation including bonuses. Because its compensation is reasonable compared to the market, USWC concludes that its expense for management and executive bonuses is reasonable. USWC conflates two separate issues. The level of overall compensation is reasonable compared to the market. That

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<sup>37</sup> USWC argues that most commissions follow the principle that "managers of a utility have broad discretion in conducting their business affairs and in incurring costs necessary to provide services to their customers," including compensation decisions. *Violet v. FERC*, 800 F2d 280, 282 (1st Cir. 1986). USWC also cites two California cases that advocate leaving the allocation of compensation between salaries and incentives to the utility's discretion. *In re Pacific Gas and Electric Co.*, 1992 WL 438101 slip op at 46 (Cal. PUC); *In re Southern California Edison Co.*, 130 PUR 4th 97, 126 (1991) ("The Commission's duty is to authorize reasonable expenses for employee compensation as a whole, without micromanaging the distribution of employee salaries, wages, and benefits.").

does not determine whether it is reasonable to ask ratepayers to fund bonuses with the declared goals of USWC's incentive plans.

USWC is correct in stating that Order No. 87-406 (UT 43) does not preclude recovery of incentive pay linked to financial performance. The disallowance in that case occurred because the proposed compensation was based on the performance of the utility's parent, not the utility itself. Still, the principle that Staff quotes from that order is our policy: "Only expenditures necessary for furnishing utility service should be reflected in rates." Order No. 87-406 at 42.

We disagree that submitting USWC compensation expenditures to scrutiny is micromanaging; rather, it is our role as regulators to determine the reasonableness of USWC's claimed expenses. On review of the stated goals for the incentive programs at issue, we note that some of the goals on which bonuses were awarded deal with earnings, net income, financial performance, reengineering benefits, and stock prices and dividend growth. These goals benefit shareholders rather than ratepayers.

Two of the goals deal with customer service and customer loyalty. In view of the problems USWC has had with customer service (see discussion at Issue 9c below), we agree with Staff that it is inappropriate to award bonuses for performance in this area.<sup>38</sup> We point out that here our decision deals with bonuses for management and supervisory personnel. We do not mean our comments to reflect negatively on front line employees, who have done well under a difficult set of circumstances.

Under the circumstances of this case, we conclude that USWC has not shown that its incentive plans are reasonable expenses for the provision of utility service. We note that our disallowance is not based on the manner in which compensation is administered but on the purpose for which the bonuses are awarded. We also note that this conclusion does not prevent USWC from paying bonuses; it merely dictates that bonuses be paid from funds that would go to shareholders, not from funds provided by ratepayers. Therefore, we do not believe that the resolution of this issue places USWC at a competitive disadvantage.

We limit the findings on this issue to the facts before us. If in a future rate case USWC submits employee incentive plans with goals that would benefit both ratepayers and shareholders, we will include those expenditures in revenue requirement.

#### **Issue 8b(2): Other Payroll Changes**

In this adjustment, Staff proposes to add the effects of wage rate changes for 1996 and 1997 to the 1995 test year. USWC agrees with the mechanics of Staff's adjustment but disagrees about the need for pro forma adjustments. See discussion at Issue 1a(1)

<sup>38</sup> USWC appears to argue that Staff raises the argument of disallowance based on service quality issues for the first time in its brief. This is incorrect. See Revised Staff/1 Lambeth/65.

above. The final amount of this adjustment depends on whose adjustment the Commission adopts as well as the resolution of Issue 4f, Headquarters Allocations.

USWC implies that Staff's adjustment treats reengineering as if it had not happened, while including the effects of wage rate changes. Staff responds that its adjustment is to eliminate from wage and salary bases nonrecurring wages related to reengineering. It has calculated its pay increases on a wage base that excludes wages related to reengineering and extraordinary expense. Terminated jobs will not be replaced. Therefore, wage adjustments should not be computed for nonexistent employees.

We have determined that pro forma adjustments are appropriate to cause the test year to represent the period for which rates from this docket will be in effect. We are persuaded by Staff's argument that its adjustment makes the test year more representative of that period than it would be without the adjustment. Therefore, we accept Staff's adjustment for the effects of wage rate changes for 1996 and 1997.

#### **Issue 8e(2): Ballot Measure 5 Property Tax Savings**

This issue is addressed by the First Stipulation, paragraph 20. Staff and USWC agree that if we order a refund in this docket, the refund should be reduced by the Measure 5 refund for May and June 1996. We adopt this recommendation.

#### **Issue 8j: Average Growth in Access Lines**

At issue here is a pro forma adjustment (see discussion of Staff's proposed adjustments at Issue 1a(1) above). As we stated previously, the purpose of a test year is to represent the period in which rates will be in effect. Therefore, to avoid overearning or underearning by USWC during that period, we add to the revenue requirement recurring increases in revenues and expenses that are reasonably certain to occur, and exclude nonrecurring revenues and expenses. *Pacific Northwest Bell Telephone Co.*, UT 43, Order No. 87-406 at 11.

Staff proposes to adjust the test year to recognize USWC's continued access line growth and the associated growth in revenues. Staff has increased USWC's revenues by 3% per year to reflect growth in access lines.

*USWC's Position.* USWC argues that Staff's adjustment is for growth in revenue per access line. USWC contends that Staff has not carried the burden of showing that this adjustment is "known and measurable." USWC argues that Staff's sole evidence of an increasing trend in Oregon intrastate local revenue per line is a graph of monthly revenues per line for the period January 1994 to September 1995 (Staff Exhibit 36, Morrison 3). The graph for that short period showed a slightly increasing slope. USWC contends that the data are deceptive, because Staff witness Ed Morrison selected a small time period, excluding later as well as earlier data that refute his hypothesis. USWC charges that Staff had earlier and later data on revenue per access line, which it ignored

and which would break Staff's upward trend in per line revenue growth. USWC's position is that 1995 local revenue per line is approximately the same as it was in 1992. USWC concludes that per line revenues are, at best, flat.

USWC maintains that its evidence also shows that local revenue per line would be declining significantly without USWC's new promotions and services. USWC also notes that over the next several years there will likely be downward pressure on revenue per line, given resale. The Telecommunications Act of 1996 and the Commission's certification of local service providers are causing great changes in the telecommunications industry, according to USWC, making USWC's revenue highly uncertain. USWC charges that Staff considered none of these factors in developing its revenue forecast adjustment.

USWC also argues against Staff's claim that expense per line is declining. USWC contends that Staff's sole evidence of decreasing expense per line is Mr. Morrison's graph (Staff 36, Morrison 3). This chart, USWC points out, is based on normalized data. If one includes depreciation, access expense paid to independent telephone companies, and property taxes, it is clear that expenses per line are not decreasing. USWC asserts that Staff achieves its declining expense trend by normalizing depreciation expense without justification, continuing access expense reductions and Ballot Measure 5 property tax reductions, which have been fully reflected in the test year and which have ended. USWC argues that intrastate expense has, in fact, been increasingly slightly on a per line basis.

USWC also argues that Staff could not describe any steps to ensure that it balanced expenses and revenues associated with its proposed adjustment. Staff also made no effort to show that the cumulative effect of its adjustments is reasonable and does not distort the test year. USWC asserts that it provided positive evidence that Staff's proposed adjustments overlap and create test year distortion.

Since revenue per line is flat, USWC contends, Staff's proposed adjustment 8j to increase local revenue per line overlaps with Issue 6c. According to USWC, given Staff's failure to prove that expense per line is declining, Staff's adjustments in Issues 8l, 9a and 9b, and 5a create a distorted test year by causing test year expense per line to decline significantly below the historic trend.

USWC cites the overall result of Staff's proposed adjustment to underscore how unreasonable Staff's proposed adjustment is. According to USWC, Staff forecasts that between 1995 and 1997, USWC's revenues will grow by \$37.7 million while expenses will decline by \$30.5 million. This results in a net revenue gain of \$68.2 million, a profit margin of 18.4%, or a 50% improvement over 1995. According to USWC, Staff also projects that during the same period, access lines will increase by approximately 74,000 lines and that increase will come at a negative incremental cost.

Finally, USWC argues that Staff fails to include a comparable adjustment for forecasted changes in toll and access revenues, where revenue per line has been declining. For the two year period from 1993 to 1995, USWC contends, toll and access revenue declined by approximately \$15 per line. If the Commission were to adopt forecasted local revenue growth, it should also adopt an offsetting adjustment for forecasted decreases in toll and access revenues. An expense adjustment related to access line growth would also be warranted, as would an adjustment for the effects of competitive entry.

*Staff's Position.* Staff responds that USWC has mischaracterized the nature of Staff's adjustment. The adjustment is for *average growth in access lines*, not *revenue growth per line*. Staff notes that this misunderstanding explains why USWC asserts that Staff's revenue adjustments in Issues 8j and 6c overlap. Staff's revenue adjustment in Issue 8j is based on the quantity of USWC access lines. The adjustment in Issue 6c is based on revenue; that is, it reflects changes in USWC's tariffs, prices, and contracts. Staff asserts that these adjustments do not double count revenues. Mr. Morrison testified that he did not make an adjustment for the growth in revenues per line, because revenues associated with new filings were covered by Mr. Ball in Issue 6c.

Staff's revenue adjustment to the annualized test year consists of approximately \$24 million. The adjustment recognizes USWC's continued access line growth and the associated revenues. Staff proposed its adjustment because USWC's Oregon intrastate access lines have grown steadily in number since 1988. Staff believes that its estimate of continued average growth of 3% per year while rates from this docket are in effect is conservative.

Staff notes that Oregon is one of the ten fastest growing states in the nation in terms of population. USWC provides 1.2 million access lines in Oregon. As of February 1996, USWC was receiving nearly 36,000 service requests monthly from customers wanting new or additional lines. Staff points out that that USWC also introduces new services and products, which expands the local telecommunications markets. USWC's 1996 revenues from services such as Caller ID, Call Waiting, and data networking services increased 50% or more over 1995. There is also a growing customer demand for existing services, such as second residential lines. Staff cites the record to show that USWC experienced a growth rate of more than 30% in additional residential access lines for the 12 months ending in September 1996.

In response to USWC's contention that the Telecommunications Act of 1996 jeopardizes the stability of USWC's local revenue per access line, Staff notes that current growth figures set out above belie that argument. Staff also points to the following data in the record:

- In 1995, USWC experienced a 4.2% increase in access lines and a 6.8% increase in local service revenues over 1994.

- For first quarter 1996, USWC experienced a 4.8% increase in access lines and a 9% increase in local service revenues over the same period in 1995.
- For second quarter 1996, USWC experienced a 4.9% increase in access lines and a 9.6% increase in local service revenues over the preceding 12 months.
- For third quarter 1996, USWC experienced a 5.1% increase in access lines and a 9.3% increase in local service revenues over the preceding 12 months.
- USWC is also generating strong growth in revenues from value added services such as Caller ID, Call Waiting, Voice Messaging, and data networking services.

Staff points out that its proposed 3% growth rate is substantially less than the increases noted above. Staff also notes that because USWC's local service revenues are increasing at a higher rate than its access lines, its local service revenues per line are also increasing.

USWC has argued that, because of emerging competition, Staff's revenue adjustment for access line growth should be offset by reductions of \$8.4 million in its local Oregon service revenues and \$2.3 million in toll revenues. Staff argues that these forecasted revenue reductions are based on incorrect assumptions. USWC assumes that it will lose 9 percent market share to resale competition in 1997. That is, access lines that would be sold at retail to end users will become wholesale access lines sold to resellers. USWC projects a confidential percent of those lines to be residential access lines. Staff argues that this assumption is dubious. Staff argues that few, if any, competitors have plans to market local exchange services to residential customers in the near future. Therefore, Staff contends, USWC's forecasts about the impact of competition on its revenues during the period when rates will be in effect are greatly overstated.

Staff asserts that USWC's revenue reduction forecasts also contain other incorrect assumptions. For instance, USWC used \$12 as the monthly rate for its unbundled local loop (also called the basic network access channel, or NAC). By Order No. 96-283, however, the Commission revised the monthly rate for USWC's basic NAC from \$11.95 to \$16.33. Order No. 96-283 at 10-11; Appendix C at 1. Staff notes that USWC also used a 25% wholesale discount for its retail services and products, whereas USWC has neither given nor offered that large a discount to any competitor in Oregon.

**Disposition.** USWC's misunderstanding of this issue has led the company to argue against a position that Staff has not taken. Trends in average revenue per access line and average expense per access line are not at issue in this adjustment. At issue is whether the number of USWC access lines is growing at a rate that justifies an adjustment to revenue requirement to recognize that growth.

The record contains strong evidence that USWC access lines are growing at a rate well above the 3% adjustment Staff proposes. It is reasonably certain that this growth



rate will continue during the time rates from this docket are in effect.<sup>39</sup> The record also shows that USWC revenues from local access are increasing at a rate above the access line growth rate.

We are also persuaded by Staff's argument that the competition USWC foresees will be slow to develop. We cite UM 351, Order No. 96-283 at 6:

As we have previously stated, the revenue loss scenarios advanced by the [local exchange carriers] incorporate numerous assumptions regarding the timing and rate of competitive entry, the number and type of product offerings, customer willingness to change carriers, and changes in the overall market demand for telecommunications services. We do not think it is productive to engage in such speculation, especially when competition for many services has not even begun in the event of a significant impact on revenues, a [local exchange carrier] may seek immediate revenue relief in the form of an interim rate increase.

Finally, we agree with Staff that USWC's projections with respect to the cost of the unbundled NAC and the discount rate for wholesale services and products are mistaken. We are also satisfied that Staff has refuted USWC's argument about double counting and overlap between Issue 8j and Issue 6c.

We conclude that Staff's pro forma adjustment to recognize USWC's continuing growth in access lines is reasonable to keep USWC from overearning and should be accepted.

#### Issue 8k: Marketing Accrual Reversal

Staff reviewed accident and damage claims accrued and paid by USWC and recommended a \$529,375 decrease in total Oregon operating expenses. Staff's adjustment represents the actual level of claims paid during the historical period, January through September 1995, annualized.

USWC maintains a reserve account to recognize the accident and damage claims that will likely be filed against the company. During the test period, USWC accrued \$833,000 per month to the account for a nine month total of \$7,497,000. The company paid out \$2,743,000 from the reserve for the same period. Staff adjusted for annualization, for Oregon's share, and for the disparity between the amounts being accrued and the actual amounts paid.

USWC objects to Staff's adjustment and requests that the amount of claims paid for the last three months of 1995 be included. These months show an additional claims

<sup>39</sup> USWC again asserts that the standard for accepting adjustments to the test year is that the changes be "known and measurable." As we discussed at Issue 1a(1) above, the correct standard for these adjustments is that they be reasonably certain. That standard is met here.

paid amount of \$6,582,000. USWC argues that its analyst erred in the first response to Staff's data request, and asks that the Commission consider the entire year's data on accruals and cash payments.

Staff responds that USWC previously indicated that the January to September 1995 level of paid claims is representative of the ongoing level of claims. Staff also contends that the data offered by USWC for claims paid for the last three months of 1995 are highly inconsistent with confidential claims paid data for 1994 and 1996. Therefore, Staff considers USWC's data for the last three months of 1995 unreliable or unrepresentative of claims likely to be paid in the future.

We conclude that the additional claims paid amount of \$6,582,000 is not representative of claims likely to be paid during the time rates from this docket are in effect. We accept Staff's adjustment.

#### **Issue 81: Information Management Systems**

This issue concerns two adjustments to USWC's revenue requirement to reflect the reduced expenses due to two recently completed information management projects: (1) SAVER time reporting and (2) bill reformatting. Staff proposes a decrease of \$1,185,365 in total Oregon operating expense to account for these savings.

*SAVER Time Reporting.* This is a project that now allows certain USWC outside plant personnel to spend less time completing work time reporting cards. The project was implemented in Oregon during the fourth quarter of 1995. Staff included the savings achieved by this project, although it was implemented after the historical test period, because that was consistent with Staff's methodology of recognizing such events. Staff calculated its adjustment of \$492,827 from information provided by USWC.

USWC argues that Staff's adjustment double counts expense reductions and distorts the test year. First, USWC charges that Staff makes no test year adjustments for increased expenses, and then, when Staff proposes to adjust the test year for specific productivity improvements, it counts expense reductions again. USWC argues that Staff proposes no adjustment to operating expenses due to growth. USWC contends that 1996 maintenance expenses increased rather than decreasing. Maintenance expense, which SAVER would impact, was higher in 1996, the time period when SAVER was in effect.

Staff responds that USWC failed to recognize that SAVER (like bill reformatting) was implemented before the time rates are likely to be in effect. Therefore, it is appropriate to recognize this historical productivity improvement. Staff notes that it has allowed USWC a reasonable level of ongoing expense to make further information management productivity improvements.

*Disposition.* We conclude that Staff is correct in its response to USWC's double counting argument. Because SAVER was implemented before the time rates from this

docket became effective, it is a historical event that will reduce expense during the rate period. If maintenance expense is increasing, as USWC alleges, that is due to factors other than SAVER. Staff's adjustment is appropriate and should be adopted.

*Bill Reforming.* This adjustment concerns postage savings. USWC estimates that changes to its billing statement will result in postage savings of seven cents per residential bill. The billing project was implemented in the second quarter of 1996. Staff argues that the effect of this program is known and measurable. Staff contends that it should be recognized as an adjustment to the test year. Staff calculates the Oregon portion of this savings to be \$692,538.

USWC objects to this adjustment because it is based on an estimate. USWC proposes an adjustment of \$156,420 instead, asserting that Staff's adjustment is too high.

Staff responds that the estimate is specific to bill reforming and that it comes from the company. Staff points out that USWC's recommended adjustment is also an estimate. It is based on total company postage expense that has been allocated to Oregon and is not specific to bill reforming. USWC's analysis reflects other causes for expense changes, such as the weight of bill inserts. Further, the amounts included in USWC's analysis represent more than just savings attributable to residential bills. Moreover, USWC's analysis fails to account for the fact that the bill reforming project was implemented in different states during different times, because it relies on total company amounts.

*Disposition.* We conclude that Staff's adjustment should be adopted. It accounts for reasonably certain reductions in expense arising from USWC's bill reforming project. The amount underlying the adjustment comes from USWC, so the company should not be heard to complain of its reliability.

#### **Issue 8n: PUC Fee Increase**

In the adjustment, Staff proposes to add the effects of a projected 1997 increase in the PUC fee. Whether this adjustment is accepted or not depends on whether we adopt Staff's forecast adjustments that restate the test year to August 1997. We do adopt Staff's forecast adjustments; therefore, this adjustment should be accepted.

#### **ISSUE 9: SERVICE QUALITY AND REENGINEERING**

##### ***Disputed Issues:***

- *Issue 9a, Service Reengineering Costs (Adjustment 50).* The recorded data include large service reengineering costs. Staff normalized the test year as if service reengineering had not occurred. USWC disagrees about the need for this adjustment, claiming that it is a disallowance. Staff believes these are nonrecurring costs that should be normalized to properly state USWC's ongoing cost structure. See Issue 1a(1), Test Year.

- *Issue 9b, Extraordinary Expenses (Adjustment 51).* Staff removed extraordinary customer service, cable and wire facilities, reported trouble testing, and pole maintenance expenses that will not be part of USWC's ongoing cost structure. Staff has excluded accelerated pole testing expenses from this adjustment. USWC disagrees about the need for normalizing and pro forma adjustments. See discussion at Issue 1a(1) above.
- *Issue 9c, Service Quality (Adjustment 52).* Due to continuing service problems, with no quick solutions in sight, Staff recommends using the low end of the return on equity range (10.2%). USWC disagrees with Staff's adjustment.

### Issue 9a: Service Reengineering Costs

*Background.* USWC's reengineering program officially began in September 1993. It was scheduled to end three years later but was extended and will now end in 1997. U S WEST Communications Group described the reengineering plan recently as follows:<sup>40</sup>

The Communications Group's 1993 results reflected an \$880 million restructuring charge (pretax). The related restructuring plan (the "Restructuring Plan") is designed to provide faster, more responsive customer services while reducing the costs of providing these services. . . . The Communications Group has consolidated its 560 customer service centers into 26 centers in 10 cities and plans on reducing its work force by approximately 10,000 employees. All service centers are operational and supported by new systems and enhanced system functionality.

The Restructuring Plan is expected to be substantially complete by the end of 1997. Implementation of the Restructuring Plan has been impacted by the growth in the business and related service issues, new business opportunities, revisions to system delivery schedules, and productivity issues caused by the major rearrangement of resources due to restructuring. These issues will continue to affect the timing of employee separations.

The Communications Group estimates that full implementation of the 1993 Restructuring Plan will reduce employee related expenses by approximately \$400 million per year.

The consolidation involved in USWC's reengineering program included customer service upgrades (also termed resystematization by several witnesses); employee effects

<sup>40</sup> Source: *US WEST Communications Group, 1995 Financials, Management's Discussion and Analysis of Financial Condition and Results of Operations*, p. 6. In this passage, the reengineering plan is called the restructuring plan.

such as termination, relocation, hiring, and increased overtime; and real estate transactions.

As the passage from the Communications Group Financials above indicates, USWC established an \$880 million reserve account for the reengineering program expenses and charged such expenses to the reserve under the SEC's guidance. The company also set up an internal governance committee to administer the actual financial accrual for SEC purposes. The committee was created to ensure that only reengineering program expenses, as defined by accounting rules, were charged to the reserve. When the reengineering program was implemented, USWC's employees were instructed to charge certain expenses to the reserve. To help track these charges, USWC made a change to the indicator in the responsibility code to identify the reengineering program costs. USWC instructed its employees to charge nonrecurring expenses, not ongoing expenses, to the reserve. USWC wanted to separate business as usual costs from reengineering program costs so that reengineering costs could be audited (Staff Exhibit 76).

*Staff's Proposed Adjustment.* Staff argues that for the period January through September 1995, USWC's costs were substantially higher than for a normal period. That period coincides with the peak of the reengineering implementation period. The costs in the reengineering period included a) nonrecurring costs to implement reengineering (Issue 9a) and b) extraordinary expenses resulting from the movement of work functions, the introduction of new work processes, and the work disruption caused by reengineering implementation activities (Issue 9b).

Staff proposes a \$33,840,141 decrease in USWC's total Oregon operating expense due to USWC's service reengineering program. This amounts to a decrease of \$25.6 million in intrastate revenue requirement. The costs involved in this adjustment are the costs USWC incurred to implement reengineering (e.g., system development, employee related costs, and support costs). Staff asserts that reengineering is a unique change in USWC's business practices that entails large nonrecurring costs and equally large forecasted future savings. Staff argues that it is unlikely that USWC will undertake another reengineering plan of this type in the foreseeable future. Therefore, Staff argues that these are nonrecurring costs and should be removed from the test year.

*Staff's Method.* To calculate the effects of the reengineering program on the ongoing cost structure of the company, Staff reviewed USWC's results of operations. As detailed above, USWC had implemented procedures to identify and separate reengineering expenditures from business as usual expenditures. Staff calculated its service reengineering cost adjustment amount by removing nonrecurring costs to establish an appropriate recurring cost level. To do so, Staff normalized the historical period to appear as if USWC had not undertaken its reengineering efforts. Staff removed the reengineering costs incurred during the historical test period.

Staff used the information recorded by functional category under the Uniform System of Accounts, codified at 47 C.F.R. 32, to understand the type of expenses being

charged to the reserve and to ensure that USWC's remaining expenses represented a reasonable ongoing level.

Staff would have recommended removing any reengineering related savings realized during that period. However, Staff believes that USWC did not realize such savings during the historical period. To deal with future savings in calculating the service reengineering cost adjustment, Staff recommends an offset. Staff argues that during the historic test period, USWC made reengineering related capital investments in anticipation of savings. To establish the cost level that would have occurred in the absence of reengineering, Staff exactly offset the reengineering capital costs in the test period with a portion of future savings.

The portion of future savings involved in the offset is relatively minor compared to anticipated savings from the program. USWC estimates that 1998 reengineering savings will be \$400 million (*see* the Communications Group Financials, above). Staff figures the Oregon allocation of that amount at a conservative 8 percent or \$32 million. Staff points out that apart from the portion allocated to offset capital costs, USWC shareholders will receive the remaining future savings until rates are reset.

Staff maintains that its exclusion of reengineering expenses from the test year results of operations leaves USWC with a reasonable level of ongoing expense. To check the reasonableness of the ongoing level of expense for the company after Staff's reengineering adjustment, Staff reviewed the expense trend for the five accounts with the most significant reengineering expense during the test period. These five accounts represent over 75 percent of the reengineering expense that was removed from the historical period. Staff then compared the account balances for these five representative accounts from prior years to the same five accounts for the test year. These comparisons showed that USWC still had a reasonable level of ongoing expense after the reengineering program adjustment.

*USWC's Position.* USWC opposes this adjustment, arguing that the reengineering costs are recurring and that reengineering is a generic, ongoing program. USWC also argues that there is no basis in law or fact to disallow its prudently incurred expenses and investment related to restructuring to improve efficiency. USWC alleges that Staff has not proved that the expenses it recommends disallowing are nonrecurring, and has not proved that they amount to \$33 million.

USWC asserts that uncontradicted evidence shows that test year levels of expense and investment for the costs at issue are representative of historic trends and are expected to continue. USWC argues that Staff bases its proposed disallowance on accounting documents, yet concedes that accounting documents cannot prove that an expense is nonrecurring.

USWC points out that the expenses at issue consist primarily of two major items, employee separations and systems development and upgrade. Many of these costs were

incurred to improve existing systems and processes. USWC argues that it has a long history of incurring expense to upgrade its systems, consolidate operations, and downsize work force. These same expenses were ongoing at approximately the same levels before the present reengineering program was announced. USWC contends that it submitted substantial evidence that restructuring efforts will continue to be a significant ongoing expense, although they will not always be called reengineering.

USWC also argues that its consolidation and systems development efforts are not completed. USWC cannot maintain service or compete in the market place without continuing systems development. Thus, the company argues, these expenses will recur. Further, historic data demonstrate that downsizing the work force does not result in expense reductions, because of wage increases and new hires in other areas. In addition, the company argues that reduced expenses achieved by reengineering are offset by inflation and changes in other areas of operations.

Moreover, USWC contends that process improvements, systems development, and consolidation of business offices have improved operations to benefit Oregon ratepayers. For instance, business office access has improved.

Finally, USWC argues that Staff's testimony in other areas of the case contradicts its position on this issue. In Issue 8f, Income Tax Refund, Staff relied on historic trends to support its contention that an event was recurring. USWC asserts that for that issue, the historic trend was substantially less supportive of a recurrent event than the historic trend of expenses associated with restructuring. USWC accuses Staff of being result oriented and using historic trends when it would reduce revenue requirement but ignoring them when it would increase revenue requirement.

USWC proposes headcount data—that is, data regarding the number of people it employs at particular time periods—rather than accounting data to indicate the appropriate expense levels. USWC uses this argument in three ways:

- 1) USWC argues that Staff's overall projected decline in expenses is tantamount to the departure of 1,600 Oregon employees (when there were only 3,786 Oregon equivalent employees at the end of December 1995);
- 2) the levels of employee paid exits under the reengineering program are the same as prior to the reengineering program, showing that the reengineering program is recurring; and
- 3) employee levels did not increase in 1994 and 1995 during the reengineering program period.

**Disposition.** We conclude that USWC's service reengineering program represents a fundamental change in the way USWC delivers service. The program involves substantial consolidation and movement of employees as well as development and implementation of computer systems. USWC has consolidated 560 service centers into 26 and is reducing its work force by approximately 10,000 employees. This is a major

and unique program that is not likely to recur. We base our conclusion on the Communications Group Financials passage above, the statements of several USWC witnesses that the program will end in 1997, and the fact that USWC maintained its accounting records to separate reengineering charges from business as usual. We also note that the record contains these comments from pp. 24-25 of USWC's booklet of comments to the 1995 NARUC Summer Committee Meetings in San Francisco:

As announced in September 1993, the company expects a total of 9,000 jobs to be eliminated by 1997. . . . We anticipate that by August, 1995, about 95 percent of the people with jobs in the new reengineered centers will be working in them. . . . We're on target for completion of reengineering in 1997. All of the 26 reengineered centers are open.

We find USWC's attempt to downplay the importance and reliability of its accounting information unpersuasive. USWC was required by federal law to accurately maintain the information Staff used to isolate reengineering expenses. Staff properly relied on USWC's accounting data and information from its investigation to determine that the reengineering costs were nonrecurring and to calculate the amount of the disallowance.

Staff's adjustment does not ignore the reengineering program, as USWC charges, but removes the nonrecurring costs from revenue requirement. However, Staff allows USWC to offset the removed costs by retaining virtually all the savings the company estimated would arise from the reengineering program. This is a generous approach. In the past (Order No. 92-1562), the Commission approved a settlement agreement that removed the nonrecurring implementation costs and included all savings arising from that nonrecurring event.

USWC argues that the reengineering program will not result in expense reductions because of wage increases and new hires in other areas, inflation, and changes in operations. These factors are not specific to reengineering but are costs that face any company. Staff's adjustment does not affect cost increases not associated with the reengineering program. We note that USWC projects \$400 million of savings in 1998 associated with the reengineering program (see Communications Group Financials passage above).

USWC argues that Staff took a different position with regard to recurring and nonrecurring events in Issue 8f. We disagree. The income tax refund involved in that issue is an intermittent event, not a one time occurrence such as the reengineering program.

USWC argues that we should rely on its historical headcount data rather than on its accounting records to judge the costs involved in the reengineering program. Headcount data is a poor substitute for accounting data, for the following reasons. First, USWC is not able to account for changes in employee levels, leaving a residual of 2,051



unexplained employees in 1995. Second, headcount analyses are difficult to make because of changing employee status (full time to part time and back). Third, they are suspect because USWC recently has been required to use extensive overtime and contract labor. USWC also relies on a data systems organization headcount that is subject to change from reorganizations, such as the dismantling of its technologies division. And fourth, headcount information does not reflect the separation of regulated and nonregulated expenses under Part 64.

Staff gives an example of why it considers headcount information unreliable. USWC claims that Staff's projected decline in expenses is tantamount to the departure of 1600 Oregon employees. That figure is calculated using the comparison of expense per line shown in USWC Exhibit 64. USWC fails to consider that substantial operating expenses underlying its exhibit do not relate to headcount.

We conclude that the reengineering program is a one time event, not an ongoing effort as USWC asserts. The consolidation of 560 service centers into 26 centers will not take place again. Staff's adjustment follows the Commission policy of removing nonrecurring costs from the test year to establish an appropriate recurring cost level.

We are persuaded that Staff's reliance on the reengineering accounting data that USWC kept pursuant to federal law was reasonable. USWC's alternative headcount data are unpersuasive.

Staff is correct in stating that savings from the reengineering program affect the recurring cost level. Staff took the conservative approach of recognizing only the future savings that offset the capital costs in its adjustment. Staff based its recognition on savings estimates provided by USWC. We are satisfied that Staff's adjustment leaves USWC a reasonable ongoing level of expense during the time rates will be in effect. We find Staff's adjustment reasonable and adopt it.

#### **Issue 9b: Extraordinary Reengineering Related Costs**

Issue 9b addresses the extraordinary expenses incurred by employee groups that experienced work disruption during the implementation period. The groups include employees that charge the following expense accounts: customer services operations and customer accounting operations (customer services), cable and wire facilities, and reported trouble testing. It also addresses the extraordinary expenses associated with the correction of pole safety violations. Staff recommends reducing USWC's total Oregon operating expense by \$8,995,203 to account for these extraordinary expenses, because these costs will not recur at the same high level during the time rates set in this case will be in effect. That results in an intrastate Oregon revenue requirement reduction of \$6.6 million.

Unlike the reengineering program expenses (Issue 9a), USWC did not track these extraordinary expenses to specified accounts. Staff reviewed USWC financial statements

to determine that reengineering implementation resulted in extraordinary expenses. Staff then compared USWC expenses in prior periods with those from the test period. USWC's financial records show higher costs during the reengineering implementation period. Staff assessed information concerning implementation issues that USWC faced during the historical period, such as resolving computer system errors, dealing with shortages of employees in megacenters that resulted in technician hold time, trying new procedures and then reverting to prior procedures, revising procedures, and extending the length of the implementation period. This information provided specific examples of the causes of higher costs during the historical period.

Staff stresses that the problems USWC encountered in implementing the reengineering program were not due to rank and file employees. Instead, USWC's front line employees have performed admirably in a difficult work environment. The problems stem in large part from decisions made at the corporate level by USWC executives.

Staff contends that the expenses recorded during the historical period January through September 1995 were affected by activities that will not be a part of USWC's ongoing cost structure, particularly reengineering implementation expenses and pole maintenance expenses that are higher due to USWC's response to safety concerns. Staff normalized those costs based on a more representative period, to reflect USWC's ongoing cost structure. USWC's financial information supports the view that the test period includes nonrecurring expenses associated with reengineering implementation. In the latter part of 1994, reengineering implementation began to accelerate. As outside plant technicians were affected by reengineering implementation, cable and wire facilities expenses began to increase, and USWC's service quality experienced a further decline.

Staff points out that reengineering caused a decline in productivity, including computer errors, shortages of employees in megacenters that resulted in technician hold time, and changes in procedures. USWC also lost expertise when approximately 1,000 employees decided not to relocate. USWC underestimated how many people would choose to leave the company. USWC transferred or terminated locally based engineers. USWC field technicians have been required to work substantial amounts of overtime. USWC has deployed substantial numbers of out of state and contract personnel who may be unfamiliar with USWC's Oregon outside plant. Staff believes that the field technicians have performed admirably under difficult situations. However, it is normal that such situations, particularly prolonged periods of overtime, result in lowered productivity.

The productivity issues related to reengineering directly affected customer services, cable and wire facilities, and reported trouble testing expense. Staff believes that other work functions such as plant administration and engineering were also affected by reengineering implementation activities. The accounts associated with the latter two work functions were more difficult to analyze than the others, because of the clearing of capitalized amounts from those accounts and the level of nonrecurring reengineering implementation expenses in the account balances. Staff therefore elected a conservative

approach and limited its adjustment to customer services, cable and wire facilities, and reported trouble testing expenses.

Staff obtained USWC's records for the three categories of customer services, cable and wire facilities, and reported trouble testing expenses. Staff first selected a period (January through June 1994) as representative of ongoing expense levels. This was a period during which work functions were not affected by implementation of the reengineering program. Staff then normalized the January through June 1994 expenses to recognize an August 1994 wage increase and line growth between this period and the period of January through September 1995. Staff compared the normalized 1994 data with the 1995 data to determine extraordinary 1995 wage and other expense amounts and then calculated benefit effects based on extraordinary wages. Finally, Staff removed the abnormally high expenses from the test period.

Staff believes that the allowance for wage and line growth increases is more than adequate for expected cost changes. Staff did not try to adjust the allowance downward for expected factors such as productivity increases and the level of fixed expenses (those that do not vary with changes in line volume). Staff allowed for a large increase even though expenses in general, depending on type and circumstances, may be level or even declining.

Staff considers the nature of the expense increase to be temporary. The additional expenses are primarily overtime and contract labor, not permanent employees. USWC is trying to modify systems and relocate personnel at the same time. It is usual for costs to be higher during this type of implementation period and then return to normal levels. According to Staff, the problems USWC is experiencing can be corrected, and it appears that USWC is taking measures to correct them. The higher costs are related to decisions and reengineering implementation activities directed at the corporate level rather than being related to an increase in the number of USWC permanent Oregon employees or the performance of Oregon employees.

As with Issue 9a, Staff performed a reasonableness check to determine whether its adjustment for extraordinary expenses left USWC with an appropriate ongoing expense level. Staff determined that its adjustment allows a reasonable upward increase in the adjusted categories.

Staff also asked USWC to explain the sharply increasing expenses. USWC argues that its increasing expense trend is due to USWC's response to service quality problems. Staff does not credit this argument. Staff attributed the trend to reengineering implementation, which it considers the underlying cause, as opposed to a decline in service quality and USWC's response to it, the symptoms. Staff points out that the increase in service complaints the Commission received from USWC customers coincided with the implementation of reengineering during the latter half of 1994. Service quality did not improve over the course of the historical period.

USWC gave Staff two explanations for the expense increase that, according to Staff, merited further consideration. First, USWC indicated that "customer services other expenses" was increasing due to an increase in postage costs. Staff lowered its adjustment to account for the recurring nature of the postage cost increase. Second, USWC made an accounting change in the second half of 1994 to classify certain locating costs associated with construction activities as expense rather than as capital. Staff did not attempt to normalize for this accounting change because of some uncertainties. That is, unless prior capitalized charges were reclassified from capital to expense, ratepayers are incurring capital costs for prior locating as well as expenses for current locating. Also, due to the effects of reengineering and the lack of financial data, Staff had trouble determining a proper ongoing level of expense associated with this change.

Staff argues that USWC incurred extraordinary expenses during January through September 1995 to address pole safety issues. In March 1994 the Commission approved an agreement between USWC and Staff to eliminate pole safety violations (UM 640). During 1995, USWC continued to correct these safety violations. USWC conducted a public safety inspection of all USWC poles in the state and accelerated the detailed inspection and pole strength testing to 20 percent per year rather than the normal 10 percent per year. Staff recommends excluding the extraordinary pole maintenance costs associated with USWC's correction of pole safety violations.

To calculate the adjustment associated with pole safety issues, Staff excluded expenses associated with the one time public safety inspection of all USWC poles in the state and reduced detailed inspection and pole strength testing expenses from the accelerated rate of 20 percent per year to the normal rate of 10 percent per year. Staff also amended its adjustment to reflect the partial settlement of the pole safety violation issue. See Staff Exhibit 84.

USWC asserts that Staff has presented no evidence to support its proposed adjustment, while USWC has produced substantial evidence to disprove Staff's claims. Expense levels for 1996 demonstrate that ongoing levels of maintenance expense are substantially higher than test year levels. The increase is due in part to the increased number of network technicians since the end of the test year, a 26% increase from 898 technicians employed in Oregon in September 1995 to 1,134 in August 1996. USWC notes that it has added these technicians in response to Commission concerns about adequate service in Oregon. USWC also uses its new network technical data as an argument against Staff's service quality adjustment (Issue 9c).

USWC also charges that Staff failed to present evidence demonstrating that reengineering had the dollar effect on expenses that Staff claims. USWC points out that Staff's proposed adjustment is tantamount to removing 180 network technicians from the payroll. USWC also argues that Staff's adjustment distorts the test year.

Staff responds that USWC has not shown that its recent employment of over 200 network technicians justifies increasing the overall cost level in the rate case. Staff

argues that the Commission should not rely on headcount data; it is unreliable and subject to misuse (see discussion at Issue 9a above). Staff also notes that these data were introduced for the first time in USWC's reply testimony. The data are unverified, and Staff asserts that verification would be difficult and time consuming. Moreover, the relevant inquiry is how the new hires impact overall expense levels. Staff notes that in its brief, USWC claims that all these technicians are employed in Oregon, but USWC witness Carl Inouye does not make that claim in his testimony. Thus, Staff argues, the record does not establish that all or any of these technicians are working in Oregon. The duties of these network technicians are also unclear. If they are involved in construction, their cost is a capital item, not an operating expense. Nor is there evidence in the record as to how long these employees will stay in Oregon. Staff notes that USWC has deployed out of state employees in the past.

**Disposition.** For the reasons given above, at Issue 9a, we reject USWC's headcount arguments. We conclude that USWC's network technician figures are unverified and therefore do not accept them to refute Staff's argument.

We find that Staff's adjustment properly removed extraordinary nonrecurring expenses associated with problems in implementing the reengineering program. We find that the adjustment was reasonably calculated and leaves USWC an appropriate level of ongoing expenses. We also find Staff's adjustment with respect to pole safety violation corrections reasonable. We conclude that Staff's adjustment should be adopted.

#### Issue 9c: Reduced Service Quality

As we stated in Order No. 96-107, at 1:

During the past four years, U S WEST has experienced a severe increase in service quality problems, relating to both customer service and technical service.

The deterioration in USWC's service quality began during the time when USWC was operating under an AFOR approved by the Commission in Order No. 91-1598. The AFOR was an incentive based plan designed to give USWC pricing flexibility and an opportunity to earn higher rates of return within a broad range. The Commission approved the AFOR plan "contingent upon USWC's compliance with the quality of service standards as of April 1, 1991." Order No. 91-1598 at 22. Staff certified that USWC satisfied that requirement. *Ibid.*

USWC represented, and we expected,

that [this] incentive-based regulatory approach adopted in this order should motivate USWC to improve efficiency, modernize its infrastructure, and provide services which meet the challenges of the changing telecommunications environment. These benefits will be achieved without sacrificing . . . the quality of service that Oregonians have come to rely on. Indeed, the new regulatory

framework will benefit customers by providing rate stability for essential services, the potential for revenue sharing, improved service quality, and continued access to state-of-the-art telecommunications services.

Order No. 91-1598 at 1, 30.

Our expectations have not been met. Between April 1991 and October 1995, trouble report rates increased in 66 of USWC's 77 Oregon wire centers. In some instances, these trouble reports more than doubled. Further, trouble report rates in 49 of USWC's Oregon wire centers increased from October 1995 levels in 1996 (average of March, April, and May 1996). USWC held orders for primary lines in Oregon have risen from an average of 66 per month in 1991 to 172 in 1995 and to 261 in July 1996. USWC's primary held orders delayed more than 30 days have risen from an average of 23 per month in 1994 to 35 per month in 1995 to 107 in July 1996. USWC has also experienced problems with other measures of service quality the Commission uses. These are detailed in the Staff report attached as Appendix A to Order No. 96-107 terminating USWC's AFOR. Finally, the number of complaints received by the PUC Consumer Services Division regarding USWC's service has increased by a factor of ten, from an average of 23 per month in 1991 to 228 per month during the first six months of 1996.

USWC Oregon Vice President Chuck Lenard indicated to the Commission at the March 27, 1996, special public meeting that USWC is unlikely to be able to restore its service quality to the pre-AFOR levels soon. Service quality improvement will take considerable time. Mr. Lenard also indicated that USWC's service quality problems were due in large part to the condition of USWC's network infrastructure. Moreover, Mr. Lenard told the Commission that USWC has capacity problems in Oregon because the company underestimated the demand for USWC services.

Staff believes that it is unlikely that USWC will be able to remedy its service quality problems during the time when rates from this docket will be in effect. Staff therefore recommends that we adopt the low end of Staff witness John Thornton's return on equity range to reflect the reduced level of USWC's telecommunications service quality. Staff notes that if USWC restores its service quality to April 1991 levels, it would be appropriate to use the midpoint of Staff's return on equity range to determine USWC's revenue requirement.<sup>41</sup> Staff argues that this condition is reasonable, because the highly reliable digital technology in USWC's network today makes it easier for USWC to provide the level of service it provided in April 1991.

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<sup>41</sup> We recently adopted new service quality standards for Oregon's local exchange companies (Order No. 96-332, amending OAR 860-023-0055). In light of these new standards, Staff recommends that the Commission use the middle of its return on equity range in determining USWC's revenue requirement in the future, if the utility's service meets or exceeds the standards in the amended rule.

Staff recommends that the Commission take the following actions with respect to Issue 9c:

1. Use the low end of Staff's reasonable return on equity range in determining USWC's revenue requirement.
2. Order USWC to restore service to April 1991 levels.
3. Order USWC to continue providing monthly service reports specified in the AFOR agreement until its service has been restored to April 1991 levels.
4. Adopt USWC's April 1991 service levels as the reference points for the levels of service that would justify using the midpoint of Staff's return on equity range in determining USWC's revenue requirement.

USWC opposes Staff's proposed adjustment. USWC maintains that it has been investing at record levels and has added service technicians to meet the new service requirements. USWC also claims that it has improved service levels in Oregon. To illustrate this claim, USWC points out that 80% of calls into customer centers have consistently been answered within 20 seconds since October 1995. USWC also notes that access to repair centers has improved, the percentage of missed commitments has declined, and repair cycle times are down.

USWC argues that Staff's reliance on the April 1991 service quality standards is misplaced. Those standards, USWC argues, were relevant only as benchmarks in Order No. 91-1598 establishing the AFOR. Therefore, USWC contends, the limited purpose for which the April 1991 performance levels are relevant is no longer applicable. USWC maintains that it has already been penalized for falling below the April 1991 service quality levels by termination of the AFOR, which cost it its pricing flexibility and the ability to earn at higher levels. USWC argues that if the Commission adopts Staff's recommendation, it will be penalized again and will continue to be penalized as long as rates from this docket are in effect.

USWC also believes that Staff has unfairly singled out USWC for the requirement that service be kept at April 1991 levels. USWC contends that this selective creation and application of the law only to USWC is akin to a bill of attainder, US Const. Art. I, §10, and violates USWC's right to equal protection of the law.

Moreover, USWC contends that the April 1991 performance levels were the highest ever achieved by the company, and are therefore not a reasonable basis for evaluating current and future service quality. USWC argues that there is no evidence that the April 1991 levels produce an appropriate level of service. Staff also proposes service levels that must be achieved in nine categories before USWC will be allowed to earn at the midpoint of the return on equity range. Currently, USWC notes that there is no

standard as to five of the nine categories. The levels are defined only as those achieved in April 1991. Four of the nine measurements were not reported to the Commission in April 1991, however, so there was no basis to conclude that USWC met them then. As to those measurements that were recorded, USWC did not achieve them in April 1991. In almost all instances, the levels of service described by Staff are higher than USWC was actually achieving in 1991.

USWC argues that Staff proposes to adopt in this proceeding the standards by which to measure the company's performance and to apply those standards retroactively so as to penalize the company for failing to achieve them. USWC considers this an obvious example of an ex post facto action, which is prohibited by Article I, § 10 of the U. S. Constitution. USWC also argues that there is no competent evidence on which to assess a rate of return penalty. USWC argues that there is no suggestion in the record that USWC failed to meet the service standards set forth in the Commission's rule. USWC also asserts that the Commission may not impose a penalty for service quality without a known service quality standard. *State ex rel. Utilities Comm'n v. Carolina Water Serv., Inc.*, 439 S.E.2d 127 (N.C. 1994).

USWC also maintains that the Commission has no statutory authorization to penalize a utility by denying it a rate of return which Staff would otherwise find appropriate. Staff has recommended an 11.6% rate of return but for service quality considerations. USWC cites several cases that hold that quality of service cannot lawfully be used as a factor to reduce a utility's rate of return.<sup>42</sup>

USWC contends that specific measures are already in place to address any service quality problems. Order No. 96-107, which terminated the AFOR, prescribed the specific measures that USWC must undertake to improve service quality. These measures include implementation of USWC's cellular telephone loaner program and an out of service credit. Those provisions, USWC believes, address the specific service quality issues and provide focused relief to affected customers. USWC has offered to make the existing program permanent until the next rate case. USWC argues that penalties should directly benefit those who have been inconvenienced, as USWC's current plan does. USWC also argues that Staff's proposed penalty would deprive the company of the financial resources it needs to achieve further service quality improvements.

Finally, USWC argues that Staff has shown no relationship between the amount of the recommended penalty and the nature of service quality concerns. USWC cites *South Central Bell Telephone Company v. Utility Regulatory Commission*, 637 S.W.2d 649, 653 (Ky. 1982) for the proposition that it is arbitrary and subjective to impose a penalty grossly disproportionate to documented service deficiencies. Here, USWC contends that Staff has identified technical noncompliance only in three small exchanges.

<sup>42</sup> *South Central Bell Telephone Co. v. Utility Regulatory Commission*, 637 S.W. 2d 649, 654 (Ky. 1982); *Florida Telephone Corp. v. Carter, Fla.*, 70 So.2d 508, 510 (Fla. 1954); *In re General Telephone Co.*, 652 P2d 1200 (N.M. 1982).



USWC also contends that customer calling volumes do not correlate with service quality. USWC argues that the proposed adjustment is based on complaints by only 1% of its customers. USWC recommends that we reject Staff's proposed service quality penalties.

*Disposition.* ORS 759.035 provides:

Every telecommunications utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited.

ORS 756.040 empowers the Commission in part as follows:

(1) . . . [T]he commission shall represent the customers of any public utility or telecommunications utility and the public generally in all controversies respecting the rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.

(2) The commission is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.

As these provisions make clear, we have authority to set service levels and establish reasonable rates for that service. We also have authority to set rates to reflect the level of service a utility provides. As the Oregon Court of Appeals held in *Garrison v. Pacific Northwest Bell*, 45 Or App 523, 531 (1980), "[r]ates, service levels, and the remedy for . . . service failures are inseparable." See also *West Coast Tel. Co.*, 27 PUR 3d 489, 497 (OPUC 1958) (OPUC held that a telephone company's inadequate service justified a rate of return "in the lower range of the zone of reasonableness").

USWC claims that its service substantially meets the standards in OAR 860-023-0055 (1995). Therefore, USWC argues, no rate of return adjustment should be made based on service considerations. We disagree. Our service quality rule was based largely on technical standards. Customer service problems are at the heart of USWC's current service quality problems. We amended the rule by Order No. 96-332, because some of the technical standards in it were outdated and because it did not contain important customer service standards.

Our service quality rule is not our only redress for poor utility service, however. As the statutory provisions above and the *Garrison* case make clear, the reasonableness of rates depends in part on the quality of service that the utility provides. We find that

USWC's revenue requirement should reflect the lower level of service the utility is currently providing.

USWC argues that it is inappropriate to hold the company to the April 1991 standard for service. USWC argues that the only relevance of the service quality as of that date is to measure service quality in terms of the AFOR. Again, we disagree. We approved the AFOR plan because we expected it to result in long range benefits to ratepayers: improved efficiency, modernized infrastructure, and the provision of services that meet the challenges of the changing telecommunications environment. We expected those benefits to accrue without sacrificing service quality. Order No. 91-1598 at 1, 30. As a condition for granting the AFOR, we asked USWC to maintain the quality of service it was providing in April 1991.

Instead, Oregon ratepayers are now worse off than they were in 1991, and perceive themselves to be worse off than they were in 1994. That is an unreasonable outcome. Technology has improved in the meantime. We consider it a reasonable condition to ask USWC to bring service quality to the level of April 1991 in order to use the midpoint of Staff's return on equity range in determining USWC's revenue requirement.

USWC claims that there have been material improvements in its service quality. USWC cites improved access to customer and repair centers, fewer missed commitments, and shorter repair cycle times. We commend USWC for these improvements, but note that other indicators of service quality are dismaying. We quote from Order No. 96-339 at 1-2:

Order No. 96-107 terminated USWC's alternative form of regulation (AFOR) plan, and the order also adopted a stipulation that addresses USWC's service quality problems regarding held orders for primary and additional access lines, and delays in restoring access line service to customers.

There has been no substantial improvement in USWC's service quality in these regards since the date Order No. 96-107 was entered (April 24, 1996), based upon customer complaint information received by the Commission. Complaints from USWC customers continue to come to the Commission's Consumer Services Division at an alarming rate. Commission records show that USWC customers are as dissatisfied with the company's service now as they were in April 1996, that the customers are less happy with USWC service now than they were during calendar year 1994, and that USWC service is perceived to be significantly worse than that provided by other utilities regulated by the Commission.

USWC has entirely too many held orders. In April 1996, the company had 283 primary held orders. In October, the primary held order figure rose to 366.

For the second and third quarters of 1996, USWC was clearing approximately 80 percent of its out of service reports within 48 hours. In recent weeks, the figure has been 50 to 70 percent. Historically, the percentage of reports cleared has dropped when Oregon's rainy season begins because of wet cables cracking, which may explain the most recent drop. Commission Staff believes that the service restoral standard should be that at least 95 percent of all reports are to be cleared within 48 hours. Because of the cable problem described above, USWC is unlikely to be close to compliance with that standard for at least several months.

USWC mentions that it is unnecessary for the Commission to "penalize" it by choosing a return on equity at the low end of the range, because the Commission has service quality remedies in place. See Order No. 96-339. We respond that the measures in that order are remedial. USWC has had ample notice that we expect its service quality to improve, not merely that we require it to provide redress for the symptoms associated with its poor service.

USWC cites several cases holding that a commission may not impose a penalty for poor service in a rate case. See Footnote 45 above. In *South Central Bell*, the Kentucky Commission was enjoined from reducing the utility's rate of return because of alleged poor service. The Kentucky Supreme Court found that a reduction in what was originally determined to be an adequate rate constituted a penalty beyond the scope of the Commission's authority. This holding is similar to the holding in the *Florida* case and the *General Telephone* case.

The present case is distinguishable on three grounds. First, the cases cited are state court cases. In our state, the Oregon Court of Appeals has reached a different conclusion about the relationship between rates and service, as the language from *Garrison* quoted at the beginning of this section shows.<sup>43</sup> Second, in the present case Staff has recommended a point within a reasonable range of return on equity. Any rate within the range is adequate to allow USWC to earn a reasonable return on equity. Therefore, USWC's arguments that the low end of the range will not permit it sufficient funds to improve its network are groundless.

Third, the choice of the low end of the reasonable range is not a penalty. It is not punishment for failure to meet service expectations in the past. As USWC noted, early termination of the AFOR was the consequence of USWC's failure to meet the April 1991 service quality standards. That issue is resolved. Ratemaking, however, is prospective in nature. See, e.g., Order No. 87-407 at 11-12. Staff's proposed adjustment is also prospective. Staff determined that "USWC is unlikely to restore its service quality to pre-AFOR levels during the period in which rates resulting from this proceeding will be in effect." Staff/7, Birko/1, 3, 6-7, ; Staff/8, Birko/4-5; Staff/42 and 43; Mr. Lenard's

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<sup>43</sup> USWC argues that this case is not on point because the court found that the utility had not violated the "adequate service" statute. The point is, however, that the court, in making its determination, articulated the principle that rates and service are interrelated.

comments at the March 27, 1996, PUC special public meeting (officially noticed Tr 15-16.) Our reduction in the return on equity is based on our understanding that USWC's service during the period when rates will be in effect will be less satisfactory than it was six years ago.

USWC argues that we cannot choose the low point in the range of reasonable return on equity because there is no known standard below which USWC's service quality has fallen. *Carolina Water Serv., Inc., supra*: Throughout the term of the AFOR, we held up USWC's own April 1991 service quality achievement as the standard which it must meet. In Order No. 96-107 terminating the AFOR, we again stressed to USWC the importance of improving its quality of service. That order specifically directed the company to continue to file the monthly technical service quality reports that it had filed under the AFOR. That order originally foresaw continuing the reports until OAR 860-023-0055 was amended, but the Commission subsequently extended the period of time during which USWC must file the reports required indefinitely (*see* Order No. 96-338 at 4, Ordering Paragraph 4).

We believe this is a reasonable and known standard to continue to apply. It is reasonable because USWC had already met that standard before the AFOR was implemented.<sup>44</sup> It is known because we have repeatedly held it up as the standard of service USWC must meet, both during and since the AFOR. USWC's ex post facto argument therefore fails.

As to USWC's equal protection argument, the company has not shown that other, similarly situated companies have received different treatment. USWC argues that it is subject to a standard that is not applied to other telecommunications utilities, the April 1991 standards. The history that led to approval of USWC's AFOR, development of the service quality standards under the AFOR, termination of the AFOR, and continued imposition of the AFOR service quality standards is unique. As we state below, in future rate cases, USWC will be held to the same set of standards that govern service for all telecommunications utilities, those set forth in OAR 860-023-0055. For purposes of this rate case, we look to the April 1991 standards to assess USWC's performance because of the AFOR and USWC's agreement to that set of standards under the AFOR.

USWC contends that Staff's proposed adjustment is grossly disproportionate to the consequences, because it is based on complaints by 1% of the company's customers. USWC's argument misses the point. First, we have no way of knowing how many customers who receive inadequate service fail to complain of it. Second, and more importantly, the complaints indicate problems with USWC's telecommunications system and delivery of service that may adversely affect the system as a whole and Oregon's infrastructure. Cost cutting, employee reductions, and USWC's reengineering program

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<sup>44</sup> USWC argues that it did not actually meet the April 1991 service quality standards. Staff certified that it did meet those standards. *See* Order No. 91-1598. USWC's assertion that the certification was false is a collateral attack on that order and is inappropriate in this forum.

have reduced USWC's ability to maintain 1991 service levels at a time when the utility is experiencing rapid growth in the demand for its telecommunications services. USWC's ratepayers, present and potential, can expect to be adversely affected by delays in providing access lines or service repairs.

We conclude that Staff's proposed adjustment in the return on equity to 10.2% is reasonable. The adjustment reflects USWC's reduced quality of service, which is not likely to be remedied while rates from this docket are in effect. Staff also asks us to order USWC to restore service to April 1991 levels and order USWC to continue providing monthly service reports specified in the AFOR agreement until its service has been restored to April 1991 levels. Under Order No. 96-339, USWC is already required to provide those service reports for an indefinite period. It would be redundant to include such a mandate in this order.

Further, Staff requests that we adopt USWC's April 1991 service levels as the reference point for the level of service that would justify using the midpoint of Staff's return on equity range to determine USWC's revenue requirement. We decline to do so. The 1991 service levels are an appropriate measure in this rate case for USWC's failure to provide adequate service. In future rate cases, however, we will judge USWC's service quality by amended OAR 860-023-0055 (*see* Order No. 96-332). If USWC meets the standards in the new rule, we will find it appropriate to choose the midpoint of a reasonable range for USWC's return on equity.

#### ISSUE 10: FINAL TEST YEAR SEPARATION FACTORS

*Significantly Undisputed Issue:*

- *Adjustment 53.* Staff and USWC agree that the intrastate separation factors used to initially separate the test year should be modified to include the effects of the sale of exchanges to PTI and the EAS conversions. The final factors depend on the resolution of all disputed expense adjustments. *See* Appendix B, First Stipulation, paragraph 25.

#### ISSUE 11: REFUND PROCEDURES – PROCESS

*Disputed Issue:*

Staff believes that USWC should make one time, lump sum credits on customers' bills. USWC should not make refunds for toll usage, but the company should make refunds to access service customers. USWC wants to phase the refund into rates and make no refund to access service customers.

Staff and USWC have not agreed on the refund procedures or on how to calculate the refund. If the Commission orders a refund based on the revenue requirement established in this docket, Staff recommends that USWC's Measure 5 savings for May and June 1996 be used to reduce the amount of the UT 125 refund. These savings were included in the refund USWC made to customers in January 1996.

**ISSUE 11: REFUND PROCEDURES – BASIS OF REFUND**

Appendix E to this order gives a detailed breakdown of Staff's calculation of the refund amount (page 1); the estimates, forecasts, and imputations that Staff would include but USWC would exclude (page 2); the adjustments to include in the refund calculation where the amounts depend on whose adjustments are adopted (page 2); other adjustments (page 3); and the calculation of interest on the refund (page 4).

***Completely Settled Issue:***

Staff and USWC agree that the refund should be reduced by the Measure 5 refund that related to May and June 1996. (\$.9 million, Issue 8e, Ballot Measure 5 Property Taxes)

***Disputed Adjustments (which Staff would include but USWC would exclude):***

Staff and USWC disagree about the basis of the refund. Staff believes the refund should follow Commission Order No. 96-183. Therefore, it should be based on the total revenue requirement established in this docket,<sup>45</sup> except for the Ballot Measure 5 refunds for May and June 1996.

USWC argues that the refund should follow Order No. 91-1598 and be based on actual earnings. USWC agrees that some adjustments should be made to the test year before calculating the refund but three types of adjustments should generally be excluded: estimates and forecasts, imputations, and disallowances of recorded data.

***Estimates and Forecasts.*** Many adjustments in this proceeding are based on estimated revenues and expenses that Staff expects USWC to achieve during the period when rates are in effect. USWC claims that estimates and forecasts should be ignored in a refund calculation. However, the stipulated test year includes three months of estimates, which the company would include in calculating a refund. USWC would also include the estimated effects of pending sales of exchanges on allocation factors (Issue 4f) and the estimated effects of docket UM 351. According to USWC, the adjustments shown at Appendix E, page 2, should be ignored in the refund calculation, because they are estimates and forecasts.

***Imputations.*** According to USWC, these adjustments, shown at Appendix E, page 2, remove or add imputed amounts and, therefore, should be ignored in the refund calculation. However, the company does not exclude US WEST Direct

<sup>45</sup> In Order No. 96-183 at 4, the Commission concluded that "the amount subject to refund by USWC is equal to the difference between the permanent rate level established in pending docket UT 125 and the current interim level, assuming that the latter amount of revenues is greater than the former."

directory revenues (Issue 3a) from the refund calculation. The company agreed to the imputation of Yellow Pages revenue in Order No. 91-1598, UT 80:

*Disallowances of Recorded Data.* According to USWC, these adjustments, shown at Appendix E, page 2, would impose retroactive ratemaking if they are included in calculating the refund. USWC does not exclude the floor space adjustment (included in Issue 4a) from the calculation.

*Total Adjustments to Include in the Refund Calculation (where the amounts depend on whose adjustments are adopted):* USWC seems to agree with Staff that the refund calculation should include the adjustments shown at Appendix E, page 2.<sup>46</sup> However, the amounts depend on whose adjustments are adopted in Issues 1 through 10 and 14.

If we order a refund in this proceeding, Staff recommends that we implement it as follows:

1. The refund should be made within 60 days after the Commission issues an order directing USWC to make a refund.
2. The refund should be made as a one time, lump sum credit on customers' bills.
3. The refund should be made to customers of USWC as of the refund date.
4. There should be no refund for toll service.
5. Interexchange carriers (IXCs) who are access service customers of USWC should receive refunds based on the amounts each paid the utility over the twelve months immediately preceding the refund date. In the aggregate, the portion of the total refund that should be distributed to IXCs should be calculated using the ratio of USWC's Oregon intrastate access revenues to total intrastate revenues subject to refund, as determined in this proceeding.
6. The rest of the refund should be distributed to local service customers, on a per line basis, in the following ratios:

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<sup>46</sup> USWC does not discuss the refund considerations of these adjustments.

<u>Group</u>	<u>Current Rate</u>	<u>Ratio**</u>	
Residential	\$12.80	1.00	All residential service lines
Bus. Simple	\$30.87	2.40	Business simple lines and business measured lines
Bus. Complex	\$34.77	2.70	Other business, switched service lines, including complex, DID trunks, ISDN, PAL, semipublic
Centrex	varies	1.00	All Centrex type lines
Private Line	\$9.80 (basic)	0.75	Refund per NAC

\*\*Each ratio is approximately equal to the ratio of the current rate for the service to the rate for the residential group.

USWC generally agrees with Staff's recommendations. However, USWC argues that no refunds should go to the IXCs because they have already received permanent rate reductions over the past four years.

Staff disagrees with USWC's position on refunds to IXCs. Staff recommends that any refund be divided among groups of customers approximately in proportion to the total revenue USWC receives from each group. The IXCs' proportionate share would reflect the rates they paid over the 12 months preceding the refund. Further, despite periodic rate adjustments for access service, the IXCs may still be paying higher rates than what the Commission ultimately determines is reasonable.

USWC contends that Order No. 91-1598 requires the consideration of "actual earnings" in determining refunds. The order discusses the refund procedures to be followed or the rates to be charged by USWC in the event the AFOR is terminated prematurely.<sup>47</sup> The Commission prematurely terminated USWC's AFOR by Order No. 96-107. That order provided that "U S WEST's rates for services [from May 1, 1996] shall be considered interim rates subject to refund with interest." *Id.* at 3.

USWC filed a Petition for Clarification and Request for Ruling on May 31, 1996, asking the Commission to clarify that any refund would be calculated using USWC's actual earnings during the interim rate period. On July 16, 1996, the Commission issued Order No. 96-183, which concluded that the amount subject to refund would be "equal to the difference between the permanent rate level established in pending docket UT 125, and

<sup>47</sup> The order provides, at 28-29:

Subparagraph (3) specifies that the rates in effect from the date the plan is terminated until the date new permanent rates are set shall be interim rates subject to refund. A refund will take place only where USWC is determined to have been overearning. The amount of any refund will equal the difference between the amount USWC is actually earning and the amount subsequently found to be reasonable. Any refunds will accrue interest at USWC's authorized rate of return on rate base.



the current interim level, assuming that the latter amount of revenues is greater than the former." *Id.* at 4. The Commission stated that the refund procedure would be similar to that used in ORS 757.215(4) and 759.185(4). *Id.* On September 16, 1996, USWC filed a Petition for Reconsideration, which was denied in Order No. 96-286. USWC has filed a judicial appeal of this order and of Order No. 96-183. USWC argues that the Commission erred in its application of Order No. 91-1598 by determining that the refund would not be based on what USWC is actually earning.

USWC also argues that because Staff has used forecasts in its proposed adjustments, the adjustments bring future revenues into the current time period as if they were being earned now. USWC argues that the forecasted adjustments distort the refund amount because a refund will be based on a forecast, as opposed to actual earnings as specifically contemplated in Order No. 91-1598; and because some or all of the earnings are not forecasted to occur until after the period that rates are interim, they are not subject to refund.

According to USWC, using forecasted adjustments means that the Commission has no way of knowing if earnings are ever actually achieved. The presumption of Staff's forecast adjustment is that USWC would pay ratepayers the refund now for future revenue growth or expense reduction, and over the period of rates would "earn" the refund back. USWC argues that this is inaccurate. Under Staff's approach, the refund would be paid on earnings projected to occur after rates are no longer interim and subject to refund. The Commission has no assurance that Staff's forecasts will come about. Additionally, USWC argues, ratepayers would receive interest on the refund of earnings that USWC would be presumed to achieve. This interest would never be earned back. USWC argues that this is unreasonable.

USWC also argues that imputed amounts are amounts not actually earned and that they should also be excluded from the refund calculation. Moreover, USWC contends that including disallowed recorded data in the refund calculation constitutes retroactive ratemaking.

USWC proposes that the Commission should handle any refund amounts that may be due to customers in the form of phasing in rates. If the Commission adopts its proposal, USWC argues that interest should cease to accrue as of the date of the Commission's order in this phase of the docket.

**Disposition.** USWC argues against our reading of Order No. 91-1598. We have already addressed USWC's arguments in the orders mentioned above. The matter of actual earnings versus the rate level established in UT 125 has been settled, and we decline to address the issue again here. We will set the refund based on the rate level we here establish. That is, the amount subject to refund shall be equal to the difference between the permanent rate level we establish in this order and the current interim rate level. Order No. 96-183 at 3-4. Each of the adjustments to which USWC objects is an input to that rate level. We have reviewed each of those inputs carefully, and discussed them in the

sections of this order pertaining to them. We have found each one we adopt to be appropriate and reasonable.

We reviewed each estimate and forecast that we adopted to ensure that it was reasonably certain to occur. Our reasons for adopting adjustments of this sort to the test year are discussed under Issue 1a(1) above. In brief, these reasonably certain adjustments serve to make the test year representative of the period during which rates from this docket are likely to be in effect. Moreover, we note that USWC has proposed forecasted adjustments of its own: the proposed depreciation expense adjustment and the adjustment for the future adverse effects of the orders in Commission docket UM 351.

In Issue 7e, Staff Adjustment 36, Staff removed part of an accrual that will end soon after rates in this proceeding go into effect. Staff considers this a normalizing adjustment, but USWC argues that it is an imputation. We consider this a normalizing adjustment designed to make the test year representative of the period when rates from this docket will likely be in effect. USWC also argues against the imputation involving Part 64 Still Regulated services (Issue 4g(2)). We consider it fair to order a refund of imputed revenues in this case for the same reason we consider the imputation fair. The imputation makes these services revenue requirement neutral and prevents subsidies flowing from regulated services to those that are subject to competition and underearning.

USWC contends that including disallowances of actual expenses in the refund amount constitutes retroactive ratemaking. USWC's argument is not well taken. As the Oregon Court of Appeals recently stated:

Retroactive ratemaking occurs when past profits or losses are incorporated in setting future rates. *Pacific Northwest Bell Telephone Co. v. Katz*, 116 Or App 302, 311 (1992).

In other words, retroactive ratemaking is a way of truing up faulty projections as to earnings or expenses. That is not the case here. We are dealing here with interim rates subject to refund. We have determined that USWC's revenues should be reduced by approximately \$97 million, on average, throughout the period when rates from this docket will be in effect. Until the rate design order in the case is entered, the refund mechanism will address the necessary revenue requirement reduction. Once the rate design order takes effect, rates will reflect that reduction. In both cases, we are making prospective reductions. We are not going back in time to capture past overearnings. USWC objects to including disallowances in the refund. Those amounts were included in the revenue requirement reduction. Once that determination was made, logically they should be included in the refund as well.

For the refund procedure, we adopt Staff's lump sum refund proposal. We believe that more of the ratepayers who contributed to USWC's overearning will receive a refund in that manner than if we phase the refund through rates. Interest on the refund will accrue until the refund is paid.

Customers to receive refunds are those who are USWC customers as of the date this order is entered (May 19, 1997). Staff had proposed that the refund be made to those who were customers as of the date of the refund. We choose our alternative for two reasons. First, we find it more equitable that a customer who has been on the system and leaves between May 19, 1997, and the date the refund begins (which we assume will be in July 1997) should receive a refund than someone who becomes a customer between May 19, 1997 and the date of the refund. The former customer has probably contributed more than the latter to USWC's overearnings. Second, it is not clear what "refund date" means: it could mean May 19, 1997, the date the refund is ordered, or the date the first customer receives a refund, or the date the last customer receives a refund. To avoid that ambiguity, we choose today's date as the date defining which customers are to receive refunds.

We find it reasonable that IXCs receive a refund as well, for the reasons Staff gives. We also adopt Staff's recommendation that any refund be divided among groups of customers approximately in proportion to the total revenue USWC receives from each group.

Interest on the refund amount will be calculated month by month, compounded monthly, from the date when rates became interim (May 1, 1996). The interest rate is 11.2% per annum, as provided in the stipulation ending USWC's AFOR. See Order No. 96-107. This method of calculating interest is consistent with the method we used in UT 85.

The refund mandated in this order covers the period from May 1, 1996, when rates became interim, through April 30, 1997. We end the refund period covered in this order on April 30, 1997, for ease of calculation. There will be an additional refund for the period between May 1, 1997, and the date when rates set in the rate design phase of this docket become effective. This order calculates interest on the refund amount through April 30, 1997. There will be a time lag of perhaps two months before customer bills begin to reflect refunds. When we learn from the company the date of the first refund, we will calculate interest on the refund amount from May 1, 1997, until that date. We will issue a supplemental order with the final interest calculation on this refund when we learn the date USWC will begin making refunds.

We adopt Staff's proposed distribution of the refund on a per line basis, set out above. If the refund amount should exceed a customer's bill in a given month, then the refund credit shall be carried forward into the next month.

#### **ISSUE 12: CASH FLOW; ISSUE 13: BUSINESS VALUATION**

##### ***Disputed Issue (12):***

- USWC included a cash flow analysis in its rebuttal testimony. Staff argues that it is extremely difficult to develop a meaningful cash flow statement on a

small segment of operations, such as USWC's Oregon intrastate operations. Because of the number of issues and adjustments in this case, it would be very difficult for us to accurately compare Staff's forward looking proposed revenue requirement with USWC's 1995 unadjusted results of operations.

- **Disputed Issue (13):** USWC has compared Staff's forward looking recommended revenue requirement with the company's 1995 unadjusted results of operations to argue that reducing the company's revenues would almost eliminate the business value of USWC's Oregon intrastate operations.

Issues 12 and 13 are discussed together.

USWC argues that Staff's proposed \$100 million reduction in revenue requirement would have a negative impact on the cash flow and enterprise value of USWC's Oregon intrastate operations. According to USWC, Staff departs from the Commission's traditional historic test year method and substitutes forecasting to set USWC's rates. USWC believes, and has argued throughout its case, that Staff's approach is dangerous and would seriously jeopardize USWC's ability to recover its expenses and earn a reasonable rate of return on its investment. Rates would be sufficient only if Staff's forecasts and estimates are accurate. USWC argues that it is likely that not all of Staff's predictions will come to pass. In that case, USWC asserts, the company would sustain unrecoverable losses that would adversely affect the value of its operations and its ability to attract capital and earn a return on investment. This outcome would also degrade operations, USWC argues, because the company would not have sufficient capital to maintain and upgrade its network.

USWC notes that it is entitled to "[r]ates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed." *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944). USWC argues that we cannot simultaneously accept Staff's proposals and fulfill our constitutional obligation to USWC.

USWC's expert, Mr. Gary Ciuba, maintained that Staff's proposed reduction in revenue requirement amounts to 25% of USWC's entire Oregon intrastate revenues and would diminish the value of USWC by more than 80%. USWC believes that Staff's witness on these issues, Mr. Evan White, missed the point in his testimony. According to USWC, Mr. White never addressed the impact of Staff's recommendation on intrastate enterprise value. According to USWC, Mr. White made no comparison of the present value of the company to what would result from Staff's proposed revenue reductions.

USWC notes the Mr. White also failed to examine any of Staff's adjustments to determine if they would in fact change cash flow. Mr. White conceded that if Staff's forecasts are in error, Staff's net income projections may not be realized, and Mr. White's valuation would be overstated. Mr. White acknowledged that Commission action in

Oregon and USWC's other jurisdictions will influence USWC's earnings and that reduced earnings would cause USWC's market value to decline.

USWC contends that even if some of Staff's forecasts materialize, or other increased revenues or reduced expenses offset Staff's proposed revenue reduction to some degree, USWC would still decline in value and suffer a negative impact on its operations. USWC asserts that Staff ignored the company's need for cash flow for capital investment and to pay dividends. Mr. White admitted that most cash flow statements include dividends. USWC notes that Mr. White's rebuttal to Mr. Ciuba's analysis claims that USWC will have a positive cash flow. However, the company points out that Mr. White's conclusion depends on excluding cash for dividends.

USWC also argues that Staff witness Ms. Terry Lambeth claimed that disallowance of incentive pay could create cash savings for the company if the company chose not to pay those expenses; if it paid these regulated expenses through nonregulated operations; or if it lowered the dividends to pay them. USWC argues that each of these options underscores the fact that USWC's regulated Oregon intrastate operations cannot survive under Staff's proposed reductions and still be able to fund capital investment, pay legitimately incurred expenses, and pay its stockholders their expected return on investment. Mr. White's entire analysis, according to USWC, depends on including disallowances and imputations as if they increase USWC's cash flow.

USWC contends that disallowances and imputations do not increase a company's cash flow or market value. USWC notes that it could cut capital expenditures or dividends. However, the company contends that capital expenditures are necessary to maintain and improve the existing telecommunications infrastructure, and reduced dividends would diminish the attractiveness of USWC stock to investors, thereby causing the stock price to decline and increasing the cost of new investment. USWC argues, finally, that adoption of Staff's proposed \$100 million rate reduction, based on imputation of income USWC does not receive, disallowances of legitimately incurred expenses, and forecasts of increased revenues and reduced expenses, would be devastating. It would reduce USWC's Oregon revenues and impair the company's ability to continue providing service. USWC argues that this outcome would not be in the public interest.

Staff contends that USWC's cash flow and enterprise value testimony is flawed and largely irrelevant. Staff identifies four flaws in USWC's testimony:

1. The Commission regulates on the basis of a reasonable rate of return on investment, not short term cash flow or theoretical enterprise value. Staff asserts that its proposed revenue requirement provides USWC a reasonable rate of return and allows the company to maintain its financial integrity and attract capital.

2. USWC compares Staff's forward looking proposed revenue requirement, which includes Yellow Pages and Staff's other adjustments, with the company's unadjusted reported 1995 reports of operations.
3. USWC misleadingly advised its enterprise value expert that Staff's revenue requirement reduction would result in a commensurate reduction in USWC Oregon's net operating income.
4. USWC's enterprise value expert uses a valuation technique that is inappropriate for the dire scenario that USWC provided him.

1. *Basis of Commission Regulation.* Staff notes that USWC is regulated on the basis of a reasonable rate of return, not cash flow. According to Staff, negative cash flow does not correlate with a low rate of return. Staff cites the example of USWC's CE 92 and CE.92-C reports, which USWC files with the Commission. During the years 1991 through 1995, USWC reported positive rates of return in the range of 9.6% to 12.6% (when Yellow Pages are included).<sup>48</sup> USWC asserts that its Oregon intrastate cash flow has been negative for several years, however.<sup>49</sup> Staff points out that between 1991 and 1995, USWC operated under the AFOR, approved by Order No. 91-1598, which established both a potential floor and a ceiling on earnings. *Id.* at 27. The AFOR provided remedies if USWC's earnings became too low. Staff points out that USWC never asked to be relieved from the terms of the AFOR. Staff concludes that negative cash flows, as USWC now defines them, are consistent with a reasonable rate of return. According to Staff, the fact that USWC did not file for relief under the AFOR vitiates its current claims about the impact of negative cash flow.

Staff argues that its proposed revenue requirement will allow USWC to maintain its financial integrity. Even a 10.2% return on equity, according to Staff, will result in a pretax interest coverage of ratio 4.88, which is above Standard and Poor's AA benchmark of 4.5 for telecommunications companies. Staff notes that any rating above BBB is considered investment grade; these ratings are superior to that.

Staff asserts that USWC's cash flow analysis suffers from numerous flaws. First, many cash flow adjustments rely on a balance sheet, but USWC's Oregon intrastate operations do not have a balance sheet. Thus, there are no beginning and ending Oregon balance sheets to validate computations of cash flow.

USWC's Exhibit 56, its cash flow statement, is based on "1990 reports."<sup>50</sup> USWC submitted an exhibit at hearing (USWC Exhibit 171) comparing similarities

<sup>48</sup> In 1995, the 9.6% return was reduced by 1.8% due to a one-time charge to depreciation expense of \$22.4 million associated with the PTI sale.

<sup>49</sup> Staff challenges this representation, pointing to USWC Exhibit 56, which Staff argues demonstrates positive cash flow before dividends.

<sup>50</sup> According to USWC witness Inouye:

In the cash flow estimates I did rely upon what we call a 1990 report. And that is . . . not the same report that we give to the Commission in our monthly reporting of financials. . . . We have a computer system that performs jurisdictional separations. In other words, the assignment of costs

between the 1990 reports and the CE92 report. Staff points out that the CE92 reports do not contain Oregon regulatory adjustments. The reports that follow current Commission reporting requirements are called the CE92-C reports. The CE92-C reports contain Yellow Pages, executive bonuses, rent compensation, and other regulatory adjustments.

Staff points out that the CE92-C report, with the regulatory adjustments, shows a 1995 net cash flow from operations of \$227.9 million, as contrasted to the \$160.1 million shown in the 1995 CE92 report. Staff concludes that the cash flow statements in USWC Exhibit 56 and in the CE92 report understate the net cash flow from operations shown in the 1995 CE92-C report by over \$67 million.

*2. Comparison of Forward Looking Proposed Revenue Requirement v. Unadjusted 1995 Data.* Staff also maintains that USWC improperly overlays Staff's proposed revenue requirement reduction on USWC's unadjusted 1995 data. USWC's recorded data do not include any of USWC's proposed test year adjustments; nor do they include Yellow Pages revenue. Staff argues that it is appropriate to include Yellow Pages revenue in considering a hypothetical "intrastate Oregon" cash flow or enterprise value, because a stand alone company the size of "USWC Oregon" would have Yellow Pages revenue. Moreover, Staff contends, even after U S WEST, Inc. issued targeted "Media Group" and "Communications Group" stock (see discussion under Issue 2 above), the holders of such stock will continue to be subject to risks associated with investment in a single company, and all of the company's businesses, assets, and liabilities.

According to Staff, USWC also fails to recognize uncollectible or other tax expenses included in Staff's proposed revenue reduction, as well as intrastate side records such as depreciation. Nor do USWC's 1995 data recognize that results of operations have been changed by the PTI sale of exchanges, the change in depreciation rates, the termination of the AFOR and resulting revenue sharing credits, and EAS conversions. USWC also fails to add back noncash accruals. Staff notes that USWC also fails to consider that AFOR revenue sharing credits or Ballot Measure 5 refunds paid in 1995 will not recur or have a future impact. Staff concludes that USWC's overlay of Staff's proposed revenue requirement reduction on unadjusted 1995 USWC operations is clearly inappropriate.

USWC's computation of net cash flow, Staff notes, includes a deduction for dividends paid. After deducting dividends, USWC witness Inouye contended that Oregon intrastate cash flow has been negative for several years. In oral testimony, however, Mr. Inouye admitted that USWC cash flow is positive before dividends. Staff

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between state and interstate. That system doesn't produce the CE92 report directly. The CE92 report being that which we provided the Commission. The output of that system is this 1990 report which then becomes the basis for the CE92 report. So they are not the same report but it is not entirely a different . . . data source, it's still the same data source. What I really did was took the information at a different point in the generation or the creation of the data that does become what's reported to the Commission.

Tr. 22 (January 29, 1997).

notes that Mr. Inouye agreed with Staff witnesses Ms. Lambeth and Mr. White that the amount of dividends paid out is a management decision. Rates in Oregon, Staff contends, are set to provide USWC with the opportunity to earn a fair return on investment. Management then decides how much of earnings to pay investors in the form of dividends and how much of earnings to reinvest in the business.

Staff's final set of arguments have to do with the concept of enterprise value. Staff notes that enterprise value is not a regulatory concept in use by this Commission. Moreover, according to Staff, USWC's evidence on this issue is seriously flawed.

3. *Dollar for Dollar Reduction in Operating Income.* USWC's primary enterprise value witness, Mr. Ciuba, relied on USWC's assertion that Staff's revenue requirement reduction will result in a dollar for dollar reduction in operating profits. USWC did not inform Mr. Ciuba that it is working to reduce costs, although the record indicates that that is the case. Mr. Ciuba acknowledged that different financial data will result in different indicated values. He also concedes that if Staff's proposed revenue requirement results in no material change in USWC's net operating income, his conclusions would change.

4. *Inappropriate Model of Analysis.* In its engagement letter, the firm of Arthur Anderson (Mr. Ciuba's employer) agreed to use the DCF model of analysis for its work in this case. Staff points out that Fishman, Pratt et al., whose *Guide to Business Valuations* Mr. Ciuba cites, state that the DCF model should not be used when negative or marginally positive cash flow is expected. Staff does not believe that this docket will result in negative cash flow for "USWC Oregon," or that that entity has suffered negative cash flow in the past. USWC, however, wishes to advance that position. Staff asserts that USWC has chosen the wrong valuation model for its negative cash flow scenario. With a negative cash flow, the DCF model divides a negative number or zero by a positive number, necessarily deriving no meaningful number. Staff points out that Mr. Ciuba would not recommend that USWC offer its Oregon properties for sale using his final valuation estimate.

Moreover, according to Staff, USWC contends that if a rate reduction affects its theoretical enterprise value in any amount, something improper has occurred. Staff notes that USWC seems to assume that rate reductions can never be offset by other events such as line growth or declining costs. Staff argues that rate reductions are not per se improper or confiscatory. Staff believes that on a going forward basis and without a rate reduction, USWC will earn 24.33% per year return on equity (including imputed Yellow Pages revenue). Staff argues that USWC cannot expect to retain such earnings indefinitely.

*Disposition.* Point by point, we agree with Staff's arguments. If USWC experienced negative cash flows during the term of the AFOR, remedies were available to the company. USWC did not avail itself of the available remedies. This indicates that the company did not consider negative cash flow, as USWC now defines it, a problem. We agree with Staff that negative cash flows, as USWC defines them, are not inconsistent



with a reasonable rate of return. As Staff has pointed out, we regulate rate of return, not cash flow. The 4.88 pretax interest coverage that Staff projects for USWC is more than sufficient to allow USWC to maintain its financial integrity under adoption of Staff's proposed revenue requirement reduction.

We are persuaded that USWC's exhibits on these issues are not comparable to Staff's case. The hypothetical entity "intrastate Oregon," if it were a stand alone company, would have Yellow Pages revenue. It would have to recognize uncollectible or other tax expenses included in Staff's proposed revenue reduction, as well as intrastate side records such as depreciation. It would have to recognize the results of operations such as the sale of exchanges to PTI, the changes in depreciation rates, the termination of the AFOR, and EAS conversions. We note and agree with the other deficiencies Staff lists in USWC's 1995 data.

We also agree with Staff that the concept of enterprise value is vague enough to be of little value in analyzing the financial impact of Staff's recommendations on USWC. The record discloses that "enterprise value" is a vague concept that has not been endorsed by the American Society of Appraisers and is not defined in the Uniform Standards of Professional Appraisal practice. The assumptions that USWC witness Mr. Ciuba makes in his analysis further vitiate the utility of this concept. Contrary to fact, Mr. Ciuba assumed that Staff's revenue requirement reduction will result in a dollar for dollar reduction in operating profits. Moreover, the DCF method of analysis is inappropriate for the USWC cash flow scenario. We therefore agree that Staff's contention is correct: USWC's cash flow/enterprise value analysis is flawed and largely irrelevant.

As to USWC's concern that much of Staff's case is based on forecasts, USWC has made that argument throughout this phase of the case. We reiterate that we have reviewed each of Staff's forecasts to determine whether they are reasonably certain to occur. We are satisfied that the adjustments we have adopted are indeed reasonably certain to occur. In most of its forecasts, Staff has been conservative. We therefore consider it likely that not only will Staff's forecasts and estimates be realized; USWC is likely to perform better than Staff's forecasts.

Finally, USWC seems to argue that if a Staff rate reduction affects its theoretical enterprise value at all, something is amiss. We note that rate reductions have been the norm during USWC's recent rate cases. In UT 43, we reduced USWC's (then PNB's) revenue requirement by \$45,523,000 (Order No. 87-406 at 135); in UT 85, we reduced the revenue requirement by \$24,057,000 (Order No. 89-1807 at 53); and in UT 102, we reduced USWC's revenue requirement by \$35,693,000 (Order No. 91-576).<sup>51</sup>

We conclude that USWC's arguments about the impact of Staff's proposed revenue requirement reduction on its cash flow and enterprise value are unpersuasive.

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<sup>51</sup> We take official notice of these orders pursuant to OAR 860-014-0050.

**ISSUE 14: EFFECT OF UM 351 ON ACCESS REVENUES*****Disputed Issue:***

- USWC argues that the effect of Order No. 96-188 (dated July 19, 1996, in docket UM 351) is a revenue requirement issue. Staff believes this is a rate design issue.

On November 1, 1996, the Commission issued Order No. 96-283 (UM 351), which revised certain aspects of an earlier order in that docket, Order No. 96-188. Under the revised rates in Order No. 96-283, Staff estimates that the UM 351 revenue impact on USWC is currently \$1.9 million. USWC agrees with this figure.

The revision to Order No. 96-188 dropped the estimated revenue impact from \$8.5 million to the current figure. The current revenue impact estimate may change further, due to new cost studies filed in compliance with Order No. 96-284 (UM 773, the cost study docket). Staff recommends that this revenue impact and any rate arbitrage issue be addressed in the rate design phase of UT 125.

***Disposition.*** We conclude that Issue 14 is an issue appropriate to the rate design phase of this case. We have adjusted the rate design phase of this proceeding to coordinate with new costs arising from UM 773. During rate design, Staff and USWC can address the UM 773 costs and align the rates so that any arbitrage issue is eliminated. At this point, the ultimate revenue impact is unknown, so it would be premature to deal with the revenue impact issue here.

**ORDER**

IT IS ORDERED that:

1. USWC shall file rates at the revenue requirement in this order.
2. Stipulations 1 and 2 are approved and adopted.
3. The Commission adopts a rate of return equity for USWC of 10.2% and orders a revenue reduction of \$97,437,000.
4. The revenue reduction ordered in Paragraph 3 above shall be refunded as follows:
  - a. The refund shall be made within 60 days after this order is entered.
  - b. The refund shall be made as a one time, lump sum credit on customers' bills.

- c. The refund shall be made to customers of USWC as of the refund date.
- d. There shall be no refund for toll service.
- e. Interexchange carriers (IXCs) who are access service customers of USWC shall receive refunds based on the amounts each paid the utility over the 12 months immediately preceding the refund date. In the aggregate, the portion of the total refund that shall be distributed to interexchange carriers should be calculated using the ratio of USWC's Oregon intrastate access revenues to total intrastate revenues subject to refund, as determined in this order.
- f. The remainder of the refund shall be distributed to local service customers, on a per line basis, in the following ratios:

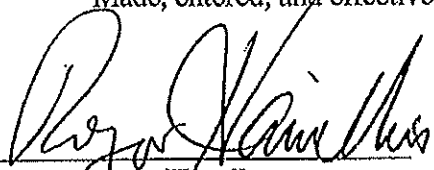
<u>Group</u>	<u>Current Rate</u>	<u>Ratio</u>	
Residential	\$12.80	1.00	All residential service lines
Bus. Simple	\$30.87	2.40	Business simple lines and business measured lines
Bus. Complex	\$34.77	2.70	Other business, switched service lines, including complex, DID trunks, ISDN, PAL, semipublic
Centrex	varies	1.00	All Centrex type lines
Private Line	\$9.80 (basic)	0.75	Refund per NAC

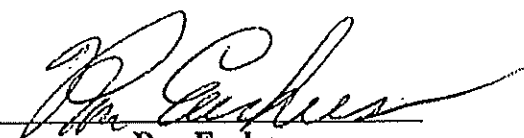
- g. Customers eligible for a refund are those who were USWC customers on May 19, 1997.
- h. Should the refund exceed a customer's total bill, the refund will be carried forward to the next month's bill.

i. This order calculates interest on the refund amount through April 30, 1997. When we learn the date of USWC's first refund to customers, we will issue a supplemental order calculating interest on the refund amount from May 1, 1997, to the date of the first refund.

**MAY 19 1997**

Made, entered, and effective \_\_\_\_\_

  
\_\_\_\_\_  
**Roger Hamilton**  
Chairman

  
\_\_\_\_\_  
**Ron Eachus**  
Commissioner



  
\_\_\_\_\_  
**Joan H. Smith**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to ORS 756.580.

**RESULTS OF OPERATIONS**

**97-171**

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Docket UT 125  
U S WEST Communications, Inc.  
SUMMARY OF INTRASTATE TEST YEAR  
(\$000's)

Line No.	Annualized 1995 Test Year (a)	Adjustments (b)	Adjusted Test Year (c)	Revenue Requirements (d)	Adjusted Intrastate Results of Operations (e)
1 Local Service & EAS	348,109.0	42,621.4	390,730.4	(97,436.9)	293,293.5
2 Toll & Access	154,466.0	(2,054.0)	152,412.0		152,412.0
3 Directory & Other	17,735.0	64,170.8	81,905.8	868.3 *	82,774.1
4 TOTAL OPERATING REVENUES	<u>520,310.0</u>	<u>104,738.2</u>	<u>625,048.2</u>	<u>(96,568.6)</u>	<u>528,479.6</u>
5 Plant Specific	84,151.0	(8,209.2)	75,941.8		75,941.8
6 Depreciation & Amortization	93,169.0	34,248.9	127,417.9		127,417.9
7 Other Operating Expenses	224,249.0	(13,512.4)	210,736.6		210,736.6
8 Operating Taxes	52,015.0	34,718.4	86,733.4	(38,921.5)	47,811.9
9 TOTAL OPERATING EXPENSES & TAXES	<u>453,584.0</u>	<u>47,245.7</u>	<u>500,829.7</u>	<u>(38,921.5)</u>	<u>461,908.2</u>
10 NET OPERATING INCOME	<u>66,726.0</u>	<u>57,492.5</u>	<u>124,218.5</u>	<u>(57,647.1)</u>	<u>66,571.3</u>
11 Telecommunications Plant in Service	1,477,856.0	90,749.1	1,568,605.1		1,568,605.1
12 Accumulated Depreciation	(576,115.0)	(56,707.7)	(632,822.7)		(632,822.7)
13 Other Rate Base	(183,598.0)	7,148.5	(176,449.5)		(176,449.5)
14 NET AVERAGE RATE BASE	<u>718,143.0</u>	<u>41,189.9</u>	<u>759,332.9</u>		<u>759,332.9</u>
15 RETURN ON RATE BASE	9.29%	7.07%	16.36%	-7.59%	8.77%
16 RETURN ON EQUITY	11.15%	12.74%	23.88%	-19.28%	10.20%

\* Uncollectibles were computed at the local rate.

Docket UT 125  
**U S WEST Communications, Inc.**  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	ISSUES 1a-b Company's Annualized Test Year Before Side Records (1)	Issue 1c(1a) Annualized Side Record for Interest During Construction (Pre-1) (2)	Issue 1c(2a) Annualized Side Record for Western Electric Affil. Interest (Pre-2) (3)	Issue 1c(3) Annualized Side Record for Interstate Depreciation Represcription (Pre-3) (4)	Issue 1c(4) Annualized Side Record for Property Held for Future Use (Pre-4) (5)	Company's Annualized Test Year <i>Exhibit USW/3, Inova/3</i> (6)	Issue 1c(1b) Adjust Interest During Construction (7)	Issue 1c(2b) Adjust Western Electric Affiliated Interest (8)	Issue 1d Remove Annualized Caller ID (Pre-6) (9)
1	Local Service & EAS	348,109.000					348,109.000			
2	Network Access	62,537.000					62,537.000			
3	Long Distance	91,929.000					91,929.000			
4	Directory	3,819.000					3,819.000			
5	Billing & Collection	2,476.000					2,476.000			
6	Miscellaneous	15,559.000					15,559.000			
7	Uncollectibles	(4,119.000)					(4,119.000)			
8	<b>TOTAL OPERATING REVENUES</b>	<b>520,310.000</b>					<b>520,310.000</b>			
9	Plant Specific	84,151.000					84,151.000			
10	Depreciation & Amortization	109,278.599	1,068.109	(316.272)	(16,861.436)		93,169.000		316.272	
11	Plant Nonspecific	43,695.000					43,695.000			
12	Access (interstate)	0.000					0.000			
13	Access (intrastate)	27,201.000					27,201.000			
14	Customer Operations (ex. B&C)	80,564.000					80,564.000			593.412
15	Billing & Collection	5,255.000					5,255.000			
16	Corporate Operations	67,783.000					67,783.000			
17	Other Gains & Losses	(249.000)					(249.000)			
18	<b>TOTAL OPERATING EXPENSES</b>	<b>417,678.599</b>	<b>1,068.109</b>	<b>(316.272)</b>	<b>(16,861.436)</b>		<b>401,569.000</b>		<b>316.272</b>	<b>593.412</b>
19	Net State & Local Income Taxes	4,207.333			1,078.667		5,286.000	(12.817)		(39.165)
20	Net Federal Income Tax	15,232.387			5,630.613		20,863.000	(47.488)		(194.249)
21	Other Taxes	25,866.000					25,866.000			
22	<b>TOTAL OPERATING TAXES</b>	<b>45,305.720</b>			<b>6,709.280</b>		<b>52,015.000</b>	<b>(60.305)</b>		<b>(233.414)</b>
23	<b>NET OPERATING INCOME</b>	<b>57,325.681</b>	<b>(1,068.109)</b>	<b>316.272</b>	<b>10,152.156</b>		<b>66,726.000</b>	<b>60.305</b>	<b>(316.272)</b>	<b>(359.998)</b>
24	Telecommunications Plant in Service	1,468,449.343	13,919.881	(4,513.224)			1,477,856.000	80.262		
25	Plant Adjustment	1,877.000					1,877.000			
26	Materials & Supplies	14,292.000					14,292.000			
27	Accumulated Depreciation	(589,740.956)	(4,365.415)	3,682.995	14,272.000	36.376	(576,115.000)	(46.520)	830.229	
28	Accumulated Amortization	(8,794.000)					(8,794.000)			
29	Accumulated Deferred Taxes	(185,297.000)			(5,676.000)		(190,973.000)	(626.772)		
30	<b>NET AVERAGE RATE BASE</b>	<b>700,786.387</b>	<b>9,554.466</b>	<b>(830.229)</b>	<b>8,596.000</b>	<b>36.376</b>	<b>718,143.000</b>	<b>(593.030)</b>	<b>830.229</b>	
31	RETURN ON RATE BASE	8.18%	-0.27%	0.05%	1.29%		9.29%	0.02%	-0.05%	-0.05%
32	RETURN ON EQUITY	9.14%	-0.49%	0.09%	2.32%	-0.00%	11.15%	0.04%	-0.09%	-0.09%
33	REVENUE REQUIREMENT (local)	16,106.777	3,345.988	(668.445)	(15,773.391)	5.866	3,016.794	(197.554)	668.445	606.479

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Docket UT 125  
 U.S WEST Communications, Inc.  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	Issue 1e Remove Annualized UP 96 Sale of Exchanges to FTI (Pre-11) (10)	Issue 1f Remove Annualized 1996 Wage Increases (Pre-16) (11)	Issue 1g Different Operating Tax Annualization Methods (12)	Issues 1h-n Separations & Other Annualization Methods (13)	Annualized Test Year as Stipulated Columns 6 through 13 (14)	Issue 1m Switching Assets (14a)	Issue 2d Interest Coordination (Fixed Charges) (Post-2) (15)	Issue 3a U S WEST Direct Directory Imputation (Post-13) (16)	Issue 3b U S WEST Direct Directory Growth (16a)
1	Local Service & EAS	4,077,347			876,250	353,062,597				
2	Network Access	2,669,665			(6,218)	65,200,447				
3	Long Distance				1,066,221	92,995,221				
4	Directory	33,285			69,584	3,921,869			54,297,600	3,491,100
5	Billing & Collection					2,476,000				
6	Miscellaneous	76,281			(760,957)	14,874,324				
7	Uncollectibles	(55,299)			280,790	(3,893,509)				
8	<b>TOTAL OPERATING REVENUES</b>	<b>6,801,279</b>			<b>1,525,670</b>	<b>528,636,949</b>			<b>54,297,600</b>	<b>3,491,100</b>
9	Plant Specific	104,244	(1,720,341)		197,528	82,732,431				
10	Depreciation & Amortization	3,545,348			(59,227)	96,971,393				
11	Plant Nonspecific		(886,531)		317,612	43,126,081				
12	Access (interstate)					0,000				
13	Access (intrastate)	(3,790,000)			(0,417)	23,410,583				
14	Customer Operations (ex. B&C)		(1,362,792)		(368,253)	79,426,367				
15	Billing & Collection	(432,000)			(16,918)	4,806,082				
16	Corporate Operations		(191,132)		123,485	67,715,353				
17	Other Gains & Losses				0,343	(248,657)				
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(572,408)</b>	<b>(4,160,796)</b>		<b>194,153</b>	<b>397,939,633</b>				
19	Net State & Local Income Taxes	471,680	274,613	280,732	102,173	6,363,216	9,001	56,073	3,576,474	229,952
20	Net Federal Income Tax	2,361,593	1,362,002	(1,244,334)	538,350	23,638,874	44,580	277,734	17,714,386	1,138,958
21	Other Taxes	159,229		358,555	18,145	26,401,929			108,595	6,982
22	<b>TOTAL OPERATING TAXES</b>	<b>2,992,502</b>	<b>1,636,615</b>	<b>(605,047)</b>	<b>658,668</b>	<b>56,404,019</b>	<b>53,581</b>	<b>333,807</b>	<b>21,399,455</b>	<b>1,375,892</b>
23	<b>NET OPERATING INCOME</b>	<b>4,381,185</b>	<b>2,524,181</b>	<b>605,047</b>	<b>672,849</b>	<b>74,293,297</b>	<b>(53,581)</b>	<b>(333,807)</b>	<b>32,898,145</b>	<b>2,115,208</b>
24	Telecommunications Plant in Service	62,667,250			5,045,570	1,545,649,082	(172,669)			
25	Plant Adjustment				7,420	1,884,420				
26	Materials & Supplies				109,037	14,401,037				
27	Accumulated Depreciation	(20,190,645)			(7,503,436)	(603,025,372)	(4,217,810)			
28	Accumulated Amortization				5,515	(8,788,485)				
29	Accumulated Deferred Taxes	(6,231,371)		(718,022)		(198,549,165)				
30	<b>NET AVERAGE RATE BASE</b>	<b>38,245,234</b>		<b>(718,022)</b>	<b>(2,335,894)</b>	<b>751,571,517</b>	<b>(4,390,479)</b>			
31	RETURN ON RATE BASE	0.13%	0.35%	0.09%	0.12%	9.89%	0.05%	-0.05%	4.58%	0.29%
32	RETURN ON EQUITY	0.23%	0.63%	0.16%	0.22%	12.21%	0.09%	-0.09%	8.25%	0.52%
33	REVENUE REQUIREMENT (local)	(1,560,741)	(4,266,446)	(1,138,448)	(1,513,928)	(4,383,399)	(617,391)	564,211	(55,605,432)	(3,575,188)

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Docket UT 125  
**U S WEST Communications, Inc.**  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	Issue 4a Rent Compensation Study (Post-1) (17)	Issue 4b UM 753 Affiliate & Certain Leases (18)	Issue 4c Strategic Marketing (19)	Issue 4d(1) Fax Services (20)	Issue 4d(2) Growth in Fax Services (20e)	Issue 4d(3) Affiliated Interest Charges (Post-3) (20b)	Issue 4d(4) FCC License (20c)	Issue 4e Affiliated Interest Return Component (21)	Issue 4f Headquarters Allocations (22)
1	Local Service & EAS									
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous				116,768	686,905				
7	Uncollectibles									
8	<b>TOTAL OPERATING REVENUES</b>				116,768	686,905				
9	Plant Specific	3,840,342	(62,255)							(110,783)
10	Depreciation & Amortization	13,093,153								(198,081)
11	Plant Nonspecific									(198,081)
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)									(214,130)
15	Billing & Collection									
16	Corporate Operations			(105,310)			(164,497)		(101,163)	(564,000)
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	16,933,495	(62,255)	(105,310)			(164,497)		(101,163)	(1,086,994)
19	Net State & Local Income Taxes	(1,174,473)	4,109	6,950	7,691	45,245	10,857		6,677	71,742
20	Net Federal Income Tax	(5,817,199)	20,351	34,426	38,095	224,100	53,774		33,070	355,338
21	Other Taxes	15,068			0,234	1,374				
22	<b>TOTAL OPERATING TAXES</b>	(6,976,606)	24,460	41,376	46,020	270,719	64,631		39,747	427,080
23	<b>NET OPERATING INCOME</b>	(9,956,889)	37,795	63,934	70,748	416,186	99,866		61,416	659,914
24	Telecommunications Plant in Service	44,051,953								
25	Plant Adjustment									
26	Materials & Supplies	(2,406,075)								
27	Accumulated Depreciation	(13,638,862)								
28	Accumulated Amortization									
29	Accumulated Deferred Taxes	(754,817)								
30	<b>NET AVERAGE RATE BASE</b>	27,252,209								
31	RETURN ON RATE BASE	-1.68%	0.01%	0.01%	0.01%	0.06%	0.01%		0.01%	0.09%
32	RETURN ON EQUITY	-3.03%	0.02%	0.02%	0.02%	0.11%	0.02%		0.02%	0.15%
33	REVENUE REQUIREMENT (local)	21,223,795	(63,882)	(108,063)	(119,580)	(703,450)	(168,797)		(103,807)	(1,115,406)

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Docket UT 125  
 U S WEST Communications, Inc.  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	Issue 4g(1)	Issue 4g(2)	Issue 4g(2)	Issue 4h	Issue 5a	Issue 5b	Issue 5c	Issue 6a	Issue 6b
		Part 64 Still Regulated (Post-10) (23)	Revenue Requirement Part 64 Still Regulated (23a1)	VMS Promotional Offerings (23a2)	Non-regulated Costs in Columns 18 through 21 (23b)	UP 96 Sale of Exchanges to FTI (Pra-11) (24)	UP 96 Stipulation (Post-4) (25)	UP 96 Effect on Property Taxes (26)	1995 EAS Conversion (Post-7) (27)	1996 EAS Conversion (28)
1	Local Service & EAS					(3,755,138)			136,001	1,129,882
2	Network Access					(943,971)				
3	Long Distance								(867,284)	(2,578,245)
4	Directory					(31,317)				
5	Billing & Collection					(29,000)				
6	Miscellaneous	3,372,176	3,472,397	(94,538)		(71,917)				
7	Uncollectibles	(19,371)				34,960			5,035	8,503
8	<b>TOTAL OPERATING REVENUES</b>	<b>3,352,805</b>	<b>3,472,397</b>	<b>(94,538)</b>		<b>(4,796,383)</b>			<b>(726,248)</b>	<b>(1,439,860)</b>
9	Plant Specific	1,022,523			3,003	(1,773,143)				
10	Depreciation & Amortization	800,241				(3,643,500)				
11	Plant Nonspecific	1,080,844				(95,491)				
12	Access (Interstate)									
13	Access (Intrastate)					2,822,032			(296,903)	(538,090)
14	Customer Operations (ex. B&C)	2,455,105				(173,308)				
15	Billing & Collection					339,724				
16	Corporate Operations	898,144			8,348	(154,217)				
17	Other Gains & Losses	81,702								
18	<b>TOTAL OPERATING EXPENSES</b>	<b>6,338,559</b>			<b>11,351</b>	<b>(2,677,903)</b>			<b>(296,903)</b>	<b>(538,090)</b>
19	Net State & Local Income Taxes	(210,407)	228,720	(6,227)	(0,749)	(57,513)	27,878	25,283	(28,441)	(60,738)
20	Net Federal Income Tax	(1,049,274)	1,132,856	(30,843)	(3,711)	(284,862)	138,083	125,227	(140,869)	(300,838)
21	Other Taxes	74,127	6,945	(0,189)		(83,541)		(383,074)	1,578	18,506
22	<b>TOTAL OPERATING TAXES</b>	<b>(1,185,554)</b>	<b>1,368,521</b>	<b>(37,259)</b>	<b>(4,460)</b>	<b>(425,916)</b>	<b>165,961</b>	<b>(232,564)</b>	<b>(167,732)</b>	<b>(343,070)</b>
23	<b>NET OPERATING INCOME</b>	<b>(1,800,200)</b>	<b>2,103,876</b>	<b>(57,279)</b>	<b>(6,891)</b>	<b>(1,692,564)</b>	<b>(165,961)</b>	<b>232,564</b>	<b>(261,613)</b>	<b>(558,700)</b>
24	Telecommunications Plant in Service	6,190,268				(64,125,841)				
25	Plant Adjustment	6,939								
26	Materials & Supplies	68,802								
27	Accumulated Depreciation	(2,418,681)				20,889,539	(22,400,000)			
28	Accumulated Amortization									
29	Accumulated Deferred Taxes	(664,142)				5,776,617	8,800,960			
30	<b>NET AVERAGE RATE BASE</b>	<b>3,183,186</b>				<b>(37,459,685)</b>	<b>(13,599,040)</b>			
31	RETURN ON RATE BASE	-0.29%	0.29%	-0.01%		0.26%	0.16%	0.03%	-0.04%	-0.08%
32	RETURN ON EQUITY	-0.52%	0.52%	-0.02%		0.47%	0.29%	0.05%	-0.07%	-0.14%
33	REVENUE REQUIREMENT (local)	3,556,034	(3,556,034)	96,815	11,647	(3,179,475)	(1,912,305)	(393,087)	442,186	944,332

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**U S WEST Communications, Inc.**  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
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Line No.	Description	Issue 6c Tariff, Price & Contract Changes Made After Jan. 1, 1995 (29)	Issue 6d Switched Access Filing (Post-11) (30)	(not used) (31)	Issue 7a(1) Current SFAS 108 Post- retirement Benefits (Post-5) (32)	Issue 7a(2) Unfunded SFAS 108 Post- retirement Benefits (Post-5) (32a)	Issue 7b AT&T Post- retirement Benefits Cost-Sharing Agreement (33)	Issue 7c Disability Pension Payment True-up (Post-8) (34)	Issue 7d Pension Accounting (Post-9, 12) (35)	Issue 7e End of Compensated Absences Accrual (36)
1	Local Service & EAS	15,937,304								
2	Network Access		(1,582,542)							
3	Long Distance	153,895								
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles	(143,126)	2,511							
8	<b>TOTAL OPERATING REVENUES</b>	<b>15,948,073</b>	<b>(1,580,031)</b>							
9	Plant Specific				161,834					
10	Depreciation & Amortization									
11	Plant Nonspecific				80,495					
12	Access (interstate)									
13	Access (intrastate)		(1,910,499)							
14	Customer Operations (ex. B&C)	6,516,087			134,170					
15	Billing & Collection									
16	Corporate Operations				28,679	(365,339)	(203,911)			(297,969)
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	<b>6,516,087</b>	<b>(1,910,499)</b>		<b>405,178</b>	<b>(365,339)</b>	<b>(203,911)</b>			<b>(297,969)</b>
19	Net State & Local Income Taxes	601,464	21,768		(26,742)	7,075	24,112	13,458	(79,457)	19,666
20	Net Federal Income Tax	2,979,070	107,815		(132,453)	35,042	119,429	66,659	(393,553)	97,406
21	Other Taxes	318,894	0,656							
22	<b>TOTAL OPERATING TAXES</b>	<b>3,899,428</b>	<b>130,239</b>		<b>(159,195)</b>	<b>42,117</b>	<b>143,541</b>	<b>80,117</b>	<b>(473,010)</b>	<b>117,072</b>
23	<b>NET OPERATING INCOME</b>	<b>5,532,558</b>	<b>200,229</b>		<b>(245,983)</b>	<b>(42,117)</b>	<b>221,798</b>	<b>123,794</b>	<b>473,010</b>	<b>180,897</b>
24	Telecommunications Plant in Service					(3,451,113)		38,758,976		
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation									
28	Accumulated Amortization									
29	Accumulated Deferred Taxes									
30	<b>NET AVERAGE RATE BASE</b>					<b>(3,451,113)</b>		<b>38,758,976</b>		
31	RETURN ON RATE BASE	0.77%	0.03%		-0.03%	0.04%	0.03%	0.02%	-0.41%	0.03%
32	RETURN ON EQUITY	1.39%	0.05%		-0.05%	0.07%	0.05%	0.04%	-0.74%	0.05%
33	REVENUE REQUIREMENT (local)	(9,351,296)	(338,433)		415,768	(485,297)	(374,890)	(209,240)	5,450,309	(305,758)

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**U S WEST Communications, Inc.**  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
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Line No.	Description	Issue 8a Team Performance Awards & Officers' Incentives (Bonuses) (37)	Issue 8b(1) 1996 Occupational Wage Increases (Pre-16) (38)	Issue 8b(2) 1996-1997 Wage & Salary Increases (38a)	Issue 8b(2) (not used) (38b)	Payroll Tax Increases (38c)	Issue 8b(2) (not used) (38d)	Issue 8b(2) [Issue 8a] Bonuses Included in Wage Base (38e)	Issue 8b(2) [Issue 9a] Wage Base Related to Reengin'g (38f)	Issue 8c SFAS 109 Accounting for Income Taxes (39)
1	Local Service & EAS									
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles									
8	<b>TOTAL OPERATING REVENUES</b>									
9	Plant Specific	(141,818)	1,863,240	1,153,030		33,252		(42,181)	(112,351)	
10	Depreciation & Amortization									
11	Plant Nonspecific	(1,964,115)	957,898	1,665,306		48,003		(60,921)	(162,268)	
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)	(1,019,739)	1,426,360	2,471,697		71,328		(90,421)	(240,843)	
15	Billing & Collection									
16	Corporate Operations	(780,602)	199,503	2,418,265		69,761		(88,466)	(235,637)	
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(3,906,274)</b>	<b>4,447,001</b>	<b>7,708,298</b>		<b>222,344</b>		<b>(281,989)</b>	<b>(751,099)</b>	
19	Net State & Local Income Taxes	257,814	(293,502)	(508,748)		(14,675)		18,611	49,573	
20	Net Federal Income Tax	1,276,961	(1,453,725)	(2,519,843)		(72,684)		92,182	245,534	
21	Other Taxes									
22	<b>TOTAL OPERATING TAXES</b>	<b>1,534,775</b>	<b>(1,747,227)</b>	<b>(3,028,591)</b>		<b>(87,359)</b>		<b>110,793</b>	<b>295,107</b>	
23	<b>NET OPERATING INCOME</b>	<b>2,371,499</b>	<b>(2,699,774)</b>	<b>(4,679,707)</b>		<b>(134,985)</b>		<b>171,196</b>	<b>455,992</b>	
24	Telecommunications Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation									
28	Accumulated Amortization									
29	Accumulated Deferred Taxes									
30	<b>NET AVERAGE RATE BASE</b>									
31	RETURN ON RATE BASE	0.33%	-0.38%	-0.65%		-0.02%		0.02%	0.06%	
32	RETURN ON EQUITY	0.59%	-0.69%	-1.17%		-0.04%		0.04%	0.11%	
33	REVENUE REQUIREMENT (local)	(4,008,379)	4,563,239	7,909,781		228,156		(289,351)	(770,731)	

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**U S WEST Communications, Inc.**  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
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Line No.	Description	Issue 8d SFAS 112 Accounting for Post- employment Benefits (40)	Issue 8e Ballot Measure 5 Property Taxes (Post-6) (41)	Issue 8f ORS 291,349 Income Tax Refund (42)	Issue 8g UM 767 Oregon Depreciation Repre- scription (Post-14) (43)	Issue 8h Aircraft (44)	Issue 8i Advertising (45)	Issue 8j Average Growth in Access Lines (46)	Issue 8k Marketing Accrual Reversal (Pre-10) (47)	Issue 8l Information Management Systems (48)
1	Local Service & EAS							24,219.789		
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles							(215.823)		
8	<b>TOTAL OPERATING REVENUES</b>							<b>24,003.966</b>		
9	Plant Specific									(353.938)
10	Depreciation & Amortization				20,325.655					
11	Plant Nonspecific									
12	Access (Interstate)									
13	Access (Intrastate)									
14	Customer Operations (ex. B&C)									(550.062)
15	Billing & Collection									
16	Corporate Operations								(392.870)	
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>				<b>20,325.655</b>				<b>(392.870)</b>	<b>(904.020)</b>
19	Net State & Local Income Taxes	169.768	(671.703)	(1,328.844)			1,552.308	25.929	59.665	
20	Net Federal Income Tax	840.868	235.096	(6,581.808)			7,688.626	128.429	295.524	
21	Other Taxes	(2,572.248)					484.154			
22	<b>TOTAL OPERATING TAXES</b>	<b>(1,561.612)</b>	<b>(436.607)</b>	<b>(7,910.652)</b>			<b>9,725.088</b>	<b>154.358</b>	<b>355.189</b>	
23	<b>NET OPERATING INCOME</b>	<b>1,561.612</b>	<b>436.607</b>	<b>(12,415.003)</b>			<b>14,278.878</b>	<b>238.512</b>	<b>548.831</b>	
24	Telecommunications Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation				(10,163.000)					
28	Accumulated Amortization									
29	Accumulated Deferred Taxes				3,993.043					
30	<b>NET AVERAGE RATE BASE</b>				<b>(6,169.957)</b>					
31	RETURN ON RATE BASE	0.22%	0.06%	-1.66%			1.99%	0.03%	0.08%	
32	RETURN ON EQUITY	0.40%	0.11%	-2.99%			3.59%	0.05%	0.14%	
33	REVENUE REQUIREMENT (local)	(2,639.483)	(737.966)	19,989.318			(24,134.588)	(403.140)	(927.651)	

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Docket UFT 125  
 U S WEST Communications, Inc.  
**INTRASTATE OREGON**  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	Issue 8m	Issue 8n	Issue 9a	Issue 9b	Issue 9c	Issue 10	TOTAL ADJS. Columns 7 - 13 and 15 - 53	ADJUSTED TEST YEAR Columns 6 + 54
		Purchase Rebates (49)	PUC Fee (49a)	Service Reengineering Costs (50)	Extra-ordinary Expenses (51)	Service Quality (52)	Effects of Adjustments on Intrastate Separations (53)	(54)	(55)
1	Local Service & EAS							42,621.435	390,730.435
2	Network Access							136.934	62,673.934
3	Long Distance						34.446	(2,190.967)	89,736.033
4	Directory							57,860.252	61,679.252
5	Billing & Collection							(29.000)	2,447.000
6	Miscellaneous						(355.451)	6,441.654	22,000.664
7	Uncollectibles						(0.248)	(102.068)	(4,221.068)
8	<b>TOTAL OPERATING REVENUES</b>						(321.253)	104,738.250	625,048.250
9	Plant Specific	(343.179)		(7,334.996)	(4,684.707)		91.461	(8,209.235)	75,941.765
10	Depreciation & Amortization						(129.088)	34,248.854	127,417.854
11	Plant Nonspecific	(26.524)		(6,250.879)	(1,357.703)		(14.227)	(6,866.582)	36,828.418
12	Access (interstate)							0.000	0.000
13	Access (intrastate)							(3,713.877)	23,487.123
14	Customer Operations (ex. B&C)			(5,303.184)	(438.239)		(340.736)	3,566.432	84,130.432
15	Billing & Collection						(457.442)	(566.636)	4,688.364
16	Corporate Operations	(189.072)		(6,017.658)			91.916	(6,013.742)	61,769.258
17	Other Gains & Losses							82.045	(166.955)
18	<b>TOTAL OPERATING EXPENSES</b>	(558.775)		(24,906.717)	(6,480.649)		(758.116)	12,527.259	414,096.259
19	Net State & Local Income Taxes	36.879	(14.877)	1,643.843	427.723		18.447	5,854.875	11,140.875
20	Net Federal Income Tax	182.664	(73.687)	8,142.006	2,118.524		65.689	29,969.027	50,832.027
21	Other Taxes		225.410				135.109	(1,105.493)	24,760.507
22	<b>TOTAL OPERATING TAXES</b>	219.543	136.845	9,785.849	2,546.247		219.245	34,718.409	85,733.409
23	<b>NET OPERATING INCOME</b>	339.232	(136.846)	15,120.868	3,934.402		217.618	57,492.582	124,218.582
24	Telecommunications Plant in Service						1,704.394	90,749.060	1,568,605.060
25	Plant Adjustment						2.013	16.372	1,893.372
26	Materials & Supplies						(4.116)	(2,232.352)	12,059.648
27	Accumulated Depreciation						2,151.527	(56,707.659)	(632,822.659)
28	Accumulated Amortization						(12.219)	(6.704)	(8,800.704)
29	Accumulated Deferred Taxes						(204.318)	9,371.178	(181,601.822)
30	<b>NET AVERAGE RATE BASE</b>						3,637.291	41,189.895	759,332.895
31	RETURN ON RATE BASE	0.05%	-0.02%	2.11%	0.55%		-0.02%	7.07%	16.36%
32	RETURN ON EQUITY	0.09%	-0.04%	3.80%	0.99%		-0.04%	12.74%	23.88%
33	REVENUE REQUIREMENT (total)	(573.380)	231.301	(25,557.745)	(6,650.044)	(9,919.764)	218.680	(100,453.664)	(97,436.870)

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 U S WEST Communications, Inc.  
 Total Oregon Subject to Separations  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	ISSUES 1a-b Annualized Test Year Before Side Records (1)	Issue 1c(1a) Annualized Side Record for Interest During Construction (Pre-1) (2)	Issue 1c(2a) Annualized Side Record for Western Electric Affil. Interest (Pre-2) (3)	Issue 1c(3) Annualized Side Record for Interstate Depreciation Represcription (Pre-3) (4)	Issue 1c(4) Annualized Side Record for Property Held for Future Use (Pre-4) (5)	Company's Annualized Test Year (6)	ISSUE 1c(1b) Adjust Interest During Construction (7)	Issue 1c(2b) Adjust Western Electric Affiliated Interest (8)	Issue 1d Remove Annualized Caller ID (Pre-6) (9)
1	Local Service & EAS	348,109.143					348,109.143			
2	Network Access	248,399.363					248,399.363			
3	Long Distance	112,528.408					112,528.408			
4	Directory	3,818.935					3,818.935			
5	Billing & Collection	8,386.560					8,386.560			
6	Miscellaneous	18,096.792					18,096.792			
7	Uncollectibles	(5,811.267)					(5,811.267)			
8	<b>TOTAL OPERATING REVENUES</b>	<b>733,527.934</b>					<b>733,527.934</b>			
9	Plant Specific	117,634.532					117,634.532			
10	Depreciation & Amortization	154,827.489	1,543.287	(456.974)	(24,371.895)		131,541.907		456.974	
11	Plant Nonspecific	62,355.959					62,355.959			
12	Access (interstate)	3,926.760					3,926.760			
13	Access (intrastate)	27,200.583					27,200.583			
14	Customer Operations (ex. B&C)	101,009.361					101,009.361			781.937
15	Billing & Collection	7,092.521					7,092.521			
16	Corporate Operations	91,512.189					91,512.189			
17	Other Gains & Losses	(352.385)					(352.385)			
18	<b>TOTAL OPERATING EXPENSES</b>	<b>565,207.009</b>	<b>1,543.287</b>	<b>(456.974)</b>	<b>(24,371.895)</b>		<b>541,921.427</b>		<b>456.974</b>	<b>781.937</b>
19	Net State & Local Income Taxes	8,189.645				1,559.353	9,748.998	(18,519)		(51,608)
20	Net Federal Income Tax	29,111.402				8,134.701	37,246.103	(68,615)		(255,961)
21	Other Taxes	31,946.981					31,946.981			
22	<b>TOTAL OPERATING TAXES</b>	<b>69,248.028</b>				<b>9,694.054</b>	<b>78,942.082</b>	<b>(87,134)</b>		<b>(307,569)</b>
23	<b>NET OPERATING INCOME</b>	<b>99,072.897</b>	<b>(1,543.287)</b>	<b>456.974</b>	<b>14,677.841</b>		<b>112,664.425</b>	<b>87,134</b>	<b>(456.974)</b>	<b>(474,368)</b>
24	Telecommunications Plant in Service	2,079,782.815	19,854.345	(6,437.347)			2,093,199.813	114.480		
25	Plant Adjustment	2,649.594					2,649.594			
26	Materials & Supplies	19,944.722					19,944.722			
27	Accumulated Depreciation	(840,540.617)	(6,266.746)	5,287.102	20,761.994	51.343	(820,706.924)	(66,782)	1,150.245	
28	Accumulated Amortization	(11,909.855)					(11,909.855)			
29	Accumulated Deferred Taxes	(261,445.502)					(269,520.619)	(880,000)		
30	<b>NET AVERAGE RATE BASE</b>	<b>988,481.157</b>	<b>13,587,599</b>	<b>(1,150,245)</b>	<b>12,686,877</b>	<b>51,343</b>	<b>1,013,656,731</b>	<b>(832,302)</b>	<b>1,150,245</b>	
31	RETURN ON RATE BASE	10.02%	-0.29%	0.06%	1.34%	-0.00%	11.11%	0.02%	-0.06%	-0.05%
32	RETURN ON EQUITY						14.43%			

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 U S WEST Communications, Inc.  
 Total Oregon Subject to Separations  
 Adjustments to Annualized Test Year  
 (\$000's)

Line No.	Description	Issue 1e Remove Annualized UP 96 Sale of Exchanges to PTI (Pre-11) (10)	Issue 1f Remove Annualized 1996 Wage Increases (Pre-16) (11)	Issue 1g Different Operating Tax Annualization Methods (12)	Issues 1h-n Other Different Annualization Methods (13)	Annualized Test Year as Stipulated Columns 6 through 13 (14)	Issue 1m Switching Assets (14a)	Issue 2d Interest Coordination (Fixed Charges) (Post-2) (15)	Issue 3a U S WEST Direct Directory Imputation (Post-13) (16)	Issue 3b U S WEST Direct Directory Growth (16a)
1	Local Service & EAS	4,077,347			876,107	353,062,597				
2	Network Access	9,001,528			(784,766)	256,616,125				
3	Long Distance				1,305,329	113,833,737				
4	Directory	33,285			69,649	3,921,869			54,297,600	3,491,100
5	Billing & Collection					8,386,560				
6	Miscellaneous	87,089			(706,841)	17,477,040				
7	Uncollectibles	(107,194)			1,571,075	(4,347,386)				
8	<b>TOTAL OPERATING REVENUES</b>	<b>13,092,055</b>			<b>2,330,553</b>	<b>748,950,542</b>			<b>54,297,600</b>	<b>3,491,100</b>
9	Plant Specific	157,207	(2,594,392)			115,197,347				
10	Depreciation & Amortization	5,122,595				137,121,476				
11	Plant Nonspecific		(1,354,929)			61,001,030				
12	Access (interstate)	(25,000)				3,901,760				
13	Access (intrastate)	(3,790,000)				23,410,583				
14	Customer Operations (ex. B&C)		(1,795,746)			99,995,552				
15	Billing & Collection	(439,000)			(31,283)	6,622,238				
16	Corporate Operations		(268,821)			91,243,368				
17	Other Gains & Losses					(352,385)				
18	<b>TOTAL OPERATING EXPENSES</b>	<b>1,025,802</b>	<b>(6,013,888)</b>		<b>(31,283)</b>	<b>538,140,969</b>				
19	Net State & Local Income Taxes	769,536	396,917	1,269	152,105	10,998,698	12,672	46,237	3,576,474	229,952
20	Net Federal Income Tax	3,848,750	1,968,596	12,776	769,105	43,520,754	62,766	229,011	17,714,386	1,138,958
21	Other Taxes	308,662		(38,542)	17,203	32,234,304			108,595	6,982
22	<b>TOTAL OPERATING TAXES</b>	<b>4,926,948</b>	<b>2,365,513</b>	<b>(24,497)</b>	<b>938,413</b>	<b>86,753,756</b>	<b>75,438</b>	<b>275,248</b>	<b>21,399,455</b>	<b>1,375,892</b>
23	<b>NET OPERATING INCOME</b>	<b>7,139,305</b>	<b>3,648,375</b>	<b>24,497</b>	<b>1,423,423</b>	<b>124,055,817</b>	<b>(75,438)</b>	<b>(275,248)</b>	<b>32,898,145</b>	<b>2,115,208</b>
24	Telecommunications Plant in Service	89,381,330			(8,328,031)	2,174,367,592	(242,884)			
25	Plant Adjustment					2,649,594				
26	Materials & Supplies					19,944,722				
27	Accumulated Depreciation	(28,984,561)			188,553	(848,419,469)	(5,938,595)			
28	Accumulated Amortization					(11,909,855)				
29	Accumulated Deferred Taxes	(8,865,231)		393,116		(278,872,734)				
30	<b>NET AVERAGE RATE BASE</b>	<b>51,531,538</b>		<b>393,116</b>	<b>(8,139,478)</b>	<b>1,057,759,850</b>	<b>(6,181,479)</b>			
31	RETURN ON RATE BASE	0.19%	0.37%	-0.00%	0.23%	11.73%	0.08%	-0.03%	3.09%	0.20%
32	RETURN ON EQUITY					15.54%				

APPENDIX A  
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Line No.	Description	Issue 4a Rent Compensation Study (Post-1) (17)	Issue 4b UM 753 Affiliate & Certain Leases (18)	Issue 4c Strategic Marketing (19)	Issue 4d(1) Fax Services (20)	Issue 4d(2) Growth in Fax Services (20a)	Issue 4d(3) Affiliated Interest Charges (Post-3) (20b)	Issue 4d(4) FCC License (20c)	Issue 4e Affiliated Interest Return Component (21)	Issue 4f Headquarters Allocations (22)
1	Local Service & EAS									
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous				137.200	807.100				
7	Uncollectibles									
8	<b>TOTAL OPERATING REVENUES</b>				137.200	807.100				
9	Plant Specific	5,347.325	(86.684)							(154.255)
10	Depreciation & Amortization	18,515.019								
11	Plant Nonspecific									(280.182)
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)									(269.584)
15	Billing & Collection									
16	Corporate Operations			(141.900)			(221.652)		(136.312)	(759.965)
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	23,962.344	(86.684)	(141.900)			(221.652)		(136.312)	(1,463.986)
19	Net State & Local Income Taxes	(1,661.573)	5.721	9.365	9.037	53.162	14.629		8.997	96.623
20	Net Federal Income Tax	(8,229.821)	28.337	46.387	44.761	263.313	72.458		44.560	478.577
21	Other Taxes	21.183			0.274	1.614				
22	<b>TOTAL OPERATING TAXES</b>	(9,870.211)	34.058	55.752	54.072	318.089	87.087		53.557	575.200
23	<b>NET OPERATING INCOME</b>	(14,092.133)	52.626	86.148	83.128	489.011	134.565		82.755	888.786
24	Telecommunications Plant in Service	61,965.510								
25	Plant Adjustment									
26	Materials & Supplies	(3,332.196)								
27	Accumulated Depreciation	(19,203.254)								
28	Accumulated Amortization									
29	Accumulated Deferred Taxes	(1,059.777)								
30	<b>NET AVERAGE RATE BASE</b>	38,370.283								
31	RETURN ON RATE BASE	-1.84%		0.01%		0.04%	0.01%			0.08%
32	RETURN ON EQUITY									

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Line No.	Description	Issue 4g(1) Part 64 Still Regulated (Post-10) (23)	Issue 4g(2) Revenue Requirement Part 64 Still Regulated (23a1)	Issue 4g(2) VMS Promotional Offerings (23a2)	Issue 4h Non-regulated Costs in Columns 18 through 21 (23b)	Issue 5a UP 96 Sale of Exchanges to PTI (Pre-11) (24)	Issue 5b UP 96 Stipulation (Post-4) (25)	Issue 5c UP 96 Effect on Property Taxes (26)	Issue 6a 1995 EAS Conversion (Post-7) (27)	Issue 6b 1996 EAS Conversion (28)
1	Local Service & EAS					(3,755,138)			136,001	1,129,882
2	Network Access					(2,921,022)				
3	Long Distance								(867,284)	(2,578,245)
4	Directory					(31,317)				
5	Billing & Collection					(88,000)				
6	Miscellaneous	4,517,316	3,472,397	(94,538)		(82,106)				
7	Uncollectibles	(25,949)				48,918			5,035	8,503
8	<b>TOTAL OPERATING REVENUES</b>	<b>4,491,367</b>	<b>3,472,397</b>	<b>(94,538)</b>		<b>(6,828,665)</b>			<b>(726,248)</b>	<b>(1,439,860)</b>
9	Plant Specific	1,423,770			4,182	(2,468,940)				
10	Depreciation & Amortization	1,137,732				(5,180,098)				
11	Plant Nonspecific	1,528,833				(135,070)				
12	Access (interstate)					49,441				
13	Access (intrastate)					2,822,032			(296,903)	(533,090)
14	Customer Operations (ex. B&C)	3,090,908				(218,190)				
15	Billing & Collection					345,566				
16	Corporate Operations	1,210,208			11,248	(207,800)				
17	Other Gains & Losses	115,784								
18	<b>TOTAL OPERATING EXPENSES</b>	<b>8,507,235</b>			<b>15,430</b>	<b>(4,993,059)</b>			<b>(296,903)</b>	<b>(538,090)</b>
19	Net State & Local Income Taxes	(283,781)	228,720	(6,227)	(1,018)	(7,364)	39,539	35,546	(28,441)	(60,738)
20	Net Federal Income Tax	(1,415,592)	1,132,856	(30,843)	(5,044)	(36,474)	195,836	176,063	(140,869)	(300,838)
21	Other Taxes	103,819	6,945	(0,189)		(87,744)		(538,582)	1,578	18,506
22	<b>TOTAL OPERATING TAXES</b>	<b>(1,595,554)</b>	<b>1,368,521</b>	<b>(37,259)</b>	<b>(6,062)</b>	<b>(131,582)</b>	<b>235,375</b>	<b>(326,973)</b>	<b>(167,732)</b>	<b>(343,070)</b>
23	<b>NET OPERATING INCOME</b>	<b>(2,420,314)</b>	<b>2,103,876</b>	<b>(57,279)</b>	<b>(9,368)</b>	<b>(1,704,024)</b>	<b>(235,375)</b>	<b>326,973</b>	<b>(261,613)</b>	<b>(558,700)</b>
24	Telecommunications Plant in Service	8,707,515				(90,202,348)				
25	Plant Adjustment	9,756								
26	Materials & Supplies	95,285								
27	Accumulated Depreciation	(3,405,456)				29,412,068	(31,631,984)			
28	Accumulated Amortization									
29	Accumulated Deferred Taxes	(932,463)				8,110,481	12,345,086			
30	<b>NET AVERAGE RATE BASE</b>	<b>4,474,632</b>				<b>(52,679,799)</b>	<b>(19,286,898)</b>			
31	RETURN ON RATE BASE	-0.30%	0.19%	-0.01%		0.66%	0.27%	0.03%	-0.03%	-0.06%
32	RETURN ON EQUITY									

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Line No.	Description	Issue 6c Tariff, Price & Contract Changes Made After Jan. 1, 1995 (29)	Issue 6d Switched Access Filing (Post-11) (30)	(not used) (31)	Issue 7a(1) SFAS 106 Post- retirement Benefits (Post-5) (32)	Issue 7a(2) Unfunded SFAS 106 Post- retirement Benefits (Post-5) (32a)	Issue 7b AT&T Post- retirement Benefits Cost-Sharing Agreement (33)	Issue 7c Disability Pension Payment True-up (Post-8) (34)	Issue 7d Pension Accounting (Post-9, 12) (35)	Issue 7e End of Compensated Absences Accrual (36)
1	Local Service & EAS	15,937.304								
2	Network Access		(2,526.514)							
3	Long Distance	153.895								
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles	(143.126)	4.010							
8	<b>TOTAL OPERATING REVENUES</b>	<b>15,948.073</b>	<b>(2,522.504)</b>							
9	Plant Specific				225.339					
10	Depreciation & Amortization									
11	Plant Nonspecific				113.858					
12	Access (interstate)									
13	Access (intrastate)		(1,910.499)							
14	Customer Operations (ex. B&C)	8,203.569			168.916					
15	Billing & Collection									
16	Corporate Operations				38.644		(492.278)	(274.761)		(401.500)
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	<b>8,203.569</b>	<b>(1,910.499)</b>		<b>546.757</b>		<b>(492.278)</b>	<b>(274.761)</b>		<b>(401.500)</b>
19	Net State & Local Income Taxes	490.090	(40.311)		(36.086)	9.952	32.490	18.134	(111.768)	26.499
20	Net Federal Income Tax	2,427.432	(199.662)		(178.735)	49.292	160.926	89.819	(553.569)	131.250
21	Other Taxes	318.894	(1,232)							
22	<b>TOTAL OPERATING TAXES</b>	<b>3,236.416</b>	<b>(241.205)</b>		<b>(214.821)</b>	<b>59.244</b>	<b>193.416</b>	<b>107.953</b>	<b>(665.357)</b>	<b>157.749</b>
23	<b>NET OPERATING INCOME</b>	<b>4,508.088</b>	<b>(370.800)</b>		<b>(331.936)</b>	<b>(59,244)</b>	<b>298.862</b>	<b>166.808</b>	<b>665.357</b>	<b>243.751</b>
24	Telecommunications Plant in Service					(4,854.494)		54,520.152		
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation									
28	Accumulated Amortization									
29	Accumulated Deferred Taxes									
30	<b>NET AVERAGE RATE BASE</b>					<b>(4,854.494)</b>		<b>54,520.152</b>		
31	RETURN ON RATE BASE	0.42%	-0.04%		-0.03%	0.06%	0.03%	0.01%	-0.72%	0.02%
32	RETURN ON EQUITY									

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Line No.	Description	Issue 8a Team Performance Awards & Officers' Incentives (Bonuses) (37)	Issue 8b(1) Occupational Wage Increases (Pre-16) (38)	Issue 8b(2) 1996-1997 Wage & Salary Increases (38a)	Issue 8b(2) (not used) (38b)	Payroll Tax Increases (38c)	Issue 8b(2) (not used) (38d)	Issue 8b(2) [Issue 8a] Bonuses Included in Wage Base (38e)	Issue 8b(2) [Issue 9a] Wage Base Related to Reengin'g (38f)	Issue 8c SFAS 109 Accounting for Income Taxes (39)
1	Local Service & EAS									
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles									
8	<b>TOTAL OPERATING REVENUES</b>									
9	Plant Specific	(197,468)	2,594,391	1,605,489		46,300		(58,733)	(156,439)	
10	Depreciation & Amortization									
11	Plant Nonspecific	(2,778,204)	1,354,929	2,355,544		67,900		(86,172)	(229,525)	
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)	(1,283,823)	1,795,747	3,111,797		89,800		(113,837)	(303,214)	
15	Billing & Collection									
16	Corporate Operations	(1,051,826)	268,821	3,258,502		94,000		(119,204)	(317,510)	
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(5,311,321)</b>	<b>6,013,888</b>	<b>10,331,332</b>		<b>298,000</b>		<b>(377,946)</b>	<b>(1,006,688)</b>	
19	Net State & Local Income Taxes	350,547	(396,917)	(681,868)		(19,668)		24,944	66,441	
20	Net Federal Income Tax	1,736,271	(1,965,940)	(3,377,312)		(97,416)		123,551	329,086	
21	Other Taxes									
22	<b>TOTAL OPERATING TAXES</b>	<b>2,086,818</b>	<b>(2,362,857)</b>	<b>(4,059,180)</b>		<b>(117,084)</b>		<b>148,495</b>	<b>395,527</b>	
23	<b>NET OPERATING INCOME</b>	<b>3,224,503</b>	<b>(3,651,031)</b>	<b>(6,272,152)</b>		<b>(180,916)</b>		<b>229,451</b>	<b>611,161</b>	
24	Telecommunications Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation									
28	Accumulated Amortization									
29	Accumulated Deferred Taxes									
30	<b>NET AVERAGE RATE BASE</b>									
31	RETURN ON RATE BASE	0.30%	-0.35%	-0.59%		-0.02%		0.02%	0.05%	
32	RETURN ON EQUITY									

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Line No.	Description	Issue 8d SFAS 112 Accounting for Post- employment Benefits (40)	Issue 8e Ballot Measure 5 Property Taxes (Post-6) (41)	Issue 8f ORS 291.349 Income Tax Refund (42)	Issue 8g UM 767 Oregon Depreciation Repre- scription (Post-14) (43)	Issue 8h Aircraft (44)	Issue 8i Advertising (45)	Issue 8j Average Growth in Access Lines (46)	Issue 8k Marketing Accrual Reversal (Pre-10) (47)	Issue 8l Information Management Systems (48)
1	Local Service & EAS							24,219.789		
2	Network Access									
3	Long Distance									
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles							(215.623)		
8	<b>TOTAL OPERATING REVENUES</b>							<b>24,003.966</b>		
9	Plant Specific									(492.827)
10	Depreciation & Amortization				28,897.735					
11	Plant Nonspecific									
12	Access (interstate)									
13	Access (intrastate)									
14	Customer Operations (ex. B&C)									(692.538)
15	Billing & Collection									
16	Corporate Operations								(529.375)	
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>				<b>28,897.735</b>				<b>(529.375)</b>	<b>(1,185.365)</b>
19	Net State & Local Income Taxes		222.064	(913.286)	(1,889.268)			1,552.308	34.939	78.234
20	Net Federal Income Tax		1,099.892	319.650	(9,357.601)			7,688.626	173.053	387.496
21	Other Taxes		(3,364.612)					484.154		
22	<b>TOTAL OPERATING TAXES</b>		<b>(2,042.656)</b>	<b>(593.636)</b>	<b>(11,246.869)</b>			<b>9,725.088</b>	<b>207.992</b>	<b>465.730</b>
23	<b>NET OPERATING INCOME</b>		<b>2,042.656</b>	<b>593.636</b>	<b>(17,650.866)</b>			<b>14,278.878</b>	<b>321.383</b>	<b>719.635</b>
24	Telecommunications Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation				(14,448.868)					
28	Accumulated Amortization									
29	Accumulated Deferred Taxes				5,676.960					
30	<b>NET AVERAGE RATE BASE</b>				<b>(8,771.908)</b>					
31	RETURN ON RATE BASE		0.19%	0.05%	-1.54%			1.34%	0.03%	0.06%
32	RETURN ON EQUITY									

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Line No.	Description	Issue 8m	Issue 8n	Issue 9a	Issue 9b	Issue 9c	Issue 10	TOTAL ADJS. Columns 7 - 13 and 15 - 53
		Purchase Rebates	PUC Fee	Service Reengineering Costs	Extraordinary Expenses	Service Quality	Effects of Adjustments on Intrastate Separations	(54)
		(49)	(49a)	(50)	(51)	(52)	(53)	
1	Local Service & EAS							42,621.292
2	Network Access							2,769.226
3	Long Distance							(1,986.305)
4	Directory							57,860.317
5	Billing & Collection							(88.000)
6	Miscellaneous							8,137.617
7	Uncollectibles							1,145.449
8	<b>TOTAL OPERATING REVENUES</b>							<b>110,459.596</b>
9	Plant Specific	(477.846)		(10,213.311)	(6,523.026)			(12,019.918)
10	Depreciation & Amortization							49,049.957
11	Plant Nonspecific	(37.517)		(8,841.750)	(1,920.446)			(10,242.731)
12	Access (interstate)							24.441
13	Access (intrastate)							(3,713.460)
14	Customer Operations (ex. B&C)			(6,676.559)	(551.731)			5,337.452
15	Billing & Collection							(124.717)
16	Corporate Operations	(254.766)		(8,108.521)				(8,404.768)
17	Other Gains & Losses							115.784
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(770.129)</b>		<b>(33,840.141)</b>	<b>(8,995.203)</b>			<b>20,022.040</b>
19	Net State & Local Income Taxes	50.829	(20.153)	2,233.449	593.683			5,242.510
20	Net Federal Income Tax	251.755	(99.817)	11,062.342	2,940.532			30,884.340
21	Other Taxes		305.343					(2,327.149)
22	<b>TOTAL OPERATING TAXES</b>	<b>302.584</b>	<b>185.373</b>	<b>13,295.791</b>	<b>3,534.215</b>			<b>33,799.701</b>
23	<b>NET OPERATING INCOME</b>	<b>467.545</b>	<b>(185.373)</b>	<b>20,544.350</b>	<b>5,460.988</b>			<b>56,637.855</b>
24	Telecommunications Plant in Service							111,061.230
25	Plant Adjustment							9.756
26	Materials & Supplies							(3,236.911)
27	Accumulated Depreciation							(72,923.634)
28	Accumulated Amortization							14,788.167
29	Accumulated Deferred Taxes							49,693.608
30	<b>NET AVERAGE RATE BASE</b>							
31	RETURN ON RATE BASE	0.04%	-0.02%	1.93%	0.51%			4.81%
32	RETURN ON EQUITY							8.67%

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Comparison of Total Oregon and Intrastate Data

Line No.	Description	TOTAL OREGON	SEPARATIONS FACTORS	INTRASTATE
		column 6 plus Column 54	Exhibit Revised Staff/3, Lambeth/5, Column e	
		(55)	(56)	(57)
1	Local Service & EAS	390,730.435	100.0000%	390,730.435
2	Network Access	251,168.589	24.9529%	62,673.934
3	Long Distance	110,542.103	81.1872%	89,738.033
4	Directory	61,679.252	100.0000%	61,679.252
5	Billing & Collection	8,298.560	29.4870%	2,447.000
6	Miscellaneous	26,234.409	85.7780%	22,000.664
7	Uncollectibles	(4,665.818)	calculated	(4,221.063)
8	<b>TOTAL OPERATING REVENUES</b>	<b>843,987,530</b>	<b>74%</b>	<b>625,048,250</b>
9	Plant Specific	105,614.614	71.9046%	75,941.765
10	Depreciation & Amortization	180,591.864	70.5557%	127,417.854
11	Plant Nonspecific	52,113.228	70.6700%	36,828.418
12	Access (interstate)	3,951.201	0.0000%	0.000
13	Access (intrastate)	23,487.123	100.0000%	23,487.123
14	Customer Operations (ex. B&C)	106,346.813	79.1095%	84,130.432
15	Billing & Collection	6,967.804	67.2861%	4,688.364
16	Corporate Operations	83,107.421	74.3246%	61,769.258
17	Other Gains & Losses	(236.601)	70.5640%	(166.955)
18	<b>TOTAL OPERATING EXPENSES</b>	<b>561,943,467</b>	<b>74%</b>	<b>414,096,259</b>
19	Net State & Local Income Taxes	14,991.508	74%	11,140.875
20	Net Federal Income Tax	68,130.443	75%	50,832.027
21	Other Taxes	29,619.832	84%	24,760.507
22	<b>TOTAL OPERATING TAXES</b>	<b>112,741,783</b>	<b>77%</b>	<b>86,733,409</b>
23	<b>NET OPERATING INCOME</b>	<b>169,302,280</b>	<b>73%</b>	<b>124,218,582</b>
24	Telecommunications Plant in Service	2,204,261.043	71.1624%	1,568,605.060
25	Plant Adjustment	2,659.350	71.1968%	1,893.372
26	Materials & Supplies	16,707.811	72.1797%	12,059.648
27	Accumulated Depreciation	(893,636.558)	70.8144%	(632,822.659)
28	Accumulated Amortization	(11,909.855)	73.8943%	(8,800.704)
29	Accumulated Deferred Taxes	(254,732.452)	71.2912%	(181,601.822)
30	<b>NET AVERAGE RATE BASE</b>	<b>1,063,350,339</b>	<b>71%</b>	<b>759,332,895</b>
31	RETURN ON RATE BASE	15.92%		16.36%
32	RETURN ON EQUITY	23.09%		23.88%

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Docket UT 125  
U S WEST Communications, Inc.  
SEPARATIONS FACTORS

Line No.		Final Factors
<b>Revenues:</b>		
1	Local Service & EAS	100.0000%
2	Network Access	24.9529%
3	Long Distance	81.1872%
4	Directory	100.0000%
6	Billing & Collection	29.4870%
6	Miscellaneous	85.7780%
7	Uncollectibles	calculated
<b>Expenses:</b>		
8	Plant Specific	71.9046%
9	Depreciation & Amortization	70.5557%
10	Plant Nonspecific	70.6700%
11	Access (Interstate)	0.0000%
12	Access (Intrastate)	100.0000%
13	Customer Operations (ex. B&C)	79.1095%
14	Billing & Collection	67.2861%
16	Corporate Operations	74.3246%
18	Other Gains & Losses	70.5640%
17	Average Expenses	sum
<b>Rate Base:</b>		
18	Telecommunications Plant In Service	71.1624%
19	Plant Adjustment	71.1968%
20	Materials & Supplies	72.1797%
21	Accumulated Depreciation	70.8144%
22	Accumulated Amortization	73.8943%
23	Accumulated Deferred Taxes	71.2912%
24	Average Rate Base	sum
<b>Other Taxes:</b>		
25	PUC Fee	calculated
26	Based on Book Cost (Property Taxes)	calculated
27	Franchise Fees	100.0000%
28	Portland License & Permit	100.0000%
28	FCC Fee	0.0000%
30	Other Operating Taxes	71.2971%
31	Average Other Taxes	sum
<b>State Income Tax:</b>		
32	Net Deferred Depreciation & Leases	70.5557%
33	Depreciation on side records	70.5557%
34	Interest	calculated
35	Net Other Additions (Deductions)	71.2971%
36	Calculated State Income Tax	calculated
37	Prior Deferred State Income Tax	70.0702%
38	Current State Income Tax	sum
39	Net Portland Income Taxes	71.2971%
39	Current Deferred State Income Tax	70.0702%
40	Average State Income Tax	sum
<b>Federal Income Tax:</b>		
41	Net Deferred Depreciation & Leases	70.5557%
42	Depreciation on side records	70.5557%
43	Current State Income Tax	calculated
44	Current Portland Income Taxes	71.2971%
45	Interest	calculated
46	Net Other Additions (Deductions)	71.2971%
47	Calculated Federal Income Tax	calculated
48	Prior Deferred Federal Income Tax	70.0702%
49	Current Federal Income Tax	sum
60	Current Deferred Federal Income Tax	70.0702%
61	Investment Tax Credits	71.1652%
62	Average Federal Income Tax	sum



Docket UT 125  
U S WEST Communications, Inc.  
NET-TO-GROSS FACTORS

Line No.	Local Service (a)	Network Access (b)	Long Distance (c)
1 Base Year	<u>100.0000%</u>	<u>100.0000%</u>	<u>100.0000%</u>
Uncollectibles:			
2 Local	0.8911%	--	--
3 Access	--	0.1587%	--
4 Long Distance	--	--	0.7203%
5 Directory	--	--	--
6 Billing & Collection	--	--	--
7 Other	--	--	--
8 Net Intrastate Uncollectibles	<u>0.8911%</u>	<u>0.1587%</u>	<u>0.7203%</u>
9 Franchise Fees	1.7990%	--	--
10 PUC Fee	<u>0.2000%</u>	<u>0.2000%</u>	<u>0.2000%</u>
11 State Income Tax (SIT) Base	<u>97.1099%</u>	<u>99.6413%</u>	<u>99.0797%</u>
12 SIT Statutory Rate	6.2700%	6.2700%	6.2700%
13 SIT Effective Rate	<u>6.0888%</u>	<u>6.2475%</u>	<u>6.2123%</u>
14 Federal Income Tax (FIT) Base	<u>91.0211%</u>	<u>93.3938%</u>	<u>92.8674%</u>
15 FIT Statutory Rate	35.0000%	35.0000%	35.0000%
16 FIT Effective Rate	<u>31.8574%</u>	<u>32.6878%</u>	<u>32.5036%</u>
17 NET-TO-GROSS MULTIPLIER	<u>169.0230%</u>	<u>164.7280%</u>	<u>165.6620%</u>

The local net-to-gross multiplier (shown in the box above) has been used to compute the revenue requirement amounts.



97-171

CASE: UT 125  
WITNESS: Terry J. Lambeth

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 2**

**Stipulation**

**August 8, 1996**

97-171

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UT 125

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In the Matter of the )  
Application of U S WEST ) STIPULATION  
Communications, Inc., )  
for an Increase in Revenues. )

I. PARTIES

The initial parties to this Stipulation are U S WEST Communications, Inc. (USWC) and Public Utility Commission of Oregon (staff). This stipulation will be made available to the other parties to this Docket, who may participate by signing and filing a copy of this Stipulation.

II. RECITALS

On December 18, 1995, USWC filed a petition for an increase in revenues pursuant to Order No. 91-1598. Staff subsequently conducted extensive discovery. Staff submitted a settlement offer to USWC. After exchanges of information and discussions, staff and USWC enter into this Stipulation for the purpose of partially resolving issues in the revenue requirement phase (Phase I) of this Docket. This stipulation represents only a partial settlement, and all issues not settled herein remain contested.

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///

PAGE 1 - STIPULATION

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1 III. STIPULATION

2 USWC and staff stipulate and agree as follows:

3 1. Issue No. 1 involves the Test Year and Annualization  
4 Methods.

5 (a) In partial settlement of Issue No. 1, staff and USWC  
6 agree to the figures or amounts listed (i) in Column 14,  
7 "Annualized Test Year," in Schedule 1 (Intrastate Oregon)  
8 and Schedule 2 (Total Oregon Subject to Separations) (both  
9 schedules attached hereto) and (ii) in the column entitled  
10 "Factors Used in Columns 14-52" in Schedule 3 (Separations  
11 Factors) (schedule attached hereto). Staff and USWC  
12 specifically do not agree upon the figures or amounts found  
13 in column 14a, "Switching Assets," of Schedule 1 and  
14 Schedule 2;

15 (b) Further, in partial settlement of Issue No. 1, staff and  
16 USWC agree to the figures or amounts listed in Schedule 4  
17 (Net to Gross Factors) (schedule attached). Staff and USWC  
18 specifically do not agree whether the factors in Schedule 4  
19 should be further modified to reflect Issue 8f, ORS 291.349.

20 2. Issue No. 2 involves the Cost of Capital. In partial  
21 settlement of Issue 2, staff and USWC agree that for purposes of  
22 this case only:

23 (a) USWC's capital structure is 44.5 percent debt and 55.5  
24 percent equity;

25 (b) USWC's cost of debt is 6.98 percent; and

26 ///

1 (c) An interest coordination adjustment should be made using  
2 the weighted cost of debt of 3.1061 percent.

3 Staff and USWC specifically do not agree on the rate of return on  
4 equity.

5 3. Issue 4a involves the Rent Compensation Study portion of  
6 Issue 4 (Affiliated Interests and Corporate Allocations). In  
7 partial settlement of Issue 4a, staff and USWC agree:

8 (a) It is appropriate to use the corporate allocation  
9 factors that result from the resolution of Issue 4f  
10 (Corporate Allocations);

11 (b) The effects of Docket UM 753<sup>1</sup> on allocated leases  
12 covered in the rent compensation study should be included;  
13 and

14 (c) The nonregulated portions of the rent compensation study  
15 should be removed from the annualized test year.

16 USWC does not agree that any costs related to square footage per  
17 employee greater than 300 square feet should be disallowed.

18 4. Issue 4c involves the Strategic Marketing portion of  
19 Issue 4 (Affiliated Interests and Corporate Allocations). In  
20 settlement of Issue 4c, staff and USWC agree:

21 The annualized test year should be adjusted to remove  
22 several affiliated expenses, as shown in Schedules 1 and 2,  
23 Column 19.

24  
25 <sup>1</sup> The agreement to include the effects of docket UM 753 is that  
26 which is ultimately determined after all court appeals, to the  
extent appeals are made.

97-171

1           5. Issue 4d(3) involves the Affiliated Interest Charges  
2 portion of Issue 4 (Affiliated Interests and Corporate  
3 Allocations). In settlement of Issue 4d(3), staff and USWC  
4 agree:

5           The annualized test year should be adjusted to remove  
6 several affiliated expenses, as shown in Schedules 1 and 2,  
7 Column 20b.

8           6. Issue 4e involves the Affiliated Interest Return  
9 Component portion of Issue 4 (Affiliated Interests and Corporate  
10 Allocations). In settlement of Issue 4e, staff and USWC agree:

11           (a) The annualized test year should be adjusted to include  
12 the affiliated interests' rate of return (ROR) charged to  
13 USWC at USWC's authorized ROR; and

14           (b) The ROR used in this adjustment should be the rate  
15 authorized by the Commission in this docket.

16           7. Issue 4f involves the Headquarters Allocations portion  
17 of Issue 4 (Affiliated Interests and Corporate Allocations). In  
18 partial settlement of Issue 4f, staff and USWC agree:

19           (a) In determining the corporate allocation factors, it is  
20 appropriate to use the factors that became effective January  
21 1, 1996; and

22           (b) It is also appropriate to consider the effects of  
23 exchange sales that occurred after the development of the  
24 corporate allocation factors that became effective  
25 January 1, 1996.

26 ///

PAGE 4 - STIPULATION

1 Staff and USWC do not agree on the amount of any resulting  
2 adjustment.

3 8. Issue 4g1 involves the Part 64 Still Regulated (Post-  
4 10) portion of Issue 4 (Affiliated Interests and Corporate  
5 Allocations). In disposition of Issue 4g1, staff and USWC agree:

6 The appropriate amounts for the total Oregon Part 64  
7 adjustment are listed in Column 23 of Schedule 2.

8 Staff and USWC do not agree on staff's contention that (1) reve-  
9 nues should be imputed to render certain services revenue neutral  
10 or (2) revenues and expenses of these services should be  
11 separated between intrastate and interstate operations.

12 9. Issue 5a involves the UP 96 Sale of Exchanges (Pre-11)  
13 portion of Issue 5 (Docket UP 96 Sale of Exchanges). In partial  
14 settlement of Issue 5a, staff and USWC agree:

15 (a) The annualized test year should be adjusted to include  
16 the effects of the PTI sale; and

17 (b) The amounts or figures listed in Line Nos. 1 through 7  
18 (Revenues), 10 (Depreciation), 12 and 13 (Access), 15  
19 (Billing & Collection), and 24, 27 and 29 (Rate Base) of  
20 Column 24 of Schedules 1 and Schedule 2 are appropriate  
21 adjustments.

22 Staff and USWC do not agree on the amount of the adjustments for  
23 Line Nos. 9 (Plant Specific), 11 (Plant nonspecific), 14  
24 (Customer Operations), and 16 (Corporate Operations) found in  
25 Column 24 of Schedules 1 and 2.

26 ///

PAGE 5 - STIPULATION



1           10.     Issue 5b involves the UP 96 Stipulation (Post-4)  
2 portion of Issue 5 (Docket UP 96 Sale of Exchanges).     In  
3 settlement of Issue 5b, staff and USWC agree:

4           The intrastate annualized test year should be adjusted to  
5 include the effects of the stipulation in Docket UP 96, as  
6 shown in Schedule 1, Column 25.

7           11.     Issue 5c involves the UP 96 Effect on Property Taxes  
8 portion of Issue 5 (Docket UP 96 Sale of Exchanges).     In  
9 settlement of Issue 5c, staff and USWC agree:

10          The annualized test year should be adjusted to include the  
11 property tax savings resulting from the sale of exchanges to  
12 PTI, as shown in Schedules 1 and 2, Column 26.

13          12.     Issue 6a involves the 1995 EAS Conversion (Post-7)  
14 portion of Issue 6 (Operating Revenues).     In settlement of Issue  
15 6a, staff and USWC agree:

16          The annualized test year should be adjusted to include the  
17 1995 EAS conversions, as shown in Schedules 1 and 2,  
18 Column 27.

19          13.     Issue 6b involves the 1996 EAS Conversion portion of  
20 Issue 6 (Operating Revenues).     In settlement of Issue 6b, staff  
21 and USWC agree:

22          The annualized test year should be adjusted to include the  
23 effects of the 1996 EAS conversions, as shown in Schedules 1  
24 and 2, Column 28.

25     ///

26     ///

PAGE 6 - STIPULATION

1 14. Issue 6d involves the Switched Access Filing (Post-11)  
2 portion of Issue 6 (Operating Revenues). In settlement of Issue  
3 6d, staff and USWC agree:

4 The annualized test year should be adjusted to include the  
5 switched access changes, as shown in Schedules 1 and 2,  
6 Column 30.

7 15. Issue 7b involves the AT&T Postretirement Benefit  
8 Sharing portion of Issue 7 (Employee Benefits). In settlement of  
9 Issue 7b, staff and USWC agree:

10 The annualized test year should be adjusted to include AT&T  
11 unfunded postretirement benefits cost-sharing, as shown in  
12 Schedules 1 and 2, Column 33.

13 16. Issue 7c involves the Disability Pension Payment  
14 True-Up (Post-8) portion of Issue 7 (Employee Benefits). In  
15 settlement of Issue 7c, staff and USWC agree:

16 The annualized test year should be adjusted to include a  
17 disability pension payment true-up, as shown in Schedules 1  
18 and 2, Column 34.

19 17. Issue 8b1 involves the 1996 Occupational Wage Increases  
20 (Pre-16) portion of Issue 8 (Operating Expenses and Taxes). In  
21 settlement of Issue 8b1, staff and USWC agree:

22 The annualized test year should be adjusted to include the  
23 January 1, 1996, occupational wage rate changes, as shown in  
24 Schedules 1 and 2, Column 38.

25 ///

26 ///

PAGE 7 - STIPULATION

1 18. Issue 8c involves the SFAS 109 Accounting for Income  
2 Taxes portion of Issue 8 (Operating Expenses and Taxes). In  
3 settlement of Issue 8c, staff and USWC agree:

4 Adoption of SFAS 109 has no revenue requirement effect for  
5 USWC, as shown in Schedules 1 and 2, Column 39.

6 19. Issue 8d involves the SFAS 112 Accounting for  
7 Postemployment benefits portion of Issue 8 (Operating Expenses  
8 and Taxes). In settlement of Issue 8d, staff and USWC agree:

9 Adoption of SFAS 112 has no revenue requirement effect for  
10 USWC, as shown in Schedules 1 and 2, Column 40.

11 20. Issue 8e involves Ballot Measure 5 Property Taxes  
12 (Post-6) portion of Issue 8 (Operating Expenses and Taxes). In  
13 settlement of 8e, staff and USWC agree:

14 The annualized test year should be adjusted to include the  
15 effects of Ballot Measure 5 property taxes, as shown in  
16 Schedules 1 and 2, Column 41.

17 21. Issue 8g involves the Oregon Depreciation  
18 Represcription (Post-14) portion of Issue 8 (Operating Expenses  
19 and Taxes). In settlement of Issue 8g, staff and USWC agree:

20 The annualized test year should be adjusted to include the  
21 new depreciation rates authorized in Docket UM 767, as shown  
22 in Schedules 1 and 2, Column 43.

23 22. Issue 8h involves the Aircraft portion of Issue 8  
24 (Operating Expenses and Taxes). In settlement of Issue 8h, staff  
25 and USWC agree:

26 ///

1 No aircraft adjustment should be made, as shown in  
2 Schedules 1 and 2, Column 44.

3 23. Issue 8i involves the Advertising portion of Issue 8  
4 (Operating Expenses and Taxes). In settlement of Issue 8i, staff  
5 and USWC agree:

6 No advertising adjustment should be made, as shown in  
7 Schedules 1 and 2, Column 45.

8 24. Issue 8m involves the Purchase Rebates portion of Issue  
9 8 (Operating Expenses and Taxes). In settlement of Issue 8m,  
10 staff and USWC agree:

11 The annualized test year should be adjusted to include  
12 purchase rebates, as shown in Schedules 1 and 2, Column 49.

13 25. Issue 10 involves Separations. In partial settlement  
14 of Issue 10, staff and USWC agree:

15 The intrastate separation factors used to initially separate  
16 the test year (as shown in Schedule 3) should be modified to  
17 include the effects of the sale of exchanges to PTI, the  
18 1995 EAS conversions, and the 1996 EAS conversions. The  
19 modified separations factors will be used to develop the  
20 adjustment for Issue 10 by taking the difference between the  
21 test year as initially separated and test year separated  
22 with the modified separations factors.

23 However, Staff and USWC do not agree on the expenses, rate base,  
24 and taxes which affect the final separations factors.

25 ///

26 ///

PAGE 9 - STIPULATION

1           26. This Stipulation covers only the issues listed herein  
2 and shall not preclude any party from litigating any issues not  
3 covered by this Stipulation.

4           27. The parties agree that the agreements reached in this  
5 Stipulation will not be cited in other proceedings as indicative  
6 of a party's position on the issues resolved or as any type of  
7 precedent for other cases.

8           28. Although the parties stipulate and agree herein to  
9 certain amounts or figures, such stipulations do not constitute  
10 any agreement or acquiescence by any party to the method or  
11 theories used by any other party in deciding to enter into this  
12 Stipulation. No party agrees that the method used by any other  
13 party in reaching this Stipulation is appropriate or superior.

14           29. The parties recommend that the Commission adopt this  
15 Stipulation in its entirety. The parties have negotiated this  
16 Stipulation as an integrated document. Accordingly, if the  
17 Commission rejects all or any part of this Stipulation, or adds  
18 elements to the Stipulation in any Order which are not  
19 contemplated by the Stipulation, each party reserves the right to  
20 withdraw from the Stipulation upon written notice to the  
21 Commission and the other parties within fifteen (15) days of  
22 rejection.

23           30. The parties agree that this Stipulation in no manner  
24 binds the Commission in ruling on this docket and does not  
25 restrict the Commission's exercise of its discretion in this or  
26 any other proceeding.

PAGE 10 - STIPULATION

97-171

1 U S WEST Communications, Inc.

2 By: Molly K. Hastings

3 Title: Senior Attorney

4 Date: August 2, 1996

5

6 Public Utility Commission Staff

7 By: Michael

8 Title: Attorney for staff

9 Date: 8/2/96

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PAGE 11 - STIPULATION

Docket UT 125  
 U S WEST Communications, Inc.  
**INTRASTATE OREGON**  
**SCHEDULE 1**  
 (\$000's)

Line No.	Description	Annualized Test Year (14)	Switching Assets (14a)	Interest Coordination (Fixed Charges) (Post-2) (15)	Strategic Marketing (19)	Affiliated Interest Charges (Post-3) (20b)	UP 96 Stipulation (Post-4) (25)	UP 96 Effect on Property Taxes (26)	1995 EAS Conversion (Post-7) (27)
1	Local Service & EAS	253,062,597							136,001
2	Network Access	65,200,447							
3	Long Distance	92,995,221							(867,284)
4	Directory	3,921,889							
5	Billing & Collection	2,476,000							
6	Miscellaneous	14,874,324							
7	Uncollectibles	(3,893,509)							5,035
8	<b>TOTAL OPERATING REVENUES</b>	<b>528,636,949</b>							<b>(726,248)</b>
9	Plant Specific	82,732,431							
10	Depreciation & Amortization	96,971,393							
11	Plant Nonspecific	43,126,081							
12	Access (interstate)	0,000							
13	Access (intrastate)	23,410,583							(296,903)
14	Customer Operations (ex. B&C)	79,426,367							
15	Billing & Collection	4,806,082							
16	Corporate Operations	67,715,353			(105,310)	(164,497)			
17	Other Gains & Losses	(248,657)							
18	<b>TOTAL OPERATING EXPENSES</b>	<b>397,939,633</b>			<b>(105,310)</b>	<b>(164,497)</b>			<b>(296,903)</b>
19	Net State & Local Income Taxes	6,363,216	10,316	56,073	6,950	10,857	27,878	25,283	(28,441)
20	Net Federal Income Tax	23,638,874	51,094	277,734	34,428	53,774	138,083	125,227	(140,869)
21	Other Taxes	26,401,929						(383,074)	1,578
22	<b>TOTAL OPERATING TAXES</b>	<b>56,404,019</b>	<b>61,410</b>	<b>333,807</b>	<b>41,376</b>	<b>64,631</b>	<b>165,961</b>	<b>(232,564)</b>	<b>(167,732)</b>
23	<b>NET OPERATING INCOME</b>	<b>74,293,297</b>	<b>(61,410)</b>	<b>(333,807)</b>	<b>63,934</b>	<b>99,866</b>	<b>(165,961)</b>	<b>232,564</b>	<b>(281,613)</b>
24	Plant in Service	1,545,649,082	(172,134)						
25	Plant Adjustment	1,884,420							
26	Materials & Supplies	14,401,037							
27	Accumulated Depreciation	(603,025,372)	(4,859,838)				(22,400,000)		
28	Accumulated Amortization	(8,788,485)							
29	Accumulated Deferred Taxes	(198,549,165)					8,800,960		
30	<b>NET AVERAGE RATE BASE</b>	<b>751,571,517</b>	<b>(5,031,972)</b>				<b>(13,599,040)</b>		

Docket UT 125  
 U S WEST Communications, Inc.  
**INTRASTATE OREGON**  
**SCHEDULE 1**  
 (\$000's)

Line No.	Description	Issue 6b 1998 EAS Conversion (28)	Issue 6d Switched Access Filing (Post-11) (30)	Issue 7b AT&T Unfunded Postretirement Benefits Cost-Sharing Agreement (33)	Issue 7c Disability Pension Payment True-up (Post-8) (34)	Issue 8b(1) 1998 Occupational Wage Increases (Pre-16) (38)	Issue 8c SFAS 109- Accounting for Income Taxes (39)	Issue 8d SFAS 112 Accounting for Post- employment Benefits (40)	Issue 8e Ballot Measure 5 Property Taxes (Post-6) (41)	Issue 8g UM 767 Oregon Depreciation Repre- scription (Post-14) (43)
1	Local Service & EAS	1,129,882								
2	Network Access		(1,582,542)							
3	Long Distance	(2,578,245)								
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles	8,503	2,511							
8	<b>TOTAL OPERATING REVENUES</b>	<b>(1,439,880)</b>	<b>(1,580,031)</b>							
9	Plant Specific					1,863,240				
10	Depreciation & Amortization									20,325,655
11	Plant Nonspecific					957,898				
12	Access (interstate)									
13	Access (intrastate)	(538,090)	(1,910,499)							
14	Customer Operations (ex. B&C)					1,426,360				
15	Billing & Collection									
16	Corporate Operations			(365,339)	(203,911)	199,503				
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(538,090)</b>	<b>(1,910,499)</b>	<b>(365,339)</b>	<b>(203,911)</b>	<b>4,447,001</b>				<b>20,325,655</b>
19	Net State & Local Income Taxes	(60,798)	21,768	24,112	13,458	(293,502)		169,768		(1,328,844)
20	Net Federal Income Tax	(300,838)	107,815	119,429	66,659	(1,453,725)		840,868		(6,531,808)
21	Other Taxes	18,506	0,656					(2,572,248)		
22	<b>TOTAL OPERATING TAXES</b>	<b>(343,070)</b>	<b>130,239</b>	<b>143,541</b>	<b>80,117</b>	<b>(1,747,227)</b>		<b>(1,561,612)</b>		<b>(7,910,652)</b>
23	<b>NET OPERATING INCOME</b>	<b>(558,700)</b>	<b>200,229</b>	<b>221,793</b>	<b>123,794</b>	<b>(2,699,774)</b>		<b>1,561,612</b>		<b>(12,415,003)</b>
24	Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation									(10,163,000)
28	Accumulated Amortization									
29	Accumulated Deferred Taxes									3,993,043
30	<b>NET AVERAGE RATE BASE</b>									<b>(6,169,957)</b>



Docket UT 125  
 U S WEST Communications, Inc.  
**INTRASTATE OREGON**  
**SCHEDULE 1**  
 (\$000's)

Issue 8h      Issue 8i      Issue 8m

Line No.	Description	Aircraft	Advertising	Purchase Rebates
		(44)	(45)	(49)
1	Local Service & EAS			
2	Network Access			
3	Long Distance			
4	Directory			
5	Billing & Collection			
6	Miscellaneous			
7	Uncollectibles			
<b>8</b>	<b>TOTAL OPERATING REVENUES</b>			
9	Plant Specific			(343,179)
10	Depreciation & Amortization			
11	Plant Nonspecific			(26,524)
12	Access (Interstate)			
13	Access (Intrastate)			
14	Customer Operations (ex. B&C)			
15	Billing & Collection			
16	Corporate Operations			(189,072)
17	Other Gains & Losses			
<b>18</b>	<b>TOTAL OPERATING EXPENSES</b>			<b>(558,775)</b>
19	Net State & Local Income Taxes			38,879
20	Net Federal Income Tax			182,864
21	Other Taxes			
<b>22</b>	<b>TOTAL OPERATING TAXES</b>			<b>219,543</b>
<b>23</b>	<b>NET OPERATING INCOME</b>			<b>339,232</b>
24	Plant in Service			
25	Plant Adjustment			
26	Materials & Supplies			
27	Accumulated Depreciation			
28	Accumulated Amortization			
29	Accumulated Deferred Taxes			
<b>30</b>	<b>NET AVERAGE RATE BASE</b>			

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**Docket UT 125**  
**U S WEST Communications, Inc.**  
**Total Oregon Subj. to Separations**  
**SCHEDULE 2**  
**(\$000's)**

Line No.	Description	Annualized Test Year (14)	Issue 1m Switching Assets (14a)	Issue 2d Interest Coordination (Fixed Charges) (Post-2) (15)	Issue 4c Strategic Marketing (19)	Issue 4d(3) Affiliated Interest Charges (Post-3) (20b)	Issue 4g(1) Part 64 Still Regulated (Post-10) (23)	Issue 5a UP 96 Sale of Exchanges to PTI (Pre-11) (24)	Issue 5c UP 96 Effect on Property Taxes (26)	Issue 6a 1995 EAS Conversion (Post-7) (27)
1	Local Service & EAS	353,062.597						(3,755.138)		136.001
2	Network Access	256,618.125						(2,921.022)		
3	Long Distance	113,833.737								(867.284)
4	Directory	3,921.869						(31.317)		
5	Billing & Collection	8,388.560						(88.000)		
6	Miscellaneous	17,477.040					4,517.316	(82.106)		
7	Uncollectibles	(4,347.386)					(25.949)	48.918		5.035
8	<b>TOTAL OPERATING REVENUES</b>	<b>748,950.542</b>					<b>4,491.367</b>	<b>(6,828.665)</b>		<b>(726.248)</b>
9	Plant Specific	115,197.347					1,423.770	(2,468.940)		
10	Depreciation & Amortization	137,121.476					1,137.732	(5,180.098)		
11	Plant Nonspecific	61,001.030					1,528.833	(135.070)		
12	Access (Interstate)	3,901.760						49.441		
13	Access (Intrastate)	23,410.583						2,822.032		(296.903)
14	Customer Operations (ex. B&C)	99,995.552					3,090.908	(218.190)		
15	Billing & Collection	6,622.238						345.566		
16	Corporate Operations	91,243.368			(141.900)	(221.652)	1,210.208	(207.800)		
17	Other Gains & Losses	(352.385)					115.784			
18	<b>TOTAL OPERATING EXPENSES</b>	<b>538,140.869</b>			<b>(141.900)</b>	<b>(221.652)</b>	<b>8,507.235</b>	<b>(4,993.059)</b>		<b>(296.903)</b>
19	Net State & Local Income Taxes	10,998.698	14.524	46.237	9.365	14.629	(283.781)	(7.364)	35.546	(28.441)
20	Net Federal Income Tax	43,520.754	71.937	229.011	46.387	72.458	(1,415.592)	(36.474)	176.063	(140.869)
21	Other Taxes	32,234.304					103.819	(87.744)	(538.582)	1.578
22	<b>TOTAL OPERATING TAXES</b>	<b>86,753.756</b>	<b>86.461</b>	<b>275.248</b>	<b>55.752</b>	<b>87.087</b>	<b>(1,595.554)</b>	<b>(131.582)</b>	<b>(326.973)</b>	<b>(167.732)</b>
23	<b>NET OPERATING INCOME</b>	<b>124,055.817</b>	<b>(86.461)</b>	<b>(275.248)</b>	<b>86.148</b>	<b>134.565</b>	<b>(2,420.314)</b>	<b>(1,704.024)</b>	<b>326.973</b>	<b>(261.613)</b>
24	Plant in Service	2,174,367.592	(242.131)				8,707.515	(90,202.348)		
25	Plant Adjustment	2,649.594					9.758			
26	Materials & Supplies	19,944.722					95.285			
27	Accumulated Depreciation	(848,419.469)	(6,842.558)				(3,405.456)	29,412.068		
28	Accumulated Amortization	(11,909.855)								
29	Accumulated Deferred Taxes	(278,872.734)					(932.468)	8,110.481		
30	<b>NET AVERAGE RATE BASE</b>	<b>1,057,759.850</b>	<b>(7,084.689)</b>				<b>4,474.632</b>	<b>(52,679.799)</b>		

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**Docket UT 125**  
**U S WEST Communications, Inc.**  
**Total Oregon Subj. to Separations**  
**SCHEDULE 2**  
**(\$000's)**

*Issue 8h      Issue 8i      Issue 8m*

Line No.	Description	Aircraft (44)	Advertising (45)	Purchase Rebates (49)
1	Local Service & EAS			
2	Network Access			
3	Long Distance			
4	Directory			
5	Billing & Collection			
6	Miscellaneous			
7	Uncollectibles			
<b>8</b>	<b>TOTAL OPERATING REVENUES</b>			
9	Plant Specific			(477,846)
10	Depreciation & Amortization			
11	Plant Nonspecific			(37,517)
12	Access (interstate)			
13	Access (intrastate)			
14	Customer Operations (ex. B&C)			
15	Billing & Collection			
16	Corporate Operations			(254,768)
17	Other Gains & Losses			
<b>18</b>	<b>TOTAL OPERATING EXPENSES</b>			<b>(770,129)</b>
19	Net State & Local Income Taxes			50,829
20	Net Federal Income Tax			251,755
21	Other Taxes			
<b>22</b>	<b>TOTAL OPERATING TAXES</b>			<b>302,584</b>
<b>23</b>	<b>NET OPERATING INCOME</b>			<b>467,545</b>
24	Plant in Service			
25	Plant Adjustment			
26	Materials & Supplies			
27	Accumulated Depreciation			
28	Accumulated Amortization			
29	Accumulated Deferred Taxes			
<b>30</b>	<b>NET AVERAGE RATE BASE</b>			

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**Pocket UT 125**  
**U S WEST Communications, Inc.**  
**Total Oregon Subj. to Separations**  
**SCHEDULE 2**  
**(\$000's)**

Line No.	Description	Issue 6b 1998 EAS Conversion (28)	Issue 6d Switched Access Filing (Post-11) (30)	Issue 7b AT&T Unfunded Postretirement Benefits Cost-Sharing Agreement (33)	Issue 7c Disability Pension Payment True-up (Post-8) (34)	Issue 8b(1) 1998 Occupational Wage Increases (Pre-18) (38)	Issue 8c SFAS 109 Accounting for Income Taxes (39)	Issue 8d SFAS 112 Accounting for Post- employment Benefits (40)	Issue 8e Ballot Measure 5 Property Taxes (Post-6) (41)	Issue 8g UM 767 Oregon Depreciation Repre- scription (Post-14) (43)
1	Local Service & EAS	1,129,882								
2	Network Access		(2,526,514)							
3	Long Distance	(2,578,245)								
4	Directory									
5	Billing & Collection									
6	Miscellaneous									
7	Uncollectibles	8,503	4,010							
8	<b>TOTAL OPERATING REVENUES</b>	<b>(1,439,860)</b>	<b>(2,522,504)</b>							
9	Plant Specific					2,594,391				
10	Depreciation & Amortization								28,897,735	
11	Plant Nonspecific					1,354,929				
12	Access (interstate)									
13	Access (intrastate)	(538,090)	(1,910,499)							
14	Customer Operations (ex. B&C)					1,795,747				
15	Billing & Collection									
16	Corporate Operations			(492,278)	(274,761)	268,821				
17	Other Gains & Losses									
18	<b>TOTAL OPERATING EXPENSES</b>	<b>(538,090)</b>	<b>(1,910,499)</b>	<b>(492,278)</b>	<b>(274,761)</b>	<b>6,013,888</b>				<b>28,897,735</b>
19	Net State & Local Income Taxes	(60,738)	(40,311)	32,490	18,134	(396,917)		222,064		(1,889,268)
20	Net Federal Income Tax	(300,838)	(199,662)	160,926	89,819	(1,965,940)		1,099,892		(9,357,601)
21	Other Taxes	18,506	(1,232)					(3,364,612)		
22	<b>TOTAL OPERATING TAXES</b>	<b>(343,070)</b>	<b>(241,205)</b>	<b>193,416</b>	<b>107,953</b>	<b>(2,362,857)</b>		<b>(2,042,656)</b>		<b>(11,246,869)</b>
23	<b>NET OPERATING INCOME</b>	<b>(558,700)</b>	<b>(370,800)</b>	<b>298,862</b>	<b>186,808</b>	<b>(3,651,021)</b>		<b>2,042,656</b>		<b>(17,650,866)</b>
24	Plant in Service									
25	Plant Adjustment									
26	Materials & Supplies									
27	Accumulated Depreciation								(14,448,868)	
28	Accumulated Amortization									
29	Accumulated Deferred Taxes								5,676,960	
30	<b>NET AVERAGE RATE BASE</b>									<b>(8,771,908)</b>

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Page 2

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Schedule 3

Docket UT 125  
U S WEST Communications, Inc.  
SEPARATIONS FACTORS

9.7 - 171

Line No.		Factors Used in Columns 14-52
<b>Revenues:</b>		
1	Local Service & EAS	100.0000%
2	Network Access	25.4078%
3	Long Distance	81.6939%
4	Directory	100.0000%
5	Billing & Collection	29.5234%
6	Miscellaneous	85.1078%
7	Uncollectibles	<i>calculated</i>
<b>Expenses:</b>		
8	Plant Specific	71.8180%
9	Depreciation & Amortization	70.3365%
10	Plant Nonspecific	70.6973%
11	Access (interstate)	0.0000%
12	Access (intrastate)	100.0000%
13	Customer Operations (ex. B&C)	79.4299%
14	Billing & Collection	67.7627%
15	Corporate Operations	74.2140%
16	Other Gains & Losses	70.5640%
17	Average Expenses	<i>sum</i>
<b>Rate Base:</b>		
18	Plant in Service	71.0911%
19	Plant Adjustment	71.1297%
20	Materials & Supplies	72.2069%
21	Accumulated Depreciation	71.0237%
22	Accumulated Amortization	73.7906%
23	Accumulated Deferred Taxes	71.2241%
24	Average Rate Base	<i>sum</i>
<b>Other Taxes:</b>		
25	PUC Fee	<i>calculated</i>
26	Based on Book Cost (Property Taxes)	<i>calculated</i>
27	Franchise Fees	100.0000%
28	Portland License & Permit	100.0000%
29	FCC Fee	0.0000%
30	Other Operating Taxes	71.2300%
31	Average Other Taxes	<i>sum</i>
<b>State Income Tax:</b>		
32	Net Deferred Depreciation & Leases	70.3365%
33	Depreciation on side records	70.3365%
34	Interest	<i>calculated</i>
35	Net Other Additions (Deductions)	71.2300%
36	Calculated State Income Tax	<i>calculated</i>
37	Prior Deferred State Income Tax	70.0031%
38	Current State Income Tax	<i>sum</i>
39	Net Portland Income Taxes	71.2300%
39	Current Deferred State Income Tax	70.0031%
40	Average State Income Tax	<i>sum</i>
<b>Federal Income Tax:</b>		
41	Net Deferred Depreciation & Leases	70.3365%
42	Depreciation on side records	70.3365%
43	Current State Income Tax	<i>calculated</i>
44	Current Portland Income Taxes	71.2300%
45	Interest	<i>calculated</i>
46	Net Other Additions (Deductions)	71.2300%
47	Calculated Federal Income Tax	<i>calculated</i>
48	Prior Deferred Federal Income Tax	70.0031%
49	Current Federal Income Tax	<i>sum</i>
50	Current Deferred Federal Income Tax	70.0031%
51	Investment Tax Credits	71.0981%

Docket UT 125  
U S WEST Communications, Inc.  
NET-TO-GROSS FACTORS

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Line No.	Local Service (a)	Network Access (b)	Long Distance (c)
1 Base Year	<u>100.0000%</u>	<u>100.0000%</u>	<u>100.0000%</u>
Uncollectibles:			
2 Local	0.8911%	--	--
3 Access	--	0.1587%	--
4 Long Distance	--	--	0.7203%
5 Directory	--	--	--
6 Billing & Collection	--	--	--
7 Other	--	--	--
8 Net Intrastate Uncollectibles	<u>0.8911%</u>	<u>0.1587%</u>	<u>0.7203%</u>
9 Franchise Fees	1.7990%	--	--
10 PUC Fee	<u>0.2000%</u>	<u>0.2000%</u>	<u>0.2000%</u>
11 State Income Tax (SIT) Base	97.1099%	99.6413%	99.0797%
12 SIT Statutory Rate	6.6000%	6.6000%	6.6000%
13 SIT Effective Rate	<u>6.4093%</u>	<u>6.5763%</u>	<u>6.5393%</u>
14 Federal Income Tax (FIT) Base	90.7006%	93.0650%	92.5404%
15 FIT Statutory Rate	35.0000%	35.0000%	35.0000%
16 FIT Effective Rate	<u>31.7452%</u>	<u>32.5728%</u>	<u>32.3891%</u>
17 NET-TO-GROSS MULTIPLIER	<u>169.6200%</u>	<u>165.3110%</u>	<u>166.2470%</u>

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

RECEIVED

UT 125

DEC 11 1996

Public Utility Commission of Oregon  
Administrative Hearings Division

In the Matter of the  
Application of U S WEST  
Communications, Inc.,  
for an Increase in Revenues.

SECOND STIPULATION

I. PARTIES

The initial parties to this Second Stipulation are U S WEST Communications, Inc. (USWC), and the Public Utility Commission of Oregon's staff (staff). This stipulation will be made available to the other parties to this Docket, who may participate by signing and filing a copy of this Second Stipulation.

II. RECITALS

On December 18, 1995, USWC filed a petition for an increase in revenues pursuant to Order No. 91-1598. Staff subsequently conducted extensive discovery. Staff submitted a settlement offer to USWC. After exchanges of information and discussions, staff and USWC entered into a stipulation on August 2, 1996 ("the first Stipulation"), for the purpose of partially resolving issues in the revenue requirement phase (Phase I) of this Docket.

After further exchanges of information and discussions, staff and USWC enter into this Second Stipulation for the purpose of resolving some other issues in the revenue requirement phase (Phase I) of this Docket. This Second Stipulation represents only a partial settlement, and all issues not settled herein, or in the first Stipulation, remain contested.

III. STIPULATION

USWC and staff stipulate and agree as follows:

1. Issue 1b involves Net-to-Gross Factors. Staff and USWC agree to use the net-to-gross factors shown in Exhibit Staff/3, Lambeth/4; Columns d through f. This agreement

DOCKETED

1 supplements the partial settlement of Issue No. 1 in the first stipulation, page 2.

2           2.     Issue 4g(1) involves the Part 64 Still Regulated portion of Issue 4 (Affiliated  
3 Interests and Corporate Allocations). In settlement of Issue 4g(1), Staff and USWC agree to:

4                 (a)     Allocate 74.65 percent of USWC's total Oregon miscellaneous revenues  
5                 to intrastate operations.

6                 (b)     Separate USWC's total Oregon expenses between interstate and  
7                 intrastate jurisdictions.

8 The resulting adjustment is shown in Exhibit Revised Staff/3, Lambeth/10, Column 23.

9           3.     Issue 4g(2) involves the imputation of revenues to render the Part 64 Still  
10 Regulated services revenue-requirement-neutral. Issue 6c reflects the normalization of  
11 Tariff, Price and Contract Changes made after January 1, 1995. Staff and USWC agree that  
12 \$94,538 of net revenues associated with Issue 6c is attributable to Voice Messaging Service  
13 promotions. Therefore, staff and USWC agree that, if the Commission adopts both of staff's  
14 adjustments under Issues 4g(2) and 6(c), the imputation amount under Issue 4g(2) should be  
15 reduced by \$94,538 to prevent double-counting of new Voice Mail Service revenues. If the  
16 Commission adopts neither, or only one, of these two staff adjustments, no change is  
17 required.

18           4.     Issue 7a(1) involves the SFAS 106 Postretirement Benefits portion of Issue 7  
19 (Employee Benefits). In settlement of Issue 7a(1), Staff and USWC agree on the amount of  
20 the adjustment as follows:

21                 (a)     If the Commission adopts staff's recommendation to amortize the  
22                 Transition Benefit Obligation (TBO) as though no curtailments related to  
23                 reengineering have been or will be recorded, then the amount of the adjustment shall  
24                 be as shown in Exhibit Revised Staff/3, Lambeth/17, Column 32; or

25                 (b)     If the Commission adopts USWC's position that curtailment expenses  
26                 will continue during some portion of the period when rates from this Docket are in



1 effect and should be spread over the entire rate period, then the Commission should  
2 adopt USWC's adjustment as shown in Exhibit USW/92, Total State, page 8, column  
3 32b.

4 5. Issue 7d involves the Pension Accounting portion of Issue 7 (Employee  
5 Benefits). In settlement of Issue 7d, staff and USWC agree to (1) leave the negative expense  
6 in USWC's operating expenses, (2) leave accumulated deferred taxes in USWC's rate base,  
7 and (3) add the pension asset to the rate base. The resulting adjustment is shown in Exhibits  
8 Revised Staff/3, Lambeth/17, Column 35, and USW/92, Total State, page 9, Column 35b.

9 6. Issue 7e involves the End of Compensated Absences Accrual portion of Issue 7  
10 (Employee Benefits). In settlement of Issue 7e, staff and USWC agree to adjust the test year  
11 for this accrual, which will end in December 1997. The resulting adjustment is shown in  
12 Exhibits Revised Staff/3, Lambeth/17, Column 36, and USW/92, Total State, page 9,  
13 Column 36.

14 7. Issue 8b(2) involves the Other Payroll Changes portion of Issue 8 (Operating  
15 Expenses and Taxes). Staff and USWC agree that the payroll tax expenses should be  
16 increased by \$298,000. Staff and USWC also agree on how to calculate the wage increase  
17 adjustments, which are shown in Attachment 1 to this Stipulation, which attachment is  
18 incorporated herein, but USWC does not agree that the adjustments should be included in the  
19 test year.

20 8. Issue 8f involves the ORS 291.349 Income Tax Refund portion of Issue 8  
21 (Operating Expenses and Taxes). In settlement of Issue 8f, staff and USWC agree that the  
22 effective state income tax rate should be 6.27 percent (to reflect the effects of periodic tax  
23 refunds). This agreement affects USWC's current income tax expenses and the net-to-gross  
24 factor. See Exhibit Staff/1, Lambeth/71-72. However, the amount of the adjustment (see  
25 Exhibit Revised Staff/3, Lambeth/17, Column 42) depends on which of the other adjustments  
26 the Commission adopts in this Docket.

1           9. This Second Stipulation covers only the issues listed herein and shall not preclude  
2 any party from litigating any issues not covered by this Second Stipulation.

3           10. The parties agree that the agreements reached in this Second Stipulation will not  
4 be cited in other proceedings as indicative of a party's position on the issues resolved or as  
5 any type of precedent for other cases.

6           11. Although the parties stipulate and agree herein to certain amounts or figures,  
7 such agreements do not constitute any agreement or acquiescence by any party to the method  
8 or theories used by any other party in deciding to enter into this Second Stipulation. No  
9 party agrees that the method used by any other party in reaching this Second Stipulation is  
10 appropriate or superior.

11           12. The parties recommend that the Commission adopt this Second Stipulation in its  
12 entirety. The parties have negotiated this Second Stipulation as an integrated document.  
13 Accordingly, if the Commission rejects all or any part of this Second Stipulation, or adds  
14 elements to this Stipulation in any order which are not contemplated by this Stipulation, each  
15 party reserves the right to withdraw from this Stipulation upon written notice to the  
16 Commission and the other parties within fifteen (15) days of rejection.

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1 13. The parties agree that this Second Stipulation in no manner binds the  
2 Commission in ruling on this Docket and does not restrict the Commission's exercise of its  
3 discretion in this or any other proceeding.

4  
5

6 U S WEST Communications, Inc.

7 By: Molly K. Hastings  
8 Title: Senior Attorney  
9 Date: November 27, 1996

10

11 Public Utility Commission Staff

12 By: Benny Won  
13 Title: Assistant Attorney General  
14 Date: December 11, 1996

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Docket UT 125  
U S WEST Communications, Inc.  
**TOTAL OREGON**  
Issue 8b(2), Other Payroll Changes

	Payroll Changes Before Disputed Issues (a)	Issue 8a Team Incentives Included In Management Wage Base (b)	Issue 9a Reengineered Wages Included In Wage Base (c)	Total Disputed Adjustments (b)+(c) (d)	Adjusted Total (e)	
<u>1996 Payroll Changes</u>						
1 Wage Increases	1,907,271	(168,658)	(471,597)	(640,255)	1,267,016	
2 FICA, Savings Plans & Group Life	222,045	(19,636)	(47,594)	(67,229)	154,816	
3 Total 1996 Wage Adjustments	<u>2,129,316</u>	<u>(188,293)</u>	<u>(519,191)</u>	<u>(707,484)</u>	<u>1,421,832</u>	
<u>1997 Payroll Changes</u>						
4 Wage Increases	7,423,101	(169,876)	(475,003)	(644,879)	6,778,222	
5 FICA, Savings Plans & Group Life	778,915	(19,777)	(47,938)	(67,715)	711,200	
6 Total 1997 Payroll Changes	<u>8,202,016</u>	<u>(189,653)</u>	<u>(522,941)</u>	<u>(712,594)</u>	<u>7,489,422</u>	
7 Total Payroll Changes	<u>10,331,332</u>	<u>(377,946)</u>	<u>(1,042,132)</u>	<u>(1,420,078)</u>	<u>8,911,254</u>	
<u>Account Distribution:</u>						
8 Plant Specific	15.54%	1,605,489	(58,733)	(161,947)	(220,680)	1,384,809
9 Plant Nonspecific	22.80%	2,355,544	(86,172)	(237,606)	(323,778)	2,031,766
10 Customer Operations	30.12%	3,111,797	(113,837)	(313,890)	(427,727)	2,684,070
11 Corporate Operations	31.54%	3,258,502	(119,204)	(328,689)	(447,893)	2,810,609
12 Total Operating Expense		<u>10,331,332</u>	<u>(377,946)</u>	<u>(1,042,132)</u>	<u>(1,420,078)</u>	<u>8,911,254</u>

2ND REVISED STAFF EXHIBIT

PRICE CHANGES MADE AFTER JANUARY 1, 1995

Fig. No.	Tariff Data				Number of Days to Add Annualized Test Year Col. 2 - Jan. 1, 1995	Annualized Adjustment			
	Tariff Filing	Effective Date	Annual Revenues Per USWC's Work Papers Supporting the Filings	Annual Expenses Per USWC's Work Papers Supporting the Filings		Revenues Col. 3 + 365 days x Col. 5	Expenses Col. 3 + 365 days x Col. 5	Net Effect (6)-(7)-(8)	
									(1)
	(1)	(2)	(3)	(4)		(5)	(6)	(7)	(8)
1	PL 95-4015	27-Feb-95	1,253,461	321,095	57	195,746	50,144	145,602	
2	PL 95-003	15-Mar-95	80,472	0	73	16,094	0	16,094	
3	PL 95-4019	15-Mar-95	90,079	0	73	18,016	0	18,016	
4	PL 95-4001	05-Apr-95	2,765,641	1,383,611	94	712,247	356,327	355,920	
5	PL 95-020	18-Sep-95	747,760	42,674	260	532,651	30,398	502,253	
6	PL 95-018	18-Sep-95	1,174,288	344,684	260	836,479	245,457	591,022	
Jan. through Sep. 1995			6,111,701	2,091,968		2,311,283	682,826	628,907	
7	PL 95-031	16-Oct-95	0	0	365	0	0	0	
8	C1-95	29-Nov-95	(44,304)	0	365	(44,304)	0	(44,304)	
9	PL 95-040	08-Dec-95	164,798	62,873	365	164,798	62,873	101,925	
10	PL 95-035	12-Dec-95	(62,668)	0	365	(62,668)	0	(62,668)	
11	PL 95-042	04-Jan-96	992,274	576,075	365	992,274	576,075	416,199	
12	PL 96-002	27-Feb-96	1,907,686	1,190,573	365	1,907,686	1,190,573	717,113	
13	PL 96-011	15-Mar-96	4,170,613	2,202,900	365	4,170,613	2,202,900	1,967,713	
14	PL 96-017	15-Mar-96	1,695,836	0	365	1,695,836	0	1,695,836	
15	PL 96-018	01-Apr-96	37,079	10,338	365	37,079	10,338	26,741	
16	C2-95	10-Apr-96	1,819,765	1,660,681	365	1,819,765	1,660,681	159,084	
17	PL 96-027	30-Apr-96	55,782	63,508	365	55,782	63,508	(7,726)	
18	PL 96-028	30-Apr-96	291,671	367,421	365	291,671	367,421	(75,750)	
19	PL 96-029	13-May-96	2,003,430	667,040	365	2,003,430	667,040	1,336,390	
20	PL 96-026	20-May-96	130,574	94,413	365	130,574	94,413	36,161	
21	PL 96-033	06-Jul-96	463,635	442,498	365	463,635	442,498	21,037	
LOCALS (R/C 5000-5089)			18,737,772	9,430,288		15,997,304	8,020,646	7,916,658	
22	PL 95-4029	28-Apr-95	(285,000)	0	117	(91,356)	0	(91,356)	
Jan. through Sep. 1995			(285,000)	0		(91,356)	0	(91,356)	
23	PL 95-024	18-Oct-95	405,132	182,923	365	405,132	182,923	222,209	
24	PL 96-024	04-Apr-96	(58,060)	0	365	(58,060)	0	(58,060)	
25	PL 96-025	25-Apr-96	(198,210)	0	365	(198,210)	0	(198,210)	
26	PL 96-023	26-Apr-96	96,389	0	365	96,389	0	96,389	
TOLL (R/C 6100-6169)			(39,749)	(182,823)		(53,895)	(182,823)	(29,028)	
TOTAL			18,090,972	9,443,274		15,037,380	8,203,669	6,833,711	



Docket UT 125  
 U S WEST Communications, Inc.  
**ISSUE 11, CALCULATION OF REFUND**  
 (\$ Thousands)

97-171

Line No.	Issue Number and Description (a)	Appendix A Column Number (b)	Proposals		Order (e)
			Staff (Note 1) (c)	USWC (Notes 1-2) (d)	
<b>12-MONTH REFUND WITH INTEREST:</b>					
1	Total Local and Access Charge Refunds (from May 1, 1996, through April 30, 1997)				(\$96,219)
2	Total Interest Compounded at 11.2%				(5,569)
3	<b>TOTAL 12-MONTH REFUND WITH INTEREST</b>				<b>(\$101,788)</b>
<b>BASIS OF REFUND:</b>					
4	Estimates and Forecasts	Page 2, line 49	(\$71,021)	--	(\$70,923)
5	Imputations	Page 2, line 52	(3,862)	--	(3,862)
6	Disallowances of Recorded Data	Page 2, line 57	(14,995)	--	(14,988)
7	Total Disputed Adjustments		(\$89,878)	\$0	(\$89,773)
8	Completely Settled Issues	Page 2, line 77	45,851	45,851	45,851
9	Cost of Capital	Page 2, line 86	(93)	11,858	(93)
10	Other Adjustments	Page 3, line 104	(56,286)	(34,734)	(53,422)
11	<b>TOTAL</b>		(\$100,406)	\$22,975	(\$97,437)
12	Ballot Measure 5 Refunds (Note 3)		877	877	877
13	Local Revenue Requirement Subject to Refund		(\$99,529)	\$0	
14	Difference in Revenue Requirement Caused by Access Charge Net-to-Gross Factors				341
15	<b>TOTAL 12-MONTH REFUND (before Interest)</b>				<b>(\$96,219)</b>
<b>ADJUSTED TEST YEAR:</b>					
16	Local Revenues	Appendix A, Col. 55			\$390,730 86.2%
17	Access Revenues	Appendix A, Col. 55			62,674 13.8%
18	Total Revenues Subject to Rate Reductions				<u>\$453,404 100%</u>
19	Rate Base	Appendix A, Col. 55			\$759,333
20	Rate of Return on Rate Base				8.767%
21	Return on Rate Base Authorized				\$66,571
22	Net Operating Income	Appendix A, Col. 55			124,219
23	<b>ANNUAL NET OPERATING INCOME REQUIREMENT</b>				<u>(\$57,648)</u>
<b>CALCULATION OF LOCAL REFUND:</b>					
24	Annual Net Operating Income Requirement				(\$57,648)
25	Local Net-to-Gross Factor (Note 4)				169.023%
26	Local Revenue Requirement				(\$97,437)
27	Local Revenues as a Percent of Total Revenues Subject to Refund				86.2%
28	Portion of Total Refund Applicable to Local				(\$83,991)
29	Ballot Measure 5 Refunds (Note 3)				877
30	Local Refund (before Interest)				(\$83,114)
31	Interest Compounded at 11.2% (May 1, 1996, through April 30, 1997) (see page 4)				(4,811)
32	<b>12-MONTHS' TOTAL LOCAL REFUND (with 12 months' Interest)</b>				<b>(\$87,925)</b>
<b>CALCULATION OF ACCESS CHARGE REFUND:</b>					
33	Net Operating Income Requirement				(\$57,648)
34	Local Net-to-Gross Factor (Note 4)				164.728%
35	Access Charge Revenue Requirement				(\$94,962)
36	Access Revenues as a Percent of Total Revenues Subject to Refund				13.8%
37	Access Refund (before Interest)				(\$13,105)
38	Interest Compounded at 11.2% (May 1, 1996, through April 30, 1997) (see page 4)				(759)
39	<b>12-MONTHS' TOTAL ACCESS CHARGE REFUND (with 12 months' Interest)</b>				<b>(\$13,863)</b>

**Notes:**

- (1) Amounts are shown after Stipulation Nos. 1-2, based on the local net-to-gross factor (169.023%). See Staff Exhibit 89 Lambeth 1.
- (2) Issue 14 is shown as revised by USWC on December 16, 1996.
- (3) For the property tax refund, see Staff Exhibit 1 Lambeth 70, footnote 58.
- (4) For the net-to-gross factors, see Stipulation No. 1, Part III, paragraph 1(b), and Staff Revised Exhibit 3 Lambeth 4, line 17, Columns d-e.

Docket UT 125  
 U S WEST Communications, Inc.  
**ISSUE 11, CALCULATION OF REFUND**  
 (\$ Thousands)

97-171

Line No.	Issue Number and Description (a)	Appendix A	Proposals		Order (e)
		Column Number (b)	Staff (Note 1) (c)	USWC (Notes 1-2) (d)	
<b>Estimates and Forecasts:</b>					
40	3b, U S WEST Direct Directory Growth	16a	(3,575)	--	(3,575)
41	4d(1), Fax Services	20	(120)	--	(120)
42	4d(2), Growth In Fax Services	20a	(704)	--	(703)
43	4g(2), VMS Revenues	23a2	--	--	97
44	6c, Tariff, Price & Contract Changes	29	(9,351)	--	(9,351)
45	8j, Average Growth In Access Lines	46	(24,135)	--	(24,135)
46	8i, Information Management Systems	48	(928)	--	(928)
47	9a, Service Reengineering Costs	50	(25,558)	--	(25,558)
48	9b, Extraordinary Expenses	51	(6,650)	--	(6,650)
49	<b>TOTAL ESTIMATES AND FORECASTS</b>		<b>(71,021)</b>	<b>--</b>	<b>(70,923)</b>
<b>Imputations:</b>					
50	4g(2), Part 64 Still Regulated - Revenue Requirement	23a1	(3,556)	--	(3,556)
51	7e, End of Compensated Absences Accrual	36	(306)	--	(306)
52	<b>TOTAL IMPUTATIONS</b>		<b>(3,862)</b>	<b>--</b>	<b>(3,862)</b>
<b>Disallowances of Recorded Data:</b>					
53	8a, Team Awards & Officers' Incentives (Bonuses)	37	(4,008)	--	(4,008)
54	8b(2), Wage Increases Related to Bonuses	38e	(289)	--	(289)
55	8b(2), Wage Increases Related to Reengineering	38f	(798)	--	(771)
56	9c, Service Quality	52	(9,900)	--	(9,920)
57	<b>TOTAL DISALLOWANCES OF RECORDED DATA</b>		<b>(14,995)</b>	<b>--</b>	<b>(14,988)</b>
<b>Adjustments to Include in the Refund Calculation</b> where the amounts depend on whose adjustments are adopted:					
Completely Settled Issues:					
58	2d, Interest Coordination	15	564	564	564
59	4a, Rent Compensation Study - Stipulated Portion	17	16,830	16,830	16,830
60	4c, Strategic Marketing	19	(108)	(108)	(108)
61	4d(3), Affiliated Interest Charges	20b	(169)	(169)	(169)
62	4g(1), Part 64 Still Regulated	23	3,556	3,556	3,556
63	5b, UP 96 Stipulation	25	(1,912)	(1,912)	(1,912)
64	5c, UP 96 Effect on Property Taxes	26	(393)	(393)	(393)
65	6a-b, 1995-1996 EAS Conversions	27-28	1,387	1,387	1,387
66	6d, Switched Access Filings	30	(338)	(338)	(338)
67	7b, AT&T Unfunded Postretirement Benefit Sharing	33	(376)	(376)	(375)
68	7c, Disability Pension Payment True-up	34	(209)	(209)	(209)
69	7d, Pension Accounting	35	5,450	5,450	5,450
70	8b(1), 1996 Occupational Wage Increases	38	4,563	4,563	4,563
71	8b(2), Other Payroll Changes - Payroll Taxes	38c	228	228	228
72	8c-d, SFAS 109 and 112 - Changes in Accounting	39-40	--	--	--
73	8e, Ballot Measure 5 Property Taxes	41	(2,639)	(2,639)	(2,639)
74	8g, Oregon Depreciation Represcription	43	19,989	19,989	19,989
75	8h-1, Aircraft and Advertising	44-45	--	--	--
76	8i, Purchase Rebates	49	(573)	(573)	(573)
77	<b>TOTAL SETTLED ISSUES</b>		<b>45,851</b>	<b>45,851</b>	<b>45,851</b>
2, Cost of Capital Issues:					
78	1a(2), Annualized Test Year	14	(4,383)	7,038	(4,383)
80	4a, Rent Compensation Study	17	4,394	4,626	4,394
81	4e, Affiliated Interest Return Component	21	(104)	--	(104)
82	4g(1), Part 64 Still Regulated	23	--	28	--
83	5b, UP 96 Stipulation	25	--	(120)	--
84	7d, Pension Accounting	35	--	340	--
85	8g, Oregon Depreciation Represcription	43	--	(54)	--
86	<b>TOTAL COST OF CAPITAL ISSUES</b>		<b>(93)</b>	<b>11,858</b>	<b>(93)</b>



Docket UT 125  
U S WEST Communications, Inc.  
**ISSUE 11, CALCULATION OF REFUND**  
(\$ Thousands)

97-171

Line No.	Issue Number and Description (a)	Appendix A Column Number (b)	Proposals		Order (e)
			Staff (Note 1) (c)	USWC (Notes 1-2) (d)	
Other Adjustments:					
87	1m(2), Switching Assets	14a	(617)	--	(617)
88	3a, U S WEST Direct Directory Imputation	16	(55,605)	(34,652)	(55,605)
89	4a, Rent Compensation Study - Floor Space	17	(776)	--	--
90	4b, UM 753 Affiliate & Certain Leases	18	(64)	249	(64)
91	4d(4), FCC License	20c	(391)	--	--
92	4f, Headquarters Allocations	22	(2,815)	(1,351)	(1,115)
93	4h, Nonregulated Costs Removed in Col. 18-21	23b	12	--	12
94	5a, UP 96 Sale of Exchanges	24	(3,160)	(1,371)	(3,179)
95	7a(1), SFAS 106 Postretirement Benefits	32	416	1,313	416
96	7a(2), Unfunded SFAS 106 Postretirement Benefits	32a	(485)	--	(485)
97	8b(2), Other Payroll Changes - Wage Increases	38a	7,910	--	7,910
98	8f, ORS 291.349 Income Tax Refund	42	(748)	(811)	(738)
99	8k, Marketing Accrual Reversal	47	(403)	--	(403)
100	8m, PUC Fee	49a	232	--	231
101	10, Separations	53	228	--	219
102	14, Effects of Docket UM 351 on Access Revenues (Note 2)		--	1,889	--
103	Roundings		--	--	(4)
104	TOTAL OTHER ADJUSTMENTS TO INCLUDE IN THE REFUND CALCULATION, where amounts depend on whose adjustments are adopted		<u>(56,286)</u>	<u>(34,734)</u>	<u>(63,422)</u>
105	Annual Local Revenue Requirement Subject to Refund		(100,406)	22,975	(97,437)
106	Ballot Measure 5 Refunds (Note 3)		877	877	877
107	LOCAL REVENUE REQUIREMENT SUBJECT TO REFUND		<u>(99,529)</u>	<u>0</u>	<u>(96,560)</u>

**Notes:**

- (1) Amounts are shown after Stipulation Nos. 1-2, based on the local net-to-gross factor (169.023%). See Staff Exhibit 89 Lambeth 1.
- (2) Issue 14 is shown as revised by USWC on December 16, 1996.
- (3) For the property tax refund, see Staff Exhibit 1 Lambeth 70, footnote 58.
- (4) For the net-to-gross factors, see Stipulation No. 1, Part III, paragraph 1(b), and Staff Revised Exhibit 3 Lambeth 4, line 17, Columns d-e.

Docket UT 125  
 U S WEST Communications, Inc.  
**ISSUE 11, CALCULATION OF INTEREST ON REFUND**  
 (\$ Thousands)

97-171

Line No.	Local Revenues			Access Charges			Total Monthly Amount (g)	
	Monthly Refund (a)	Interest (b)	Balance (c)	Monthly Refund (d)	Interest (e)	Balance (f)		
1	Interest Rate - 11.20%							
2	May 1996	(6,926.2)	(32.3)	(6,958.5)	(1,092.1)	(5.1)	(1,097.2)	(8,055.7)
3	June 1996	(6,926.2)	(97.3)	(13,982.0)	(1,092.1)	(15.3)	(2,204.6)	(8,130.9)
4	July 1996	(6,926.2)	(162.8)	(21,071.0)	(1,092.1)	(25.7)	(3,322.4)	(8,206.8)
5	August 1996	(6,926.2)	(229.0)	(28,226.2)	(1,092.1)	(36.1)	(4,450.6)	(8,283.4)
6	September 1996	(6,926.2)	(295.8)	(35,448.2)	(1,092.1)	(46.6)	(5,589.3)	(8,360.7)
7	October 1996	(6,926.2)	(363.2)	(42,737.6)	(1,092.1)	(57.3)	(6,738.7)	(8,438.8)
8	November 1996	(6,926.2)	(431.2)	(50,095.0)	(1,092.1)	(68.0)	(7,898.8)	(8,517.5)
9	December 1996	(6,926.2)	(499.9)	(57,521.1)	(1,092.1)	(78.8)	(9,069.7)	(8,597.0)
10	January 1997	(6,926.2)	(569.2)	(65,016.5)	(1,092.1)	(89.7)	(10,251.5)	(8,677.2)
11	February 1997	(6,926.2)	(639.1)	(72,581.8)	(1,092.1)	(100.8)	(11,444.4)	(8,758.2)
12	March 1997	(6,926.2)	(709.8)	(80,217.8)	(1,092.1)	(111.9)	(12,648.4)	(8,840.0)
13	April 1997	(6,926.2)	(781.0)	(87,925.0)	(1,092.1)	(123.1)	(13,863.6)	(8,922.4)
14	<b>TOTAL</b>	<u>(83,114.4)</u>	<u>(4,810.6)</u>		<u>(13,105.2)</u>	<u>(758.4)</u>		<u>(101,788.6)</u>



UT 125-- Advice No. 1668, Effective 4/15/97.  
Dated 1/15/97. (Note: Past retention and unavailable.)



ORDER NO. 96-183

ENTERED JUL 16 1996

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UT 80(1)

In the Matter of the Petition of U S WEST )  
COMMUNICATIONS, INC., for Clarification ) ORDER  
and Request for Ruling. )

DISPOSITION: REFUND PROCEDURES CLARIFIED

**Introduction**

In response to reduced service quality by U S WEST Communications, Inc., (USWC), this Commission recently terminated the company's alternative form of regulation (AFOR) plan authorized in Order No. 91-1598. USWC subsequently filed this Petition for Clarification and Request for Ruling concerning the interpretation of Order No. 91-1598 with respect to the "procedures to be followed or the rates to be charged by USWC in the event the [AFOR] is terminated prematurely[.]" USWC contends that, in determining whether a refund is warranted, we must review the company's actual earnings for the period during which interim rates were in effect.

Staff filed a reply to USWC's petition and disputes the company's interpretation of the refund provisions. It contends that the January 1 to September 30, 1995, annualized test year, as modified by adjustments ordered in pending docket UT 125, should be used to determine if the company overearned during the interim rate period. On July 11, 1996, USWC filed a response to Staff's reply.

**Discussion**

In November 1991, the Commission offered USWC an AFOR plan under terms and conditions set forth in Order No. 91-1598. USWC accepted the offer, and the AFOR was implemented effective January 1, 1992.

Among other things, Order No. 91-1598 contained the method for determining the amount of refund by USWC upon a premature termination of the AFOR. The relevant language in that order provides:

The Commission finds that the [AFOR] stipulation should be modified to include a provision which protects USWC and its customers in the event the Plan is terminated prematurely due to one of the [specified conditions.] We propose that Paragraph 10 should be amended to include the following language[:]

\* \* \* \* \*

(2) If the Commission declares the plan terminated, it may also order USWC to refrain from making any further changes in rates or terms of price listed services. \* \* \* The Commission may also initiate an investigation to determine the rates and terms of service which should be placed in effect on a permanent basis.

(3) Unless otherwise ordered by the Commission, rates authorized under (2) of this subparagraph after the plan has been terminated shall be considered interim rates subject to refund. The amount subject to refund with interest shall be that portion of USWC's earnings which the Commission finds have exceeded a reasonable rate of return, commencing with the date of the order terminating the plan and ending with the date that permanent rates are set and are in effect. For purposes of determining the amount of the refund, the Commission shall not be bound by the provisions of this paragraph or any other provision of the Plan.

\* \* \* \* \*

The amendments proposed by the Commission are intended to remove any uncertainty regarding the procedures to be followed in the event the Plan is prematurely modified or terminated. The changes will also prevent USWC from over or under earning while proceedings are held to establish new permanent rates. To clarify:

Subparagraph (2) provides that the Commission may freeze the rates charged by USWC at the levels in effect on the date the plan is terminated. The Commission would likely choose this option if the Plan is terminated because USWC's earnings have exceeded the upper limits

established in the Plan. \* \* \* Lastly, subparagraph (2) permits the Commission to initiate a separate proceeding to determine the permanent rates to be charged.

Subparagraph (3) specifies that the rates in effect from the date the plan is terminated until the date new permanent rates are set shall be interim rates subject to refund. A refund will take place only where USWC has been determined to have been overearning. *The amount of any refund will equal the difference between the amount USWC is actually earning and the amount subsequently found to be reasonable.* Any refunds will accrue interest at USWC's authorized rate of return on rate base.

Order No. 91-1598 at 27-29 (footnote omitted) (emphasis added).

Relying on the italicized language, USWC contends that, now that the AFOR has been terminated, our refund determination must be based on an examination of the company's actual earnings during the period rates are interim. Comparing the process to a true-up of base earnings in an application for deferral under ORS 759.200(4), it argues that earnings cannot be adjusted for disallowances imposed retroactively, for annualization of intra-period events, or normalization adjustments for nonrecurring and unusual events.

Staff disputes USWC's assertions and presents a different interpretation of the language cited above. It contends that the amount subject to refund is equal to the difference between the permanent rate level established by the Commission and the current, interim rate level, assuming that the latter amount of revenues is greater than the former. It argues that the Commission used the term "interim rates" to refer to the commonly understood method of refund determination used in ORS 757.215(4) and 759.185(4).

### Resolution

In this proceeding, we are asked to resolve a dispute between USWC and Staff concerning what financial information should be used to determine whether the utility must refund a portion of interim rates to customers. Our resolution of that issue, however, need not be based on the specific wording of any provision contained in Order No. 91-1568. As the last sentence of paragraph (3) set forth above expressly states: "For purposes of determining the amount of the refund, *the Commission shall not be bound by the provisions of this paragraph or any other provision of the Plan.*" Order No. 91-1598 at 28 (emphasis added). Accordingly, the terms of the accepted plan clearly authorize us to determine the amount of refund through any legal process we find reasonably protects USWC and its customers.

With that clarification, we conclude that a refund procedure similar to that in ORS 757.215(4) and 759.185(4) should be used to determine what amount of refund, if any, is warranted during the period of interim rates. The amount subject to refund by USWC should be



equal to the difference between the permanent rate level we establish in Docket UT 125 and the current interim rate level. This method, we believe, will adequately assure that ratepayers will be charged the proper rates under traditional rate base/rate-of-return regulation commencing with the date of order terminating the AFOR.

We reject USWC's proposed refund methodology for three primary reasons. First, USWC's proposal would limit the refund determination to an examination of the company's actual earnings, while excluding normalization adjustments for nonrecurring events, annualization adjustments for intra-period events, and new test year disallowances and imputations. As Staff notes, that proposal would allow USWC to modify its earnings picture during the period of interim rates by accelerating expenses and deferring revenues.

Moreover, the exclusion of imputations is inconsistent with other provisions of the AFOR, where USWC agreed not to challenge our authority to impute Yellow Page revenues for ratemaking purposes. See Order No. 91-1598 at 8-10, 22-24, and 42 n.32. USWC's proposal could have the effect of allowing the company to retain more revenues during the period of interim rates than it was entitled to under the AFOR, or that it would otherwise be entitled to receive under traditional rate base/rate-of-return regulation.

Finally, USWC's refund proposal could substantially increase its refund obligation. In order to determine the amount of USWC's actual revenues earned during the period of interim rates, Staff would be required to perform another examination of the company's books of account in addition to the examination of those books for the purposes of determining the company's revenue requirement in Docket UT 125. This additional review would delay the refund determination process by several months, during which time USWC's refund obligation would accrue interest at 11.2 percent, the authorized rate of return on rate base.

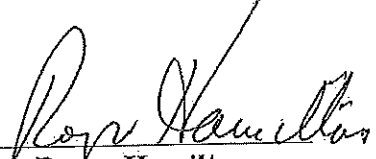
### Conclusion

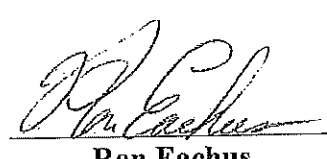
Accordingly, for the reasons stated above, we conclude that the amount subject to refund by USWC is equal to the difference between the permanent rate level established in pending docket UT 125, and the current interim level, assuming that the latter amount of revenues is greater than the former. We find this refund procedure, similar to that used in ORS 757.215(4) and 759.185(4), protects both the utility and its ratepayers now that the AFOR has been terminated prematurely due to USWC's noncompliance with its terms.

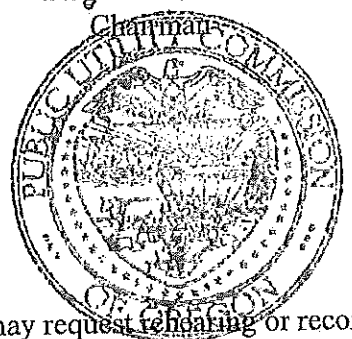
ORDER

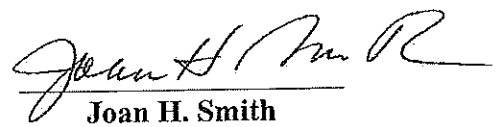
IT IS ORDERED that the annualized test year from January 1 to September 30, 1995, as modified by adjustments ordered in docket UT 125, shall be used to determine whether U S WEST Communications, Inc., overearned during the period from May 1, 1996, to the effective date of rates established in docket UT 125.

Made, entered, and effective JUL 16 1996

  
Roger Hamilton  
Chairman

  
Ron Eachus  
Commissioner



  
Joan H. Smith  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.



ORDER NO. **96-107**

ENTERED **APR 24 1996**

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 80

In the Matter of the Petition of PACIFIC )  
NORTHWEST BELL TELEPHONE )  
COMPANY dba U S WEST )  
COMMUNICATIONS, INC., to Price List ) ORDER  
Telecommunications Services Other than )  
Essential Local Exchange Services. )

DISPOSITION: STIPULATION TERMINATING AFOR ADOPTED

**Background**

In Order No. 91-1598, the Commission adopted an alternative form of regulation (AFOR) plan for U S WEST Communications, Inc. (U S WEST). Under the terms of the plan, the Commission granted U S WEST pricing flexibility within specified constraints for certain non-essential services, such as call waiting and centrex-type services. The plan also granted U S WEST the ability to earn rates of return within a broad range before rate action would be taken, and provided revenue sharing credits to customers. The Commission adopted the AFOR to help the company better respond to dramatic changes in the telecommunications industry that resulted from the emergence of competition and rapid technological advancement.

To ensure that U S WEST would maintain adequate service levels for its customers, the AFOR contained a number of technical service quality standards. This part of the plan requires U S WEST to file monthly or semi-annual information with the Commission to allow the monitoring of technical service quality. If U S WEST fails to comply with this or other provisions, the Commission is authorized to terminate or modify the AFOR prior to its expiration.

**Service Quality Problems**

During the past four years, U S WEST has experienced a severe increase of service quality problems, relating to both customer service and technical service. In December 1995, the Commission Staff (Staff) determined that U S WEST was in violation of one of the technical service quality standards set forth in the AFOR. Staff concluded that the number of customers

reporting problems with their phone service exceeded a prescribed limit for 24 of U S WEST's 77 central offices. In January 1996, Staff concluded that U S WEST had violated a second technical service standard relating to transmission loss level variation.

Pursuant to procedures adopted in Order No. 91-1598, Staff convened a settlement conference in February 1996 to discuss resolution of the technical service quality violations. Staff also scheduled a special public meeting to address those issues for March 27, 1996.

### Staff Recommendation

On March 26, 1996, Staff submitted a report to the Commission indicating that, as a result of settlement discussions, the parties had agreed to certain remedies to improve U S WEST's service quality standards. These remedies included: (1) the termination of the company's AFOR effective May 1, 1996; (2) the provision of a cellular phone loaner option for U S WEST customers who do not receive requested phone service in a timely manner, effective June 1, 1996; (3) adoption of an automatic out-of-service credit for U S WEST customers who experience unreasonable delays in receiving telephone service repairs; and (4) rulemaking to review utility service standards set forth in OAR 860-23-055.

Staff further indicated, however, that the parties had not had the opportunity to develop either a comprehensive set of service quality standards or a formal stipulation incorporating them in time for the special public meeting. Accordingly, Staff requested that the Commission adopt the proposed actions in principle, with the understanding that Staff would present a formal stipulation for approval at the Commission's April 16, 1996, public meeting. Staff subsequently submitted the proposed stipulation on April 11, 1996, and recommended its adoption. The stipulation and Staff's accompanying report are attached as Appendix A.

### Stipulation

The stipulation is generally intended to cover orders for access lines or out-of-service repairs pending with U S WEST on May 1, 1996, or submitted thereafter up to and including October 31, 1996. It has been signed by Staff, U S WEST, TRACER, Teleport Internet Services, and the Citizens Utility Board.

The first six sections detail the negotiated remedies designed to improve U S WEST's service quality standards. U S WEST agrees that all remedies shall be funded entirely by stockholders.

Section 1 terminates U S WEST's AFOR on May 1, 1996, including the revenue sharing portion of the plan. It provides that the company's current rates will become interim rates on May 1, 1996, subject to refund with interest, at a rate of 11.2 percent per annum. Any party may seek, by May 31, 1996, a declaratory ruling from the Commission regarding how the refund amount should be determined pursuant to the applicable provisions of the AFOR agreement.

Section 2 provides that a rulemaking shall be initiated to review the utility service standards set forth in OAR 860-23-055.

Section 3 requires U S WEST to continue to provide technical service quality reports until the above noted rulemaking has been completed.

Section 4 establishes a cellular telephone loaner program for primary lines. On June 1, 1996, U S WEST shall provide a cellular phone to customers who do not receive requested primary lines within five business days from the due date. Customers who do not want a cellular phone, or who already have one, may instead receive up to a \$100 credit for each month they are without service.

This section also acknowledges that the implementation of a cellular loan program is contingent on the approval by the Federal Communications Commission and the successful negotiation and award of contracts to cellular vendors. In the event that the cellular loan program is implemented after June 1, 1996, U S WEST shall provide customers a pro-rated basic exchange credit of \$100 per month. If the cellular loaner program is implemented after June 17, 1996, U S WEST shall provide customers a pro-rated basic exchange credit of \$150 per month.

Section 5 provides remedies for business customers with multiple-line held orders. Customers with less than ten delayed lines will receive a waiver of non-recurring charges associated with the requested lines. They will also receive credits equal to the monthly rate they would have paid for the lines, until the requested lines are installed. Customers with more than ten delayed lines are entitled to the same remedies, or may obtain from U S WEST a written confirmation of the installation due date and negotiate their own remedies with the company.

Section 6 provides a remedy for existing customers who experience unreasonable delays in having service restored. If service is not restored within 48 hours, customers will automatically receive an out-of-service credit equal to one-thirtieth of their normal fixed monthly charge for the first five days they are without service. If U S WEST does restore service within five days, the out-of-service credit amount escalates.

### **Disposition**

This matter came before the Commission at its March 27, 1996, and April 16, 1996, public meetings. After consideration, the Commission accepts Staff's recommendation and adopts the stipulation in its entirety. U S WEST's AFOR is terminated effective May 1, 1996, pursuant to the terms and conditions contained therein. U S WEST's rates for services thereafter shall be considered interim rates subject to refund with interest, at a rate of 11.2 percent.

The service quality remedies detailed in the stipulation and summarized above are adopted, with one clarification. As noted above, Section 5 provides that a business customer requesting ten or more lines may obtain a written confirmation of an installation date from U S WEST and then negotiate with the company for damages if service is not installed by that date. If the customer and U S WEST are unable to agree on damages, the customer

shall be entitled to waiver of the nonrecurring charges and credits provided to business customers requesting less than ten lines. The Commission clarifies that, under that provision, U S WEST is not entitled to an additional 30-day period before the customer is entitled to such remedies.

The Commission agrees with Staff that the remedies detailed in the stipulation will provide U S WEST strong incentive to improve its service quality. The Commission acknowledges, however, that necessary improvements will take considerable time and that, unfortunately, the re-establishment of high quality service will only come gradually. The Commission also notes the impact of U S WEST's actions on economic development. The company's delays in providing businesses with new or additional lines has, in effect, created an "economic drag" that ratepayers should not be required to tolerate.

Furthermore, a rulemaking docket shall be initiated to review and amend OAR 860-23-055 to enhance solutions to future customer service concerns. Until such rulemaking is complete, U S WEST shall continue to provide all technical service quality reports currently provided under the AFOR.

In making this decision, the Commission acknowledges that, pursuant to the terms of the AFOR, U S WEST has filed numerous price listings with the Commission. Upon the termination of the AFOR, U S WEST need not re-file these listings as tariffs. Rather, the Commission will consider any price list filing with an effective date of May 1, 1996, as a fully-regulated tariff, subject to all suspension and investigation procedures set forth in ORS 759.180 to 759.190.

### ORDER

IT IS ORDERED that the Stipulation Terminating the AFOR, attached as part of Staff's April 11, 1996, report in Appendix A, is adopted in its entirety with clarification stated above.

Made, entered, and effective APR 24 1996



*Roger Hamilton*  
Roger Hamilton  
Chairman

*Ron Eachus*  
Ron Eachus  
Commissioner

*Joan H. Smith*  
Joan H. Smith  
Commissioner

may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.





of the stipulation also provides for ending the revenue sharing portion of the AFOR. Customers are entitled to one-third of 1996 revenue sharing (January through April), plus any money resulting from the true-up of 1995 revenue sharing.

Section II. This section describes agreement among the parties that a rulemaking to review and amend OAR 860-23-055, the Commission's telecommunications utility service quality rule, should be commenced. The Commission directed that this rulemaking begin at the March 27, 1996, Special Public Meeting.

Section III. This section concerns technical service quality reports the company files under the AFOR. The company agrees to file these reports until the service quality rulemaking described in Section II is completed.

Section IV. This section of the stipulation details the cellular telephone loaner program I described in the attached March 27 memorandum. This program will cover primary (first) lines. Under this program, customers who do not receive requested primary lines within five business days will receive a cellular telephone to use until service is received. The provisions of the cellular program are described in the stipulation. A key provision is that residential customers will be billed at the rate of \$12.80 per month, and that business customers will be billed at the rate of \$30.87 per month. All customers will pay their own long-distance charges. USWC will pay all air time charges. Customers who do not desire a cellular phone, or who already have one, will have the option of receiving up to a \$100 credit for each month they are without service.

USWC has issued a request for proposals to secure the required cellular service. Unfortunately, this process may not be completed in time to provide the cellular service until approximately June 17, 1996. The company has agreed to provide a prorated share of the \$100 credit to all primary line held order customers between June 1, 1996 and June 16, 1996, if cellular loaners are not available by June 1, 1996. In addition, if cellular loaners are not available by June 17, 1996, the amount of the credit will increase to \$150.

Section V. This is the most complex section in the stipulation. It applies to business additional line held orders. I will limit my discussion here to the essence of the agreement. This section divides business customers into two groups; those with fewer than 10 delayed lines, and those with 10 or more delayed lines.

Customers in the former group who have not received requested service within 30 days will receive a waiver of non-recurring charges associated with the requested lines. They will also receive credits equal to the monthly rate they would have paid for the requested lines, until the requested lines are installed.

Customers with 10 or more delayed lines can choose the same remedy available to customers with fewer than 10 delayed lines. Alternatively, they can negotiate their own remedies for delayed service, to be effective from a date given to them in writing from USWC. Currently, USWC does not routinely provide customers with written service commitment dates. If a customer is not able to negotiate a satisfactory remedy with USWC, the customer is entitled to the waiver of non-recurring charges/credit remedy I described above.

Section V limits the number of business lines going into residences which may receive the waiver of non-recurring charge/credit remedy to 8. This limit was put into the stipulation at USWC's request because extremely large orders of this type require special provisioning. Orders of this magnitude can restrict the availability of service to residential customers in the same area, in some cases.

Section VI. This section provides a remedy for customers who experience unreasonable delays in having service restored. If service is not restored within 48 hours, customers will automatically receive a credit (out-of-service credit) equal to one-thirtieth of their normal fixed monthly charge for the first five days they are without service. After five days the amount of the credit escalates. For days six through 10, the credit will equal one-half of one month's fixed monthly charge. After 11 days the credit continues to escalate, first to a full month's fixed monthly charge (days 11 through 15), then to amounts equal to more than a month's charge. Ultimately, customers who are out of service for more than 31 days will receive a credit equal to two month's fixed monthly charge. The out-of-service remedy will begin on June 1, 1996.

USWC agrees that all of the remedies described above shall be paid for by its stockholders.

The rest of the stipulation, Sections VII through XII, concerns the filing of tariffs to reflect certain provisions in the stipulation, access to information, the duration of the stipulation, interpretation of the stipulation, rights of the parties to the stipulation, and agreement that this stipulation does not bind the Commission in ruling on the subjects it addresses.

**STAFF RECOMMENDATION:**

I recommend that the Commission accept the attached stipulation in its entirety.

Attachments

scstip

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: March 27, 1996

96-107

REGULAR AGENDA  CONSENT AGENDA  EFFECTIVE DATE \_\_\_\_\_

DATE: March 26, 1996  
TO: Mike Kane *MK*  
FROM: Phil Nyegaard *PN*  
SUBJECT: Steps to Improve USWC Service Quality

SUMMARY RECOMMENDATION:

Staff recommends that the Commission accept the following actions to improve the service quality of US WEST Communications, Inc. (USWC) negotiated by staff, the company, and other parties to UT 80: (1) termination of USWC's alternative form of regulation (AFOR), effective May 1, 1996; (2) a cellular phone loaner option for USWC customers who do not receive requested telephone service in a timely manner, effective June 1, 1996; (3) an automatic out-of-service credit for USWC customers who experience unreasonable delays in receiving telephone service repairs. Staff recommends adoption of these actions in principle, with the understanding that staff will present a formal stipulation incorporating these actions at the Commission's April 16, 1996 public meeting. The stipulation might also contain language addressing multiple-line held order problems. If not, staff will recommend a specific action directed toward multiple-line held orders. Staff also recommends the commencement of a rulemaking docket to review 860-23-055, as soon as possible. Finally, the company should also be ordered to file service quality reports required by the AFOR.

DISCUSSION:

USWC has recently experienced a variety of service quality problems. Some of these problems are technical service problems. Others are customer service problems. The technical service problems relate to the company's AFOR, which began on January 1, 1992. The AFOR has a term of five years, ending December 31, 1996 unless otherwise terminated.

The AFOR is described fully in Order No. 91-1598, which was signed on November 25, 1991, after a lengthy investigation and hearings in UT 80. Under the AFOR, services are classified either as essential services or non-essential services. Overall rates for essential services are frozen for the life of the AFOR. Rates for non-essential services are price-listed. Except for services priced below Long Run Incremental Cost (LRIC) at the time the AFOR was implemented, USWC was given pricing flexibility within specified constraints for price-listed services. Services initially priced below LRIC have since been repriced at rates above LRIC, as required by the Commission.

Another feature of the AFOR is that USWC is granted the freedom to earn rates of return within a very broad range before rate action is taken. No rate actions have been taken under the AFOR to date. The AFOR also provides for revenue sharing if USWC's revenues exceed a target amount. The plan has provided revenue sharing credits to customers totaling approximately \$40 million.

through 1995.

The AFOR contains a number of technical service quality standards. The company is required to file monthly or semi-annual information with the Commission, so that technical service quality can be monitored. I have attached the portion of Order No. 91-1598 which describes the technical service standards as Attachment A.

A key provision of the AFOR is that it may be terminated or modified prior to expiration if the Commission concludes that USWC has failed to comply with all of its provisions. If the AFOR is terminated prematurely, the Commission may order that USWC's current customer rates be considered interim rates subject to refund with interest. The company would also lose its ability to price list services.

Staff concluded in December of 1995 that USWC is in violation of the central office trouble report standard. In simplest terms, violation of this standard meant that the number of USWC customers reporting problems with their phone service exceeded a limit, for 24 of USWC's 77 central offices. In January of 1996, staff concluded that a second technical service standard, transmission loss level variation, had been violated. In the case of this violation, transmission quality was found to be inadequate for four central offices. Customers served by these central offices may experience variations in sound levels from one telephone call to the next, although most customers would probably not notice a problem.

As required by Order No. 91-1598, a settlement conference was convened in February of 1996 to discuss resolution of the technical service quality violations. These discussions involved parties to UT 80. No resolution was reached, and discussions ended. Shortly thereafter, the March 27, 1996 special public meeting was scheduled. Settlement discussions resumed late last week.

As a result of these discussions, USWC and staff agree that the AFOR should be terminated, effective May 1, 1996. USWC and staff also agree that revenue sharing should continue through April of 1996. Upon termination of the AFOR, USWC's customer rates would become interim rates, subject to refund with interest, pending the outcome of the company's current rate filing, UT 125. In the event that refunds are ordered, the rate of interest used will be 11.2 percent, which is USWC's currently authorized return on rate base.

In addition to AFOR-related technical service quality problems, USWC has experienced customer service quality problems. USWC customers too often experience difficulty in securing service ("held order" problems) and in having service restored when it is lost, although there is some evidence that the severity of the latter problem is lessening. Standards for these performance areas were not included in the AFOR agreement because the company's recent and well-publicized problems in these areas had not been encountered prior to the implementation of the AFOR.

The held order problem is particularly troublesome. For March of 1991, the company recorded only 84 instances where service was not provided in a timely manner. By December of 1995, held orders soared to over 600.

When settlement discussions resumed last week, staff and USWC considered ways to address held order and repair difficulties. As a result of these discussions, USWC has agreed to do the following:

1. Provide cellular telephones to residential and business customers when their requests for primary lines (first lines) are not met within five working days. Customers who are given cellular telephones will be billed by USWC at the company's rate for flat rate local exchange service. These customers will also pay all long distance charges. Customers who do not desire a cellular telephone, will be given a basic exchange credit of \$100 per month (to be prorated for a partial month) for each month the service order is identified as a held order. The cellular telephone loaner program will begin on June 1, 1996 in order to give the company time to prepare. Customers who select to receive a cellular phone would not be required to sign a contract obligating them to receive cellular service on a long-term basis.
2. The company will automatically credit the bills of existing customers who lose service. Discussions involving USWC, staff, and the Citizen's Utility Board regarding the specifics of the out-of-service credit are ongoing. Specifics being discussed concern when the credit begins, and how large it will be. Staff will return to the April 16 Commission Public Meeting to detail the specific out-of-service credit to be implemented.

Staff recommends that the Commission accept, in principle, the cellular telephone loaner and out-of-service credit remedies, which would be funded entirely with USWC stockholder funds. If that is the Commission's decision, staff will present a formal stipulation covering the remedies at the April 16, 1996 Commission Public Meeting. Staff will also make a recommendation then regarding a remedy for the multiple-line held order problem, which is not adequately addressed by the cellular telephone remedy, if one cannot be negotiated with USWC.

Staff believes the actions recommended above will provide USWC with strong incentives to substantially improve its service quality. However, the reality of the company's service quality problems must be acknowledged. Placement of needed plant and essential technicians will take considerable time, which means that high quality service will not come overnight. USWC's formerly high quality service deteriorated over a period of years. Unfortunately, the re-establishment of high quality service will come only gradually.

Staff has one final recommendation. In order to ensure that the PUC is prepared to deal with service quality issues in the years ahead, staff recommends that a rulemaking be commenced as quickly as possible, for the purpose of reviewing OAR 860-23-055. This service quality rule, which covers all telecommunications utilities, needs to be examined to be sure it is adequate as Oregon enters an era of competition in the telecommunications industry. The cellular loaner and out-of-service credit remedies should remain in place until the rulemaking is completed. Permanent solutions to customer service problems, for all telecommunications utilities, should be contained in the rule.

**STAFF RECOMMENDATION:**

Staff recommends that the Commission accept, in principle, USWC's proposals for:

1. Termination of USWC's AFOR, effective May 1, 1996.

2. Implementation of a USWC cellular telephone loaner program, effective June 1, 1996.
3. Implementation of a USWC out-of-service credit.

The Commission should order that:

1. USWC's current rates for services be considered interim rates subject to refund with interest, at a rate of 11.2 percent, effective May 1, 1996.
2. USWC continue to provide all technical service quality reports being provided at the time the AFOR is terminated, until the Commission completes the rulemaking recommended below.
3. A rulemaking proceeding be commenced to review and amend OAR 860-23-055.

Attachment

### Paragraph 15--Service Quality

Paragraph 15 of the stipulation incorporates a service quality agreement executed by staff and USWC in November, 1988 in conjunction with USWC's original proposal to implement an alternative form of regulation. The agreement establishes a comprehensive set of performance measurements that are indicative of the technical service quality delivered to customers. These include:

- a) Monthly network reports designed to measure customer ability to originate and complete calls. Included in this category are network blockage reports, dial tone speed reports, and inter-office trunk transmission reports.
- b) Quarterly sampling of customer lines to determine loop transmission loss and noise levels.
- c) Monthly market perception studies to survey customer attitudes regarding service quality. Nine different customer groups will be sampled to determine the overall level of satisfaction with specific components of USWC's service, including provisioning, maintenance, and information/billing services.
- d) Monthly trouble reports from each of USWC's central offices. These reports are correlated with historical data to compute an average report rate and standard deviation. The average report rate for any office should not increase beyond its probable statistical range with a 95 percent assurance level.
- e) Monthly trouble reports received by USWC operators or detected by microprocessors located at the company's tandem switches. The reports indicate problems such as no ring, no answer, cut-off and noise/cross-talk.
- f) Monthly emergency service reports indicating significant customer problems such as cut cables and weather-related outages. Each report indicates the time the problem is reported and the time the repair is completed.

A base line will be established for each central office serving area for each of the performance measurements listed above. As part of the service quality agreement, USWC pledges that adequate service quality levels will remain the same or improve. Where operating levels are inadequate, USWC will take whatever steps are necessary to improve and maintain service to adequate levels as defined in OAR 860-23-055.

Implementation of the Plan is contingent upon USWC's compliance with the quality of service standards as of April 1, 1991. Staff certified that USWC has satisfied that requirement. If the Commission finds that USWC is not in compliance with the quality of service standards once the Plan is in effect, the Commission may terminate the Plan after providing the company with notice and a reasonable opportunity to cure the deficiency.

#### Paragraph 17--Deregulation/New Legislation

This provision provides that the Plan shall govern all PUC-regulated products and services during the life of the Plan. However, USWC is not prohibited from petitioning the Commission to deregulate products and services under ORS 759.030(2) and (3).<sup>17</sup> Also, the Commission or USWC may terminate the Plan after notice and hearings, if "as a result of new Oregon legislation, the intent, operation, or results of the Plan will be materially affected and changed, or the Plan no longer meets the standards in ORS 759.195."

### AMENDMENTS TO THE PLAN

Although the Commission agrees with the principal elements of the stipulation, we believe that a number of modifications are necessary to ensure that the Plan meets the statutory criteria set forth in ORS 759.195. These changes and additions are discussed below:

#### Paragraph 6--Revenue Sharing/Yellow Pages Revenue

Under the stipulation, revenues from Yellow Pages directory advertising are included in the revenue-sharing calculation. However, unlike other revenue sources, the contribution from Yellow Pages will not be based on actual revenue. Instead, Attachment "G" of the stipulation includes a formula which provides that Yellow Page revenues

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<sup>17</sup>ORS 759.030 provides that the Commission may deregulate a telecommunications service in whole or in part if it finds that "price or service competition exists, or that such services . . . [are] subject to competition, or that the public interest no longer requires full regulation . . ." Prior to making such findings, the Commission must consider (a) the extent to which services are available from alternative providers in the relevant market, (b) the extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions, (c) existing economic or regulatory barriers to entry, and (d) any other factors deemed relevant by the Commission.



BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

In the Matter of )  
 U S WEST COMMUNICATIONS, INC.'s ) STIPULATION  
 Alternative Form of Regulation. )

This agreement is made this 11th day of April 1996, by and between U S WEST Communications, Inc. ("USWC"), the Public Utility Commission's staff ("staff"), and the other undersigned parties.

RECITALS

1. On July 1, 1988, Pacific Northwest Bell Telephone Company, dba USWC, filed a petition with the Public Utility Commission of Oregon ("Commission" or "PUC") for an alternative form of regulation under ORS 757.850 (renumbered ORS 759.195). USWC's petition was docketed by the Commission as PUC Docket UT 80.
2. After public hearings and evidentiary hearings were held to consider USWC's proposal, the Commission offered USWC an alternative form of regulation ("the AFOR") under the terms and conditions described in its Order No. 91-1598 (November 25, 1991).
3. USWC accepted the Commission's offer, and the AFOR was implemented effective January 1, 1992, with a planned duration of five years.
4. PUC Order No. 91-1598 provides that the Commission may terminate the AFOR if USWC fails to comply with the terms and conditions in that order.
5. The AFOR, as described in PUC Order No. 91-1598, requires USWC to comply with a number of technical telecommunications service quality standards, including monthly central office trouble reports for USWC's 77 central offices in Oregon, and transmission loss and noise levels.
6. In December 1995, staff determined from USWC's monthly central office trouble reports for that year that USWC has violated the central office trouble report standards established in the AFOR for 24 of USWC's central offices in Oregon.

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1 7. In January 1996, staff determined that USWC had violated  
 2 another technical service standard established in the  
 3 AFOR—the transmission loss level variation standard—in four  
 4 of its central offices.

5 8. USWC has been experiencing customer service quality  
 6 problems in addition to its AFOR-related technical service  
 7 quality violations—specifically, hundreds of USWC customers  
 8 have experienced delays of several weeks or longer before  
 9 their orders for initial telecommunications service, or for  
 10 additional services, are processed, and other USWC  
 11 customers have experienced similar delays in having their  
 12 telecommunications services restored after they have been  
 13 interrupted.

14 9. As required by PUC Order No. 91-1598, a settlement  
 15 conference was convened by staff in February 1996, to  
 16 discuss resolution of USWC's technical service quality  
 17 violations.

18 10. USWC, staff, USWC customers and other parties have since  
 19 engaged in further settlement discussions and negotiations  
 20 to promptly address USWC's service quality problems in a  
 21 manner that is fair to USWC and to its customers.

22 NOW, THEREFORE, in consideration of the promises contained  
 23 herein, and for other good and valuable consideration, the  
 24 receipt and sufficiency of which are hereby acknowledged by all  
 25 the undersigned parties, these parties hereby stipulate and agree  
 26 as follows:

I

TERMINATION OF THE AFOR

27 A. The AFOR shall be terminated, effective May 1, 1996.  
 28 USWC shall pay to its customers, in accordance with PUC Order  
 29 No. 91-1598, one-third (1/3) of the 1996 revenue sharing under  
 30 the AFOR.

31 B. USWC also shall pay to its customers in 1996 the true-  
 32 up adjustment for any under-payment of USWC's 1995 revenue  
 33 sharing with its customers. However, in the event USWC is unable  
 34 to timely terminate 1996 revenue sharing on its billings to  
 35 customers (see subsection A. above), the true-up adjustment for  
 36 USWC's 1995 revenue sharing shall be adjusted to reflect any  
 over-payment of 1996 revenue sharing by USWC.

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1 C. Effective May 1, 1996, USWC's rates for services shall  
 2 be considered interim rates subject to refund, in accordance with  
 3 PUC Order No. 91-1598, with interest at a rate of 11.2 percent  
 4 per annum (USWC's authorized rate of return on rate base).

5 However, because there may be disagreement about the  
 6 methodology established in PUC Order No. 91-1598 for determining  
 7 the amount of refund by USWC, any of the undersigned parties may  
 8 petition the Commission no later than May 31, 1996, for a  
 9 declaratory ruling on interpretation of that order and, further,  
 10 to appeal the Commission's declaratory ruling. If such a  
 11 petition for declaratory ruling is filed with the Commission, or  
 12 if such a declaratory ruling by the Commission is appealed, staff  
 13 and the other undersigned parties may file comments with the  
 14 Commission and/or appellate court(s).

## 15 II

### 16 PUC RULEMAKING

17 A proceeding for permanent rulemaking shall be commenced by  
 18 the Commission to review and amend OAR 860-23-055 and consider  
 19 other telecommunications service quality standards. This  
 20 rulemaking proceeding will be in lieu of the Commission's  
 21 adoption of temporary rules to address USWC's service quality  
 22 problems.

## 23 III

### 24 REPORTS

25 USWC shall continue to file with the Commission all  
 26 technical service quality reports that it has been required to  
 file under the AFOR, until the Commission completes the  
 rulemaking proceeding mentioned in Section II above.

## 27 IV

### 28 HELD ORDERS—PRIMARY LINES

29 To address the held orders problem, USWC shall, beginning  
 30 June 1, 1996, offer to loan cellular telephones ("cellular  
 31 loaners") to residential and business customers whose requests  
 32 for primary access lines (first lines) are not processed by USWC  
 33 by the installation due date ("held orders"). For purposes of  
 34 this Section, "primary access line" means the first residence  
 35 and/or business access line at a customer's address.  
 36 Accordingly, a house or building may have two or more customer  
 accounts and, therefore, two or more requests for primary access

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1 lines. For purposes of this Section, "installation due date"  
2 means three, five or seven business days (Monday through Friday),  
3 per OAR 860-23-055(3)(a), after a request for a primary access  
4 line is submitted by the customer to USWC, or by a date that is  
5 mutually agreed upon between USWC and the customer, whichever is  
6 later.

7 If a customer's request for a primary access line is not  
8 processed by USWC within five business days after the  
9 installation due date, USWC shall give the customer the choice of  
10 the following two options:

11 A. a cellular loaner, or

12 B. a basic exchange credit of \$100 per month, or a  
13 prorated amount for a portion of a month, in which the  
14 order is a held order.

15 USWC's cellular loaner program under this Section will  
16 include the following provisions:

17 1. The customer will be required to sign an agreement with  
18 USWC acknowledging the terms and conditions of this  
19 program. However, customers who receive a cellular  
20 loaner shall not be required to sign any contract  
21 obligating them to receive cellular service after the  
22 date USWC provides the requested primary access line  
23 service.

24 2. The customer will be required to pick up and return the  
25 cellular loaner at designated and reasonably convenient  
26 locations, and to return the cellular loaner within  
two (2) days after access line service to the customer  
is established by USWC.

3. Customers shall have unlimited airtime usage. All toll  
calls shall be the responsibility of the customer. A  
U S WEST calling card shall be issued for the held line  
number, if requested. Customers will be responsible  
for making their own arrangements with the inter-LATA  
carrier(s) of their choice.

4. Customers who receive cellular loaners will be billed  
by USWC for the cellular service at the rate of \$12.80  
per month for residence customers and \$30.87 for  
business customers (which are USWC's current monthly  
rates for flat rate local exchange telecommunications  
service in Oregon), plus applicable taxes.

PAGE 4 - STIPULATION

1 5. A permanent telephone number shall be assigned to the  
2 customer.

3 6. Remote Call Forwarding or Market Expansion Line ("MEL")  
4 service shall be provided by USWC to the customer, if  
5 possible. The customer shall not be charged for this  
6 service for the period that the customer has a cellular  
7 loaner.

8 USWC shall procure the cellular loaners and service through  
9 a request for proposals (RFP) that allows cellular vendors in  
10 Oregon a fair opportunity to compete and be considered under the  
11 criteria for selection applicable in the RFP process to provide  
12 the cellular equipment and services for this cellular loaner  
13 program.

14 It is understood that implementation of USWC's cellular  
15 loan program is contingent upon approval of its petition for  
16 limited waiver by the Federal Communications Commission. It also  
17 is understood that the implementation of this program is  
18 contingent upon the successful negotiation and award of contracts  
19 to the cellular vendors who are the successful bidders. In the  
20 event USWC's cellular loan program is implemented after June 1,  
21 1996, USWC shall provide to customers, in lieu of cellular  
22 loaners, a basic exchange credit of \$100 per month, or a prorated  
23 amount for a portion of a month, in which the order is a held  
24 order. In the event USWC's cellular loan program is implemented  
25 after June 17, 1996, USWC shall provide a basic exchange credit  
26 of \$150 per month, or a prorated amount for a portion of a month,  
in which the order is a held order until such time as the  
provisions of the program are implemented.

USWC's expenditures to carry out the provisions of this  
Section shall be funded entirely by USWC stockholder funds.

V

#### BUSINESS ADDITIONAL LINES

A. To address its held order problem with respect to  
business customer orders for multiple access lines up to a total  
of nine (9) lines, USWC shall waive non-recurring charges and  
provide credits equal to recurring charges for new and existing  
business customers whose orders for additional access lines are  
not processed and completed within 30 days after the installation  
due date ("additional lines held orders"). For purposes of this  
Section, "installation due date" means three, five or seven  
business days (Monday through Friday), per OAR 860-23-055(3)(a),

PAGE 5 - STIPULATION

1 after a request for additional access lines is submitted by the  
 2 business customer to USWC, or by a date that is mutually agreed  
 upon between USWC and the customer, whichever is later.

3 If a business customer's request for additional access  
 4 lines becomes an additional lines held order, USWC shall waive  
 the non-recurring charge(s) (e.g., installation charge) and  
 5 provide the customer a credit of one month's recurring charge  
 (i.e., the monthly rate charged by USWC for that service) for  
 6 each month the order is an additional lines held order. This  
 provision shall apply to orders for additional access lines  
 7 submitted by business customers to USWC during the period from  
 May 1, 1996, to and including October 31, 1996. This provision  
 8 also shall apply to business customer orders for additional  
 access lines that are pending with USWC on May 1, 1996; such  
 9 orders shall be deemed to have been received by USWC on May 1,  
 1996, for purposes of this provision.

10 With respect to business customer orders for additional  
 11 lines to a residential location, these waivers and credits shall  
 be limited to the first eight business lines at any residential  
 12 location.

13 B. For orders for ten or more additional business lines  
 14 (including other "Eligible Services" as described below) at one  
 location, the customer (new as well as existing customers) may  
 choose one of the following two options:

- 15
- 16 1. Waiver of nonrecurring charges and credit of recurring  
 17 charges (as described below), or
  - 18 2. Documentation of service delivery dates (as described  
 below).

19 1. Waiver of Nonrecurring Charges and Credit of Recurring  
 20 Charges

21 If a business customer's request for additional access  
 22 lines (excluding other Eligible Services) becomes an additional  
 lines held order as defined in Section V.A. above, USWC shall  
 23 waive the non-recurring charge (e.g., installation charge) and  
 provide the customer a credit of one month's recurring charge  
 (i.e., the monthly rate charged by USWC for that service) for  
 24 each month beyond the mutually agreed-upon due date. This  
 provision shall apply to orders for additional access lines  
 25 submitted by business customers to USWC during the period from  
 May 1, 1996, to and including October 31, 1996.  
 26

PAGE 6 - STIPULATION

1 If a customer's request for additional access lines or  
2 other Eligible Services (as defined below) is not processed and  
3 completed by USWC by the installation due date that is mutually  
4 agreed upon by USWC and the customer utilizing the Documentation  
5 of Service Delivery Dates procedure described below, USWC shall  
6 waive the associated non-recurring charge(s) (e.g., installation  
7 charge) and provide the customer a credit of one month's  
8 recurring charge(s) (i.e., the monthly rate charged by USWC for  
9 the service(s)) for each month the order is not processed and  
10 completed. This provision shall apply to orders for additional  
11 access lines or other Eligible Services submitted by business  
12 customers to USWC during the period from May 1, 1996, to and  
13 including October 31, 1996. This provision also shall apply to  
14 business customer orders for additional access lines or other  
15 eligible services that are pending with USWC on May 1, 1996, and  
16 are subsequently processed by USWC, at the customer's request,  
17 through the Documentation of Service Delivery Date process  
18 described below.

## 11 2. Documentation of Service Delivery Dates

12 If a business customer selects this option, USWC shall  
13 provide written confirmation of the installation due date for an  
14 order for additional access lines or other Eligible Services.  
15 The customer and USWC may negotiate an agreement that provides  
16 for liquidated damages to be paid to the customer if the order is  
17 not processed and completed by USWC by the installation due date.  
18 In the event the customer and USWC cannot agree on liquidated  
19 damages, the customer shall be entitled to the waiver of  
20 nonrecurring charges and credits of recurring charges provided  
21 above. However, the customer shall have the choice of seeking  
22 remedies under any applicable new rule(s) that may be adopted by  
23 the Commission in the rulemaking proceeding referenced in  
24 Section II above in lieu of the remedies available to the  
25 customer under this Section. Also, if a customer receives  
26 liquidated damages from USWC under the provisions of this  
27 Section, the customer shall have no obligation to use USWC's  
28 services, but this provision shall not affect the customer's  
29 liability to USWC under any contract for monetary advances or  
30 payments for special construction, services or expenses.

31 The telecommunications services that are subject to these  
32 Documentation of Service Delivery Date provisions shall be deemed  
33 Eligible Services and are defined as those services listed as  
34 "essential services" in OAR 860-32-200, plus Digital Switched  
35 Service, DS-1, 56 kb, 64 kb, and Type 1 and Type 2  
36 interconnection services as defined in section 102 of USWC's  
37 current price list. This paragraph does not preclude USWC from  
38 agreeing, on a case-by-case basis, to process orders for other  
39 telecommunications services under these Documentation of Service  
40 Delivery Date provisions.

PAGE 7 - STIPULATION

1 These Documentation of Service Delivery Date provisions may  
2 be requested by business customers who submit orders for eligible  
3 services to USWC during the period from May 1, 1996, to and  
4 including October 31, 1996. These provisions also shall be  
5 available to business customers with orders for eligible services  
6 that are pending with USWC on May 1, 1996.

7 C. USWC's expenditures under the provisions of this  
8 Section shall be funded entirely by USWC stockholder funds.

9 VI

10 OUT-OF-SERVICE CREDITS

11 To address its problems with delays in restoring access  
12 line service to customers, USWC shall, beginning June 1, 1996,  
13 automatically credit the bills of existing customers who lose  
14 access line service if the service is not restored within forty-  
15 eight (48) hours. The credit shall be based upon the duration of  
16 the service interruption:

<u>Duration of Interruption</u> (consecutive days)	<u>Credit</u>
14 48 hours through 5 days	1/30 of all the customer's regular fixed monthly charges (including any common carrier line charge (CCLC), Extended Area Service charges, charges for optional services, etc.) for each day, up to 5/30 of one month's charges.
18 6 through 10 days	one-half (1/2) of one month's charges (as above, based on all the customer's regular fixed monthly charges).
21 11 through 15 days	one month's charges (as above, based on all the customer's regular fixed monthly charges).
23 16 days through 30 days	one and one-half (1 1/2) months' charges (as above, based on all the customer's regular fixed monthly charges).

26 ///



1 31 days or more two (2) months' charges for each  
 2 30 days, or portion thereof (as  
 3 above, based on all the  
 customer's regular fixed monthly  
 charges).

4 These out-of-service credits apply only to trouble found in  
 5 USWC's network. Disruption of service originating on the  
 6 customer's side of the standard network interface, caused by the  
 7 customer's negligence or willful misconduct, caused by a natural  
 8 disaster, or stemming from damage to the network affecting large  
 9 groups of customers that is caused by a third party unaffiliated  
 with USWC, will not be eligible for these out-of-service credits.  
 In the event of a dispute as to whether a disruption of service  
 was caused by a natural disaster and not through any fault of  
 USWC, the customer or USWC may request that staff decide the  
 issue.

10 USWC's expenditures under the provisions of this Section  
 11 shall be funded entirely by USWC stockholder funds.

12 VII

13 A. USWC shall file appropriate tariffs with the Commission  
 14 under ORS chapter 759 for the implementation of the provisions of  
 Sections IV, V and VI of this Stipulation.

15 B. USWC shall provide to the Commission and its duly  
 16 authorized representatives, upon request, all books of account,  
 17 records, documents, and relevant information, including  
 18 explanatory information, of USWC and its affiliates, as  
 19 applicable, which pertain to USWC's operations and actions under  
 20 Sections III, IV, V and VI of this Stipulation, for the purposes  
 of the Commission's monitoring, auditing and regulation of said  
 operations and actions of USWC. This provision is in addition to  
 any investigatory powers the Commission possesses under law  
 (e.g., ORS chapters 756 and 759).

21 VIII

22 The duration of this Stipulation shall be from May 1, 1996,  
 23 to and including October 31, 1996. The provisions of this  
 24 Stipulation are intended to cover orders for access lines and  
 25 other eligible services that are submitted by customers to USWC  
 during the period from May 1, 1996, to and including October 31,  
 1996, except as otherwise provided in this Stipulation.

26 ///

PAGE 9 - STIPULATION

## IX

1  
2 The parties understand that this Stipulation establishes  
3 interim arrangements to address customer service from USWC and  
4 that the arrangements may be changed by the Commission in the  
5 future, such as through the rulemaking proceeding referenced in  
6 Section II above. Accordingly, the parties reserve the right to  
7 change their positions on subjects addressed in this Stipulation  
8 in any future proceeding, but they shall not violate this  
9 Stipulation.  
10

## X

11 If any dispute concerning interpretation of this  
12 Stipulation, or compliance therewith, arises, any party to this  
13 Stipulation may petition the Commission to commence a proceeding  
14 to resolve the dispute. The Commission shall resolve the dispute  
15 in a way that is consistent with the intent of the Stipulation as  
16 manifested herein, and with the provisions of ORS 759.035 and  
17 759.900.

18 The undersigned parties who are customers or potential  
19 customers of USWC understand that the provisions of this Section  
20 do not mean that the PUC will act as a mediator or arbitrator in  
21 any customer's negotiations or dispute with USWC under Sections IV,  
22 V or VI of this Stipulation, except as otherwise provided in the  
23 preceding paragraph.  
24

## XI

25 The undersigned parties recommend that the Commission adopt  
26 this Stipulation in its entirety. The parties have negotiated  
27 this Stipulation as an integrated document. Accordingly, if the  
28 Commission rejects all or any material part of this Stipulation,  
29 or materially amends this Stipulation, each party reserves the  
30 right to withdraw from the Stipulation, upon written notice to  
31 the Commission and other parties within fifteen (15) days of the  
32 Commission's rejection or modification, except as otherwise  
33 provided herein.

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XII

The undersigned parties agree that this Stipulation in no manner binds the Commission in ruling on the matters or subjects addressed herein. This Stipulation in no manner restricts the Commission's exercise of its authority and discretion in this docket or any other proceeding.

US WEST COMMUNICATIONS, INC.

By \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

PUBLIC UTILITY COMMISSION'S STAFF

By W. Benny Won Date: April 11, 1996  
Title: Assistant Attorney General

OTHER PARTIES TO THIS STIPULATION

TRACER

Name of party \_\_\_\_\_  
By Mark A. Dodson Date: April 12, 1996  
Title: Counsel to TRACER

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US WEST COMMUNICATIONS, INC.

By Charles J. Bell Date: 4/12/96

Title: ATTORNEY

PUBLIC UTILITY COMMISSION'S STAFF

By \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

OTHER PARTIES TO THIS STIPULATION

\_\_\_\_\_  
Name of party

By \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

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PAGE 11 - STIPULATION

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XII

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US WEST COMMUNICATIONS, INC.

By \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

PUBLIC UTILITY COMMISSION'S STAFF

By \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

OTHER PARTIES TO THIS STIPULATION

CITIZENS UTILITY BOARD OF OREGON  
Name of party

BY Bob Jenkins <sup>BOB JENKINS</sup> Date: 4-13-96

Title: EXECUTIVE DIRECTOR

86-107

XII

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US WEST COMMUNICATIONS, INC.

By \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

PUBLIC UTILITY COMMISSION'S STAFF

By W. Benny Won Date: April 11, 1996  
Title: Assistant Attorney General

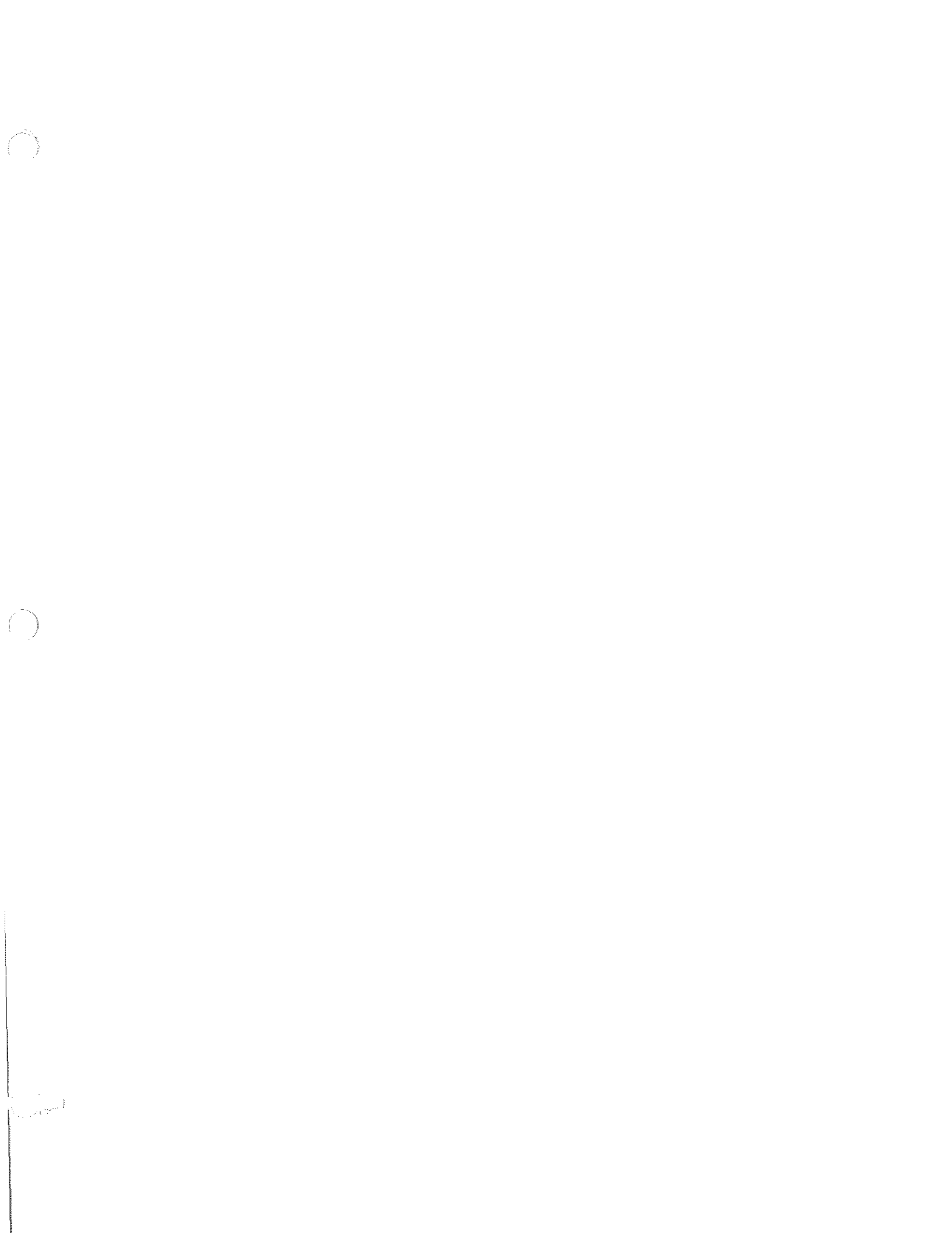
OTHER PARTIES TO THIS STIPULATION

TELEPORT INTERNET SERVICES  
Name of party

By William H. Prentice Date: 4/12/96  
William H. PRENTICE  
Title: SR VP & GEN COUNSEL

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ORDER NO. 96-094

ENTERED APR 05 1996

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UT 125

In the Matter of the Application of )  
U S WEST COMMUNICATIONS, INC., ) ORDER  
for an Increase in Revenues. )

DISPOSITION: ORDER NO. 91-1598 AMENDED

On March 5, 1996, U S WEST Communications, Inc. (USWC) filed a motion with the Commission pursuant to OAR 860-13-031 for an extension of time in which to submit a general rate filing under ORS 759.180. USWC moved the Commission to amend its Order No. 91-1598 and allow the company to submit a general rate filing not later than 90 days after the entry of the order in Docket No. UM 351, rather than on April 1, 1996.

On November 25, 1991, the Commission entered Order No. 91-1598 in Docket No. UT 80 approving an alternative form of regulation (AFOR), which became effective on January 1, 1992. Under the terms and conditions set forth in Order No. 91-1598, USWC must submit a general rate filing under ORS 759.180 nine months before the end of the plan. The purpose of the filing is to propose a schedule of rates that will be effective on expiration of the AFOR plan. USWC must therefore submit a general rate filing on or before April 1, 1996.

A general rate filing contains rate design issues, including cost of service issues. USWC points out that its telecommunications service pricing is an issue in UM 351, and USWC expects that the UM 351 order will provide information about how USWC should prepare its rate design filing. In addition, USWC has provided the Commission with updated cost information pursuant to its obligations under Order No. 94-1056. Moreover, a hearing to resolve cost issues in Docket No. UM 773 is currently scheduled for May 20 and 21, 1996. USWC does not believe that it would be a good use of the company's or the Commission's resources for the company to make an April 1, 1996, general rate filing using existing pricing policies and costs. It is almost certain that another filing would be required once the matters in UM 351 and UM 773 are resolved.



USWC understands that the UM 351 order is expected in May, 1996, and the UM 773 order is expected in the last quarter of 1996. USWC believes that it will be able to submit a general rate filing within approximately 90 days of the service date of the UM 351 order.

USWC has elected to proceed with filings necessary for the Commission to determine the revenue requirements of the company. USWC filed this aspect of a general rate filing on December 15, 1995. Those proceedings, docketed as UT 125, are moving forward, and hearings have been scheduled for September, 1996.

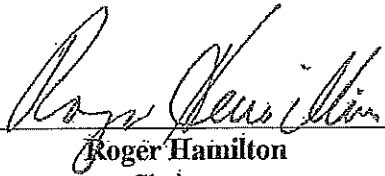
Given the proceedings in UM 351 and UM 773, USWC requests that the Commission amend its Order No. 91-1598 to allow the company to submit a general rate filing under ORS 759.180 not later than 90 days after the service date of the order in UM 351.

No party responded to USWC's motion, and the time for response is past. USWC's proposal is reasonable and comports with the schedule that Staff presented, and the Commission adopted, at the prehearing conference in UT 125 on February 1, 1996. USWC's motion is granted as to the rate design portion of the general rate filing.

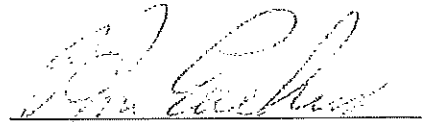
## ORDER

IT IS ORDERED that Order No. 91-1598, in Docket UT 80, is amended to allow U S WEST Communications, Inc. to submit the rate design portion of its general rate filing under ORS 759.180 no later than 90 days after the service date of the order in UM 351.

Made, entered, and effective APR 05 1996

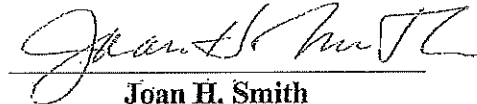


**Roger Hamilton**  
Chairman



**Ron Eachus**  
Commissioner





**Joan H. Smith**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-14-095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-13-070(2). A party may appeal this order to a court pursuant to ORS 756.580.

**IN THE COURT OF APPEALS OF THE STATE OF OREGON**

NORTHWEST PUBLIC	§	CA No. A166810
COMMUNICATIONS COUNCIL,	§	PUC Case No. UT 125/DR26
	§	STIPULATED
Petitioner,	§	MOTION TO SUPPLEMENT
	§	RECORD
v.	§	
	§	EX 1, INDEX OF DOCUMENTS
QWEST CORPORATION, fka U.S. West	§	EX 2, DOCUMENTS
Communications, Inc. and PUBLIC	§	
UTILITY COMMISSION OF OREGON,	§	<b><u>VOLUME IV</u></b>
	§	
Respondents.	§	

**EXHIBIT 1 TO MOTION**

<u>Item</u>	<u>Description</u>	<u>PUC Page</u>
	<b>VOLUME IV -- INDEX</b>	
23	Public Utility Commission of Oregon News Release, dated April 14, 2000	806-808
24	UT 125 – Advice No. 1935, Supplement No. 1, Dated February 28, 2003 (Note: Confidential materials not included but available)	809-815
25	UT 125 – Advice No. 1946, Full Copy, Dated July 28, 2003 (Note: Confidential materials not included but available)	816-830
26	DR 26/UC 600 – Sheila Harris Affidavit and attached Advices 1668 & 1689 Jan 4, 2005	831-850
27	DR 26/UC 600 – Public Utility Commission of Oregon Staff’s Reply to Qwest’s Cross-Motion for Summary Judgment, Dated January 25, 2005	851-855
28	DR 26/UC 600 – Public Utility Commission of Oregon Ruling, Dated March 23, 2005	856-864
29	DR 26/UC 600 – Public Utility Commission of Oregon Order 05-208, Dated May 3, 2005	865-868

<b><u>Item</u></b>	<b><u>Description</u></b>	<b><u>PUC Page</u></b>
30	UT 125 – NORTHWEST PUBLIC COMMUNICATIONS COUNCIL's (NPCC's) Motion to Set Procedural Conference to Establish Issues and Procedures on Remand, Dated February 9, 2006	869-877
31	UT 125 – First Conference Report, Dated March 21, 2006	878-880
32	UT125 – Stipulation Entered into between Qwest Corporation, Northwest Public Communications Council and Staff, Dated October 15, 2007	881-892
33	DR26/UC600 – NPCC Consolidated Motions to Enforce and Bifurcate, Dated January 27, 2010	893-896
34	DR26/UC600 – PUC Order 01-027 on Consolidated Motions to Enforce and Bifurcate, Dated February 1, 2010	897-904
35	DR26/UC600 – Staff Transcript of Telephone Hearing, Dated February 4, 2010	905-928
36	UT 125 – Docket entries	929-977
37	DR 26/UC 600 – Docket entries	978-987

ver. 15

# EXHIBIT 2

OPUC  
Last updated April 14, 2000  
HOME

April 14, 2000

2000-017

FOR IMMEDIATE RELEASE

## U S WEST Customers to Receive \$270 Million Refund

Contacts: Ron Eachus, Chairman, 503 378-6611; Roger Hamilton, Commissioner 503 378-6611; Joan H. Smith, Commissioner, 503 378-6611; Phil Nyegaard Telecommunication administrator 503-378-6436; Bob Valdez, Public Information Officer, 503 378-8962

### US WEST Refund Fact Sheet

Separate Statement on UT 125, Commissioner Joan H. Smith

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**Salem, OR** - The Oregon Public Utility Commission (PUC) today resolved a rate case dispute dating back to 1997 that will return over **\$270** million to current and former Oregon customers of U S WEST. It will also provide temporary bill credits of **\$63** million annually until the Commission sets final rates.

The approximate per-line credit for past overpayments for a residential customer will be **\$118**. The per-line credit for business customers will be **\$284**, depending on how "simple" or "complex" the telephone service is. Simultaneously, customers will receive a temporary on-going bill credit in the amount of **\$2.47** a month for a residential line and **\$5.93** for a business line to prevent future overpayments while the Commission considers final rate making. This credit will end when the Commission sets new retail rates late this year.

However, customers may not receive the refund and credit until sometime after **August 1**, to allow parties procedural rights to ask the Commission to reconsider the order, and allow U S WEST to review any changes made through the reconsideration process.

The order also sets aside **5 percent** of the local service refund, \$12 million, for former U S WEST customers.

In the 1997 rate case, the Commission found U S WEST had been overcharging

customers since the spring of 1996. The contentious case has been winding its way through the courts since the Commission's May 1997 ruling and was an issue in the 1999 legislative session.

Today's Commission order adopted and modified a stipulation made between the staff and U S WEST last September.

The 1997 decision required U S WEST to refund customers \$102 million and reduce annual rates by \$97 million. By August the refund would have grown to \$526 million assuming the Commission order was upheld in court.

"We were diligent and achieved a reasonable outcome that will finally get customers significant refunds they deserve," Commission Chairman Ron Eachus said. "We accounted for updated information, the risks of litigation, and the length of time that has passed. A bottom line was that we were able to settle at a level that we believe maintains the lower rate of return we imposed as a consequence of U S WEST's poor service."

The original PUC order reduced the Company's allowed rate of return to stockholders because of reduced service quality levels.

To receive a bill credit consumers must be on the U S WEST network as of the date of the refund and have had service for at least **60** days prior to the refund date. The **60-day** cutoff period is designed to discourage customers from subscribing to additional lines immediately before the refund date to receive a larger refund. Refunds will be made on a per line basis. The type of service (i.e.) business or residential on each line determines the amount.

Former customers who received at least 6 months of continuous service from U S WEST between May 1, 1996 and the date of the refund are also eligible to apply in writing to U S WEST for a refund from the five percent set aside. Refunds will be available on a **"first-verified, first-served basis"** in the form of a check.

Long distance providers who are customers of U S WEST will receive an amount equal to 13.8 percent of the total refund (\$37.6 million).

The original stipulation made no provision for former customers. However, the Commission insisted former customers be included.

In order to reach agreement with U S WEST the Commission made several adjustments to the rate case. The order takes into consideration \$277 million U S WEST spent on improvements to the system since 1996, which reduced the amount of the refund. In addition, the Commission applied the lower rate of return in the 1997 decision, 8.7 percent, as interest on the accumulated refund, rather than the 11.2 percent rate included in current rates.

The parties have 60 days to ask the Commission to reconsider the stipulation. After that time period, U S WEST has an additional 45 days to accept or reject the stipulation. U S WEST may make the refund earlier if it so chooses. If

rejected by U S WEST the issue would go back to court.

Commissioner Roger Hamilton said the Commission sought a refund mechanism that is both balanced and will result in a reasonably prompt method to get customers their money. "I was looking for what is reasonably fair and easiest to administer. I also felt it was very important that former customers receive money they are entitled to."

Last November, the Oregon Court of Appeals put the case on hold in order for the parties to consider the stipulation.

The Citizens' Utility Board (CUB) and the American Association of Retired Persons (AARP) opposed the stipulation, arguing ratepayers are entitled to a larger amount.

The refund obligation is based on \$53 million dollars a year plus interest covering a period from May 1, 1996 until the stipulation is implemented.

The temporary bill credit will appear on customers' bills at the same time the initial refund is credited. The credit will continue on an interim basis until the Commission sets final rates for U S WEST in phase two of the rate case. Final rates will reflect an annual ongoing revenue reduction of \$63 million.

See attached question and answer sheet for additional details

US WEST Refund Fact Sheet

Separate Statement on UT 125, Commissioner Joan H. Smith



421 Southwest Oak Street  
Suite 870  
Portland, Oregon 97204  
Phone 503-242-5234  
FAX 503-242-5456

Judith A. Pepler  
President - Oregon

*Stanogovic*  
*cc Ball*  
*Nygaard*

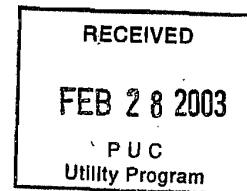
*Joe Hatala*  
*(Qwest Attorney)*



February 28, 2003

Advice No. 1935  
Supplement No. 1

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
P. O. Box 2148  
Salem, OR 97308-2148



ATTENTION: Vikie Bailey-Goggins, Administrator  
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

Qwest is forwarding for filing the sheets listed on Attachment A. This supplemental filing proposes further revisions to the Exchange and Network Services tariff. The effective date is March, 17, 2003.

The purpose of this supplemental filing is to reestablish a deaveraged rate structure for Qwest's Public Access Line Service Rates.

The original filing introduced rate reductions that were calculated in accordance with FCC Order No. 02-025. Qwest reviewed the FCC order and its filing without prejudice to its pending appeal of the FCC order, and without prejudice to its position in the pending appeals of this Commission's orders in Dockets Nos. UT 125 and DR 26/UC 600.

The estimated annualized revenue impact of this filing can be found herein under confidential cover.

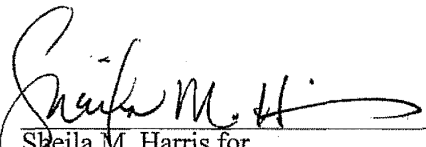
**Attachment B contains commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.**

The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
Advice No. 1935

Page 2

If you have questions concerning this filing, please contact Sheila Harris on (503) 242-5950.

Yours very truly,

By   
Sheila M. Harris for  
Judy Pepler President - Oregon  
Qwest Communications, Inc.

Attachments

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 29

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	136	3 <sup>rd</sup>
5	137	3 <sup>rd</sup>

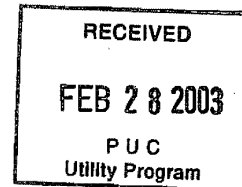
**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
3rd Revised Sheet 136  
Cancels 2nd Revised Sheet 136**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS  
5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)**



C. Rates and Charges

1. Each Basic Public Access Line

	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP			
			1	2	3	
• Measured						
- Two-way, per line[1]	17Q	[2]	\$ 7.98 (R)	\$ 7.98 (R)	\$ 7.98 (R)	
- Outgoing only, per line[1]	16Q	[2]	7.98	7.98	7.98	
• Measured with 300 Call Allowance						
- Two-way, per line[1,3]	15W	[2]	13.94	15.28	16.35	
• Message						
- Two-way, per line[1]	1MA	[2]	7.98	7.98	7.98	(T)
• Message with 300 Call Allowance						
- Two-way, per line[1,3]	1W3	[2]	15.19	16.65	17.82	(T)
• Flat						
- Two-way, per line[3]	1KY	[2]	8.78	9.62	10.30	
• Carrier Package[4]	1N8	[2]	10.88 (R)	11.85 (R)	12.63 (R)	(T)

- [1] Message usage charge specified, following, applies. (C)
- [2] The business access line nonrecurring charge specified in 5.2 applies. (C)
- [3] EAS rate increment also applies. See 5.1.1. (D)
- [4] Outgoing only service commonly used by Interexchange Carriers. Service includes CUSTOMNET Service and local call restrictions. (T)

Advice No. 1935  
Issued by U S WEST Communications, Inc.  
By J. A. Peppler  
OR2002-067 Supplement #1

Effective: March 17, 2003  
Title President

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

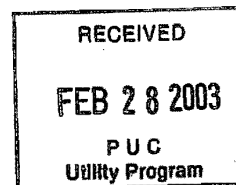
**SECTION 5  
3rd Revised Sheet 137  
Cancels 2nd Revised Sheet 137**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE**

**C. Rates and Charges (Cont'd)**



	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP		
			1	2	3
2. <b>Smart Public Access Line</b> , each					
• Flat					
- Outgoing only, per line[1]	5FO	[2]	\$8.45 (R)	\$9.05 (R)	\$9.50 (R)
- Two-way, per line[1]	5FP	[2]	9.50	10.17	10.68
• Message					
- Outgoing only, per line[3]	14C	[2]	8.61	8.61	8.61
- Two-way, per line[3]	1NH	[2]	8.61 (R)	8.61 (R)	8.61 (R)

3. Message Usage Charges

• Per message	<b>MESSAGE RATE</b>	
		\$0.02 (R)
	<b>PER MINUTE RATE</b>	
• Per Minute of Use Placed within the customer's local calling area		\$0.01

[1] EAS rate increment also applies. See 5.1.1.

[2] The business access line nonrecurring charge from 5.2 applies.

[3] Message usage charges apply.

Advice No. 1935  
Issued by U S WEST Communications, Inc.  
By J. A. Pepler  
OR2002-067 Supplement #1

Effective: March 17, 2003  
Title President

**U S WEST COMMUNICATIONS, INC.      WORKING PAPERS  
SUPPLEMENT No. 1**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
3rd Revised Sheet 136  
Cancels 2nd Revised Sheet 136**

**5. EXCHANGE SERVICES**

**5.5      PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS  
5.5.7      PUBLIC ACCESS LINE SERVICE (Cont'd)**

C. Rates and Charges

1. Each Basic Public Access Line

	USOC	NON-RECURRING CHARGE	MONTHLY RATE PER RATE GROUP			
			1	2	3	
• Measured						
- Two-way, per line[1]	17Q	[2]	\$ 7.98 (R)	\$ 7.98 (R)	\$ 7.98 (R)	
- Outgoing only, per line[1]	16Q	[2]	7.98	7.98	7.98	
• Measured with 300 Call Allowance						
- Two-way, per line[1,3]	15W	[2]	13.94	15.28	16.35	
• Message						
- Two-way, per line[1]	1MA	[2]	7.98	7.98	7.98	(T)
• Message with 300 Call Allowance						
- Two-way, per line[1,3]	1W3	[2]	15.19	16.65	17.82	(T)
• Flat						
- Two-way, per line[3]	1KY	[2]	8.78	9.62	10.30	
• Carrier Package[4]	1N8	[2]	10.88 (R)	11.85 (R)	12.63 (R)	(T)

- [1] Message usage charge specified, following, applies. (C)  
 [2] The business access line nonrecurring charge specified in 5.2 applies.  
 [3] EAS rate increment also applies. See 5.1.1. (D)  
 [4] Outgoing only service commonly used by Interexchange Carriers. Service includes CUSTOMNET Service and local call restrictions. (T)

Advice No. 1935  
 Issued by U S WEST Communications, Inc.  
 By J. A. Pepler  
 OR2002-067 Supplement No. 1

Effective: March 17, 2003  
 Title President

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
3rd Revised Sheet 137  
Cancels 2nd Revised Sheet 137**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE**

**C. Rates and Charges (Cont'd)**

	USOC	NON- RECURRING CHARGE	MONTHLY RATE PER RATE GROUP	1	2	3
2. Smart Public Access Line, each						
• Flat						
- Outgoing only, per line[1]	5FO	[2]		\$8.45 (R)	\$9.05 (R)	\$9.50 (R)
- Two-way, per line[1]	5FP	[2]		9.50	10.17	10.68
• Message						
- Outgoing only, per line[3]	14C	[2]		8.61	8.61	8.61
- Two-way, per line[3]	1NH	[2]		8.61 (R)	8.61 (R)	8.61 (R)

3. Message Usage Charges

	<b>MESSAGE RATE</b>	
• Per message	\$0.02 (R)	
	<b>PER MINUTE RATE</b>	(N)
• Per Minute of Use Placed within the customer's local calling area	\$0.01	(N)

[1] EAS rate increment also applies. See 5.1.1.

[2] The business access line nonrecurring charge from 5.2 applies.

[3] Message usage charges apply. (T)

Advice No. 1935  
Issued by U S WEST Communications, Inc.  
By J. A. Pepler  
OR2002-067 Supplement No. 1

Effective: March 17, 2003  
Title President

Qwest  
421 Southwest Oak Street  
Suite 870  
Portland, Oregon 97204  
Phone 503-242-5234  
FAX 503-242-5456

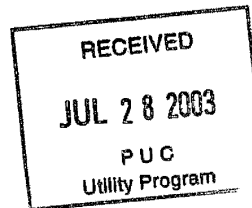
Judith A. Pepler  
President - Oregon

*Storage (S)  
cc Bob  
Mygaard*



July 28, 2003

Advice No. 1946



The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
P. O. Box 2148  
Salem, OR 97308-2148

ATTENTION: Vikie Bailey-Goggins, Administrator  
Tariffs and Data Analysis

Dear Commissioner Hemmingway:

Qwest is forwarding for filing the sheets listed on Attachment A. This filing makes changes to Public Access Line (PAL) Service offerings in the Exchange and Network Services tariff. The effective date is August 28, 2003.

In compliance with FCC Order 02-025 Qwest is submitting the enclosed filing to introduce Public Access Line (PAL)-specific Fraud Protection Service offerings. Customers currently purchasing Qwest CUSTOMNET service offerings will be migrated to the appropriate new Fraud Protection service. Fraud Protection for Basic PAL Service offers three levels of protection: incoming, outgoing, and incoming & outgoing combination.

All Fraud Protection services will be billed at the recurring/monthly rate of \$0.11. The non-recurring charge of \$1.12 will apply when the Fraud Protection features are provided subsequent to the initial installation of the Basic PAL access line. These rates will be in effect across all Qwest Communications tariffs as they relate to Public Access Line Fraud Protection.



The Honorable Roy Hemmingway, Commission Chair  
Oregon Public Utility Commission  
Advice No. 1946

Page 2

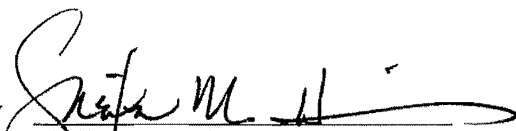
Because Qwest has decided to reduce its PAL rates, the rates have been recalculated in accordance with FCC Order No. 02-025. Qwest has reviewed the FCC order and is making this filing without prejudice to its pending appeal of the FCC order, and without prejudice to its position in the pending appeals of this Commission's orders in Dockets Nos. UT 125 and DR 26/UC 600.

The estimated annualized revenue impact of this filing can be found herein under confidential cover.

**Attachments B and C contain commercially valuable information and/or trade secrets and are submitted to Staff in confidence pursuant to ORS 192.501, 192.502 and 646.641 Et seq. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.**

If you have questions concerning this filing, please contact Sheila Harris on (503) 242-5950.

Yours very truly,

By   
Sheila M. Harris for  
Judy Pepler President - Oregon  
Qwest Communications, Inc.

Attachments

**EXCHANGE AND NETWORK SERVICES**  
**P.U.C. OREGON NO. 29**

<b><u>SECTION</u></b>	<b><u>SHEET</u></b>	<b><u>REVISION</u></b>
5	132	1
5	132.1	0
5	134	1
5	135	1
5	136	4
5	137.1	0

# U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
1st Revised Sheet 132  
Cancels Original Sheet 132

## 5. EXCHANGE SERVICES

### 5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

#### 5.5.7 PUBLIC ACCESS LINE SERVICE

##### A. Description

1. Public Access Line (PAL) Service provides telephone service to all Payphone Service Providers (PSP) pay telephones with or without coin collecting devices. Basic PAL access to the network will be provided on a flat, measured, measured with 300 call allowance, message or message with 300 call allowance or Carrier Package (out only) basis. (T)

Smart PAL Service is a flat or message, two-way or outgoing only line which utilizes central office coin control features. This service provides:

- Coin signaling, including coin collect and coin return.
- Company completed and carried local and intraLATA toll messages, both sent paid and non-sent paid.
- Company operator services/systems for all 0-, 0+ and 1+ intraLATA toll calls, and 0+ local calls.
- Routing to the presubscribed carrier for all 0+ and 00- interLATA calls.
- Pay-per-call blocking (e.g. 900 and 976).
- Incoming and outgoing call screening.
- Access to:
  - Directory assistance,
  - 911 emergency code,
  - All interexchange carriers,
  - 800/800-type service and 950 telephone numbers,
  - Company repair service.

---

Advice No. 1946  
Issued by U S WEST Communications, Inc.  
By J. A. Pepler  
OR2003-040

Effective: August 28, 2003  
Title President - Oregon

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
Original Sheet 132.1

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

A. Description (Cont'd)

2. Fraud Protection Service for Basic PAL Service offers three levels of protection: incoming, outgoing, and incoming & outgoing as described below.
  - Incoming Fraud Protection, or Billed Number Screening (BNS), prohibits collect and/or third number billed calls from being charged to Incoming Fraud Protected numbers. Callers attempting to place a collect or third number billed call using an Incoming Fraud Protected number for billing will be advised by an operator that such billing is unauthorized and the call will not be completed until other payment or billing arrangements are made.
  - Outgoing Fraud Protection restricts outgoing toll calls to only collect, third number billed and calling card.
  - Incoming & Outgoing Fraud Protection is a combination of the two aforementioned Fraud Protection Services.

Fraud Protection Service is subject to the availability of facilities with Basic PAL Service. Operator assisted, collect and/or third number billed calls originating from locations that do not have screening capabilities may not be capable of being intercepted and denied and will be billed, e.g., International calls and calls that do not go through the Billing Validation Authority database. Provision of Fraud Protection does not alleviate customer responsibility for completed toll calls. Rates and Charges for this service are set forth in 5.5.7.C.4., following.

(N)

(N)

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
1st Revised Sheet 134  
Cancels Original Sheet 134

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

B. Terms and Conditions (Cont'd)

5. All other conditions of service not specifically mentioned herein will be governed by exchange access service including, but not limited to, directory listings, touch-tone calling service, and limits of liability.
6. In the event it becomes apparent that a PSP pay telephone is attached to a line not authorized for such use, the Company reserves the right to disconnect that customer's service. However, should the customer so request, the Company will install a PAL at the rates and charges specified herein.
7. Each Basic PAL will be equipped with call screening capabilities. Call screening as referenced here allows participating operator service companies to perform data base verification to determine if third party billed or collect calls are authorized for the billed number requested by the call originator. Call screening does not block calls from completing in the Company's network. (D)  
(T)
8. The Company shall not be liable for any incidental or consequential damages, including but not limited to loss, damage, expense or charges arising from the Company's provisioning of call screening. (T)
9. The Company does not guarantee nor warrant that call screening will block collect and third party billed calls. The customer shall indemnify and hold the Company harmless from any and all losses, claims, demands, suits or other actions, or any liability, whether suffered, made, instituted or asserted by the customer or by any other party or person, for any loss, damage or charges caused or claimed to have been caused by the failure of call screening to prevent collect third party billed or other similar charges from the customer's account. (T)
10. The Company will provide written verification of call screening upon the request of the customer. There is no monthly or nonrecurring charge for call screening. (T)

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Advice No. 1946  
Issued by U S WEST Communications, Inc.  
By J. A. Pepler  
OR2003-040

Effective: August 28, 2003  
Title President - Oregon

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
1st Revised Sheet 135  
Cancels Original Sheet 135**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE**

**B. Terms and Conditions (Cont'd)**

11. The Company is not liable for shortages of coins deposited and/or collected from the pay telephones used on PAL Service. (T)
12. The Company is not liable for end-user fraud associated with failure of the customer's pay telephones to perform correctly. (T)
13. Message rates apply to all applicable local and EAS calls. No message rate is assessed for long distance calling. (T)
14. Loop Diversity and/or Avoidance (T)
  - a. Loop Diversity and/or Avoidance defined in the Private Line Transport Services Tariff are available with Basic Public Access Lines.
  - b. Customers subscribing to Loop Diversity must also subscribe to additional facilities for the diverse route.
15. The following terms and conditions are specific to Smart PAL Service: (T)
  - a. Separate lines are used for each pay telephone instrument installed. Off premises extensions are not permitted. (D)
  - b. The customer must insure that the telephone sets used with Smart PAL Service are capable of rating sent-paid local calls and are compatible with, and cause no harm to the Company's network. (T)

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Advice No. 1946  
Issued by U S WEST Communications, Inc.  
By J. A. Pepler  
OR2003-040

Effective: August 28, 2003  
Title President - Oregon

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
4th Revised Sheet 136  
Cancels 3rd Revised Sheet 136**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)**

C. Rates and Charges

1. Each Basic Public Access Line

		NON- RECURRING CHARGE	MONTHLY RATE 1	PER RATE 2	GROUP 3
• Measured					
- Two-way, per line[1]	17Q	[2]	\$ 7.98	\$ 7.98	\$ 7.98
- Outgoing only, per line[1]	16Q	[2]	7.98	7.98	7.98
• Measured with 300 Call Allowance					
- Two-way, per line[1,3]	15W	[2]	13.94	15.28	16.35
• Message					
- Two-way, per line[1]	1MA	[2]	7.98	7.98	7.98
• Message with 300 Call Allowance					
- Two-way, per line[1,3]	1W3	[2]	15.19	16.65	17.82
• Flat					
- Two-way, per line[3]	1KY	[2]	8.78	9.62	10.30
• Carrier Package[4]	1N8	[2]	8.99 (R)	9.96 (R)	10.74 (R)

[1] Message usage charge specified, following, applies.

[2] The business access line nonrecurring charge specified in 5.2 applies.

[3] EAS rate increment also applies. See 5.1.1.

[4] Outgoing only service commonly used by Interexchange Carriers. Service includes Fraud Protection Service.

(C)

Advice No. 1946  
Issued by U S WEST Communications, Inc.  
By J. A. Pepler  
OR2003-040

Effective: August 28, 2003  
Title President - Oregon

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
Original Sheet 137.1

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

C. Rates and Charges (Cont'd)

4. Fraud Protection features will be provided at the following rates and charges:

	USOC	NONRECURRING CHARGE	MONTHLY RATE
• Fraud Protection			
- Incoming, per line	PSES1	-	-
- Outgoing, per line	PSESO	\$1.12	\$0.11
- Incoming and Outgoing, per line	PSESP	1.12	0.11

(N)

(N)

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Advice No. 1946  
Issued by U S WEST Communications, Inc.  
By J. A. Pepler  
OR2003-040

Effective: August 28, 2003  
Title President - Oregon



U S WEST COMMUNICATIONS, INC. WORKING PAPERS

P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
~~Original~~ 1st Revised Sheet 132  
Cancels Original Sheet 132

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

A. Description

1. Public Access Line (PAL) Service provides telephone service to all Payphone Service Providers (PSP) pay telephones with or without coin collecting devices. Basic PAL access to the network will be provided on a flat, measured, measured with 300 call allowance, message or message with 300 call allowance or Carrier Package (out only) basis. (T)

Smart PAL Service is a flat or message, two-way or outgoing only line which utilizes central office coin control features. This service provides:

- Coin signaling, including coin collect and coin return.
- Company completed and carried local and intraLATA toll messages, both sent paid and non-sent paid.
- Company operator services/systems for all 0-, 0+ and 1+ intraLATA toll calls, and 0+ local calls.
- Routing to the presubscribed carrier for all 0+ and 00- interLATA calls.
- Pay-per-call blocking (e.g. 900 and 976).
- Incoming and outgoing call screening.
- Access to:
  - Directory assistance,
  - 911 emergency code,
  - All interexchange carriers,
  - 800/800-type service and 950 telephone numbers,
  - Company repair service.

---

Advice No. ~~1724~~1946

Issued by U S WEST Communications, Inc. Effective: ~~December 16, 1998~~ August 28, 2003

By ~~L. D. Huss~~ J. A. Pepler

Title ~~Vice President - Oregon~~

OR2003-040

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29**  
**EXCHANGE AND**  
**NETWORK SERVICES**

**SECTION 5**  
Original Sheet 132.1

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE**

**A. Description (Cont'd)**

2. Fraud Protection Service for Basic PAL Service offers three levels of protection: incoming, outgoing, and incoming & outgoing as described below.

- Incoming Fraud Protection, or Billed Number Screening (BNS), prohibits collect and/or third number billed calls from being charged to Incoming Fraud Protected numbers. Callers attempting to place a collect or third number billed call using an Incoming Fraud Protected number for billing will be advised by an operator that such billing is unauthorized and the call will not be completed until other payment or billing arrangements are made.
- Outgoing Fraud Protection restricts outgoing toll calls to only collect, third number billed and calling card.
- Incoming & Outgoing Fraud Protection is a combination of the two aforementioned Fraud Protection Services.

Fraud Protection Service is subject to the availability of facilities with Basic PAL Service. Operator assisted, collect and/or third number billed calls originating from locations that do not have screening capabilities may not be capable of being intercepted and denied and will be billed, e.g., International calls and calls that do not go through the Billing Validation Authority database. Provision of Fraud Protection does not alleviate customer responsibility for completed toll calls. Rates and Charges for this service are set forth in 5.5.7.C.4., following.

(N)

(N)

Advice No. 1946

Issued by U S WEST Communications, Inc.

By J. A. Peppler

Effective: August 28, 2003

Title President - Oregon

OR2003-040

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
Original 1st Revised Sheet 134  
Cancels Original Sheet 134

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

B. Terms and Conditions (Cont'd)

5. All other conditions of service not specifically mentioned herein will be governed by exchange access service including, but not limited to, directory listings, touch-tone calling service, and limits of liability.
6. In the event it becomes apparent that a PSP pay telephone is attached to a line not authorized for such use, the Company reserves the right to disconnect that customer's service. However, should the customer so request, the Company will install a PAL at the rates and charges specified herein.
- ~~7. CUSTOMNET Service, specified in 10.4.1, is available to Basic PAL customers. (D)~~
- ~~87. Each Basic PAL will be equipped with call screening capabilities. Call screening as referenced here allows participating operator service companies to perform data base verification to determine if third party billed or collect calls are authorized for the billed number requested by the call originator. Call screening does not block calls from completing in the Company's network. (T)~~
- ~~98. The Company shall not be liable for any incidental or consequential damages, including but not limited to loss, damage, expense or charges arising from the Company's provisioning of call screening. (T)~~
- ~~109. The Company does not guarantee nor warrant that call screening will block collect and third party billed calls. The customer shall indemnify and hold the Company harmless from any and all losses, claims, demands, suits or other actions, or any liability, whether suffered, made, instituted or asserted by the customer or by any other party or person, for any loss, damage or charges caused or claimed to have been caused by the failure of call screening to prevent collect third party billed or other similar charges from the customer's account. (T)~~
- ~~140. The Company will provide written verification of call screening upon the request of the customer. There is no monthly or nonrecurring charge for call screening. (T)~~

---

Advice No. 17241946

Issued by U S WEST Communications, Inc. Effective: ~~December 16, 1998~~ August 28, 2003

By ~~L. D. Huss~~ J. A. Pepler

Title ~~Vice~~ President - Oregon

OR2003-040

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
Original 1st Revised Sheet 135  
Cancels Original Sheet 135

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

B. Terms and Conditions (Cont'd)

121. The Company is not liable for shortages of coins deposited and/or collected from the pay telephones used on PAL Service. (T)
132. The Company is not liable for end-user fraud associated with failure of the customer's pay telephones to perform correctly. (T)
143. Message rates apply to all applicable local and EAS calls. No message rate is assessed for long distance calling. (T)
154. Loop Diversity and/or Avoidance (T)
- a. Loop Diversity and/or Avoidance defined in the Private Line Transport Services Tariff are available with Basic Public Access Lines.
- b. Customers subscribing to Loop Diversity must also subscribe to additional facilities for the diverse route.
165. The following terms and conditions are specific to Smart PAL Service: (T)
- a. Separate lines are used for each pay telephone instrument installed. Off premises extensions are not permitted.
- ~~b. Until other carriers can provide sent paid InterLATA coin service, all direct dialed InterLATA and International (1+, 10XXX+1, and 011+) calls will be forwarded to AT&T for coin rating and completion. (D)~~
- eb. The customer must insure that the telephone sets used with Smart PAL Service are capable of rating sent-paid local calls and are compatible with, and cause no harm to the Company's network. (T)

---

Advice No. 17241946

Issued by U S WEST Communications, Inc. Effective: ~~December 16, 1998~~ August 28, 2003

By ~~L. D. Huss~~ J. A. Pepler

Title ~~Vice President - Oregon~~

OR2003-040

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5**  
3~~rd~~ 4<sup>th</sup> Revised Sheet 136  
Cancels 2~~nd~~ 3<sup>rd</sup> Revised Sheet 136

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)**

C. Rates and Charges

1. Each Basic Public Access Line

	USOC	NON- RECURRING CHARGE	MONTHLY RATE PER RATE GROUP		
			1	2	3
• Measured					
- Two-way, per line[1]	17Q	[2]	\$ 7.98	\$ 7.98	\$ 7.98
- Outgoing only, per line[1]	16Q	[2]	7.98	7.98	7.98
• Measured with 300 Call Allowance					
- Two-way, per line[1,3]	15W	[2]	13.94	15.28	16.35
• Message					
- Two-way, per line[1]	1MA	[2]	7.98	7.98	7.98
• Message with 300 Call Allowance					
- Two-way, per line[1,3]	1W3	[2]	15.19	16.65	17.82
• Flat					
- Two-way, per line[3]	1KY	[2]	8.78	9.62	10.30
• Carrier Package[4]	1N8	[2]	<del>10.88</del> 8.99 (R)	<del>11.85</del> 9.96 (R)	<del>12.63</del> 10.74 (R)

[1] Message usage charge specified, following, applies.

[2] The business access line nonrecurring charge specified in 5.2 applies.

[3] EAS rate increment also applies. See 5.1.1.

[4] Outgoing only service commonly used by Interexchange Carriers. Service includes CUSTOMNET Service and local call restrictions Fraud Protection Service.

(C)

Advice No. ~~1935~~1946

Issued by U S WEST Communications, Inc. Effective: ~~March 17, 2003~~ August 28, 2003

By J. A. Peppler

Title President - Oregon

OR2003-040

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 29**

**SECTION 5**

**EXCHANGE AND**

Original Sheet 137.1

**NETWORK SERVICES**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE**

**C. Rates and Charges (Cont'd)**

4. Fraud Protection features will be provided at the following rates and charges:

(N)

	<b>USOC</b>	<b>NONRECURRING CHARGE</b>	<b>MONTHLY RATE</b>
• Fraud Protection			
- Incoming, per line	PSES1	-	-
- Outgoing, per line	PSES0	\$1.12	\$0.11
- Incoming and Outgoing, per line	PSESP	1.12	0.11

(N)

Advice No. 1946

Issued by U S WEST Communications, Inc.

Effective: August 28, 2003

By J. A. Pepler

Title President - Oregon

OR2003-040

ORIGINAL

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DR 26/ UC 600

THE NORTHWEST PUBLIC  
COMMUNICATIONS COUNCIL,

Complainant,

v.

QWEST CORPORATION,

Respondent.

AFFIDAVIT OF SHEILA M. HARRIS

RECEIVED

JAN 04 2005

Public Utility Commission of Oregon  
Administrative Hearings Division

STATE OF OREGON        )  
  ) ss.  
County of Multnomah    )

I, Sheila M. Harris, being first duly sworn, do depose and say:

1. I am a Regulatory Manager for Qwest in the State of Oregon. I make this Affidavit in support of Qwest's Memorandum in Opposition to NPCC's Motion for Partial Summary Judgment and in Support of Qwest's Cross-Motion for Summary Judgment in the above-captioned case.

2. Attached to this Affidavit as Exhibit 1 is a true and correct copy of Advice No. 1668 filed by U S WEST Communications, Inc. ("U S WEST") with the Public Utility Commission of Oregon on January 15, 1997.

3. Attached to this Affidavit as Exhibit 2 is a true and correct copy of a letter dated April 1, 1997 from the Oregon Public Utility Commission to U S WEST, relating to Advice No. 1668.

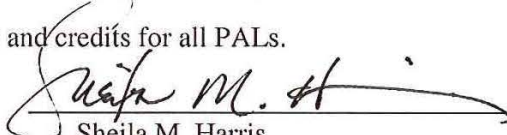
4. I have reviewed Qwest's files relating to its Oregon tariff filings for payphone services. After U S WEST filed Advice No. 1668 with the Oregon Commission on January 15, 1997, U S WEST made no other tariff filings with the Oregon Commission relating to its



DOCKETED

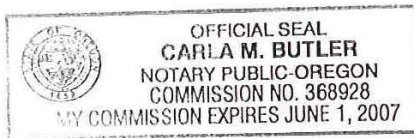
services provided to other payphone providers until September 16, 1997, when U S WEST filed Advice No. 1689. A true and correct copy of Advice No. 1689 is attached hereto as Exhibit 3.

5. All payphone service providers ("PSPs") who subscribed to PALs as of July 24, 2000, received a refund from Qwest in the amount of \$334.59 per PAL in approximately September 2000, covering the time period May 1, 1996 through September 20, 2000, as well as additional monthly credits totaling \$6.68 per PAL for the next approximately 15 months, pursuant to the Commission's orders in Docket Nos. UT 80 and UT 125. PSPs who formerly were PAL subscribers were also eligible for refunds in the same amount. Oregon PSPs thereby received refunds and credits in the amount of approximately \$434.79 for each PAL, and a total of approximately \$2,624,251 in refunds and credits for all PALs.

  
\_\_\_\_\_  
Sheila M. Harris

SUBSCRIBED AND SWORN to before me this 3<sup>rd</sup> day of January, 2005.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My commission expires: 6/1/07





U S WEST Communications, Inc.  
421 Southwest Oak Street Suite 853  
Portland, Oregon 97204  
503 242-5105  
503 242-5465 Facsimile

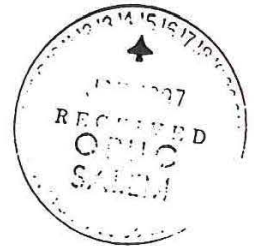
Chuck Lenard  
Vice President-Oregon

**U S WEST**  
COMMUNICATIONS 

January 15, 1997

"Letter of Acknowledgement"

Advice No. 1668



The Honorable Roger Hamilton, Commission Chair  
Oregon Public Utility Commission  
550 Capitol Street NE  
Salem, Oregon 97310-1380

ATTENTION: Janice Fulker, Administrator  
Tariffs and Data Analysis

Dear Commissioner Hamilton:

U S WEST Communications, Inc. (U S WEST) is forwarding for filing the sheets listed on Attachment A. These are revisions to the Exchange and Network Services tariff. The effective date is April 15, 1997.

This filing introduces Smart Public Access Line (Smart PAL). Smart PAL is intended to meet the requirements in the FCC Order 96-388 (Paragraphs 146 and 147) as modified in FCC Order 96-439 (Paragraph 163) to provision a coin line for use by all Payphone Service Providers who wish to place coin control functions on the line rather than the telephone set. In addition, this filing withdraws language in the tariff which regulates the operational characteristics of Payphone Service Provider pay telephones.

Currently U S WEST offers a basic PAL line which is a voice grade line used by Independent Payphone Providers to connect "smart" pay telephone equipment to the U S WEST Public Switched Network. The Smart PAL is a pay telephone access line with inherent coin control functions provided by U S WEST's central office. Smart Pal is offered on a message rated basis, however, in central offices which do not have usage sensitive billing capability, a flat rated Smart Pal is being offered.

The estimated annual revenue impact of this filing is calculated on Attachment B.

The Honorable Roger Hamilton, Commission Chair  
Oregon Public Utility Commission  
Advice No. 1668

Page 2

The proposed per message rate and nonrecurring rate for the Smart Pal line mirror the current nonrecurring rates offered for the basic Pal line. The recurring rates for the Smart Pal line were developed using the existing price/cost relationship of the basic Pal. Attachment C includes a cost/price comparison and the December 1996 recurring Smart Pal Total Service Long Run Incremental Cost Study.

**Attachment C contains commercially valuable information and/or trade secrets and is submitted to Staff in confidence pursuant to ORS 192.501 and 192.502. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.**

If you have questions concerning this filing, please contact Kathy Brady on (503) 242-5623.

Yours very truly,

By  \_\_\_\_\_  
Vice President - Oregon  
U S WEST Communications, Inc.

Attachments

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 25

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	57.1	Original
5	58	2nd
5	59	2nd
5	60	3rd
5	61	5th
5	62	2nd

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON No. 25  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
Original Sheet 57.1

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS (Cont'd)

5.5.7 PUBLIC ACCESS LINE SERVICE

A. Description

Public Access Line (PAL) Service provides telephone service to all Payphone Service Providers (PSP) pay telephones with or without coin collecting devices. Basic PAL access to the network will be provided on a measured, measured with 300 call allowance, message or message with 300 call allowance or Carrier Package (out only) basis only.

Smart PAL Service is a flat or message, two-way or outgoing only line which utilizes central office coin control features. This service provides:

- Coin signaling, including coin collect and coin return.
- Company completed and carried local and intraLATA toll messages, both sent paid and non-sent paid.
- Company operator services/systems for all 0-, 0+ and 1+ intraLATA toll calls, and 0+ local calls.
- Routing to the presubscribed carrier for all 0+ and 00- interLATA calls.
- Pay-per-call blocking (e.g. 900 and 976).
- Incoming and outgoing call screening.
- Access to:
  - Directory assistance,
  - 911 emergency code,
  - All interexchange carriers,
  - 800/800-type service and 950 telephone numbers,
  - Company repair service.



(M)

(T)

(T)

(M)

(N)

(N)

(M) Material moved from Sheet 58.

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON No. 25  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
2nd Revised Sheet 58  
Cancels 1st Revised Sheet 58

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS  
5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)



B. Terms and Conditions

- 1. PAL Service and features are available where equipment, facilities and operating conditions permit.
- 2. A number change may be required if a customer changes from existing service to PAL Service.
- 3. All PSP pay telephones must be connected to PAL Service.
- 4. Payment of all business measured service usage, message service usage, toll message service, Information Delivery Service and directory and operator assistance charges from a PAL shall be the responsibility of the customer subscribing to the PAL Service.

(M)  
(D)  
(T)  
(D)  
(C)  
(D)  
(T)

(M) Material moved to Sheet 57.1.

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 25  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
2nd Revised Sheet 59  
Cancels 1st Revised Sheet 59



5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

B. Terms and Conditions (Cont'd)

- 5. All other conditions of service not specifically mentioned herein will be governed by exchange access service including, but not limited to, directory listings, touch-tone calling service, and limits of liability. (D) (T)
- 6. In the event it becomes apparent that a PSP pay telephone is attached to a line not authorized for such use, the Company reserves the right to disconnect that customer's service. However, should the customer so request, the Company will install a PAL at the rates and charges specified herein. (T)
- 7. CUSTOMNET Service, specified in 10.4.1 of the Exchange and Network Services Price List, is available to Basic PAL customers. (D) (T)
- 8. Each Basic PAL will be equipped with call screening capabilities. Call screening as referenced here allows participating operator service companies to perform data base verification to determine if third party billed or collect calls are authorized for the billed number requested by the call originator. Call screening does not block calls from completing in the Company's network. (T)
- 9. The Company shall not be liable for any incidental or consequential damages, including but not limited to loss, damage, expense or charges arising from the Company's provisioning of call screening. (T)
- 10. The Company does not guarantee nor warrant that call screening will block collect and third party billed calls. The customer shall indemnify and hold the Company harmless from any and all losses, claims, demands, suits or other actions, or any liability, whether suffered, made, instituted or asserted by the customer or by any other party or person, for any loss, damage or charges caused or claimed to have been caused by the failure of call screening to prevent collect third party billed or other similar charges from the customer's account. (T)(M)
- 11. The Company will provide written verification of call screening upon the request of the customer. There is no monthly or nonrecurring charge for call screening. (T) (M)

(M) Material moved from Sheet 60.



**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 25  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
5th Revised Sheet 61  
Cancels 4th Revised Sheet 61**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS  
5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)**



**C. Rates and Charges**

	USOC	NONRECURRING CHARGE	MONTHLY RATE	
1. Each Basic Public Access Line				(T)
• Measured				
- Two-way, per line[1]	17Q	[2]	\$18.00	(T)
- Outgoing only, per line[1]	16Q	[2]	18.00	(T)
• Measured with 300 Call Allowance				
- Two-way, per line[1,3]	15W	[2]	30.87	(T)
• Message				
- Two-way, per line[4]	1MA	[2]	18.00	(T)

- [1] In addition, Business Measured Service usage rates from 5.2 of the Exchange and Network Services Price List, apply.
- [2] The business access line nonrecurring charge specified in 5.2 applies. (T)
- [3] Flat business EAS rates, specified in 5.1.1 of the Exchange and Network Service Price List, apply.
- [4] Message usage charge specified, following, applies. (T)

Advice No. 1668  
Issued by U S WEST Communications, Inc.  
By C. A. Lenard  
OR96-133

Effective: April 15, 1997  
Title Vice President

Exhibit 1  
Page 8 of 9



**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 25  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
2nd Revised Sheet 62  
Cancels 1st Revised Sheet 62**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS  
5.5.7 PUBLIC ACCESS LINE SERVICE**

**C. Rates and Charges**

**1. Each Basic Public Access Line (Cont'd)**



	USOC	NONRECURRING CHARGE	MONTHLY RATE	
• Message with 300 Call Allowance				
- Two-way, per line[1,2]	1W3	[3]	\$30.87	(T)
• Carrier Package[4]	1N8	[3]	25.00	
<b>2. Each Smart Public Access Line</b>				(N)
• Flat				
- Outgoing only, per line[2]	5FO	[3]	40.00	
- Two-way, per line[2]	5FP	[3]	40.00	
• Message				
- Outgoing only, per line[1]	14C	[3]	20.74	
- Two-way, per line[1]	1NH	[3]	20.74	(N)
<b>3. Message Usage Charges</b>				(T)
		<b>MESSAGE RATE</b>		
• Per message		\$0.07		

- [1] Message usage charge specified, following, applies. (T)
- [2] Flat business EAS rates, specified in 5.1.1 of the Exchange and Network Service Price List, apply.
- [3] The business access line nonrecurring charge from 5.2 applies. (T)
- [4] Outgoing only service commonly used by Interexchange Carriers. Service includes CUSTOMNET Service and local call restrictions. (T)

Advice No. 1668  
Issued by U S WEST Communications, Inc.  
By C. A. Lenard  
OR96-133

Effective: April 15, 1997  
Title Vice President Exhibit 1  
Page 9 of 9

LKM

# Oregon

PUBLIC  
UTILITY  
COMMISSION

April 1, 1997

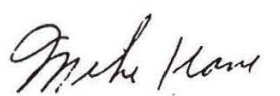
CHARLES A LENARD  
VICE PRESIDENT - OREGON  
U S WEST COMMUNICATIONS INC  
421 SW OAK ST RM 8S3  
PORTLAND OR 97204

RE: Advice No. 1668

On January 15, 1997, U S WEST Communications, Inc., filed revised sheets for inclusion in its tariff, PUC OR No. 25.

The filing introduces Smart Public Access Line (Smart PAL) services.

In accordance with a decision of the Commission in the public meeting of April 1, 1997, the sheets filed under Advice No. 1668 will become effective with service rendered on and after April 15, 1997. One receipted copy of each sheet is returned for your files.



Mike Kane  
Director  
Utility Program  
(503) 373-7133  
Fax: (503) 373-7752

usw1668

Enclosures

John A. Kitzhaber  
Governor



550 Capitol St. NE  
Salem, OR 97310-1380  
(3) 378-5849

U S WEST Communications, Inc.  
421 Southwest Oak Street Suite 853  
Portland, Oregon 97204  
503 242-5105  
503 242-5465 Facsimile

Chuck Lenard  
Vice President-Oregon

**U S WEST**  
COMMUNICATIONS 



September 16, 1997

"Letter of Acknowledgement"

Advice No. 1689

The Honorable Roger Hamilton, Commission Chair  
Oregon Public Utility Commission  
550 Capitol Street NE  
Salem, Oregon 97310-1380

ATTENTION: Janice Fulker, Administrator  
Tariffs and Data Analysis

Dear Commissioner Hamilton:

U S WEST Communications, Inc. (U S WEST) is forwarding for filing the sheets listed on Attachment A. These are revisions to the Exchange and Network Services tariff. The effective date is October 22, 1997.

This filing introduces a Flat Basic Public Access Line (PAL), reduces the rate of the Flat Smart PAL, and removes the restriction on subscribing to a Flat Smart PAL.

This filing is being proposed in conformance with House Bill 3168 which was passed by the Oregon Legislature on July 7, 1997 with an effective date of October 4, 1997. This bill was amended to read, "The Public Utility Commission shall be prohibited from requiring any call aggregator, telephone customer or class of customers to pay for local exchange telephone service, or any portion thereof, on a mandatory measured service basis."

On August 22, 1997 U S WEST filed a like proposal as a part of its UT 125 rate design filing (Advice No. 1684). This filing was filed with an effective date of October 1, 1997. However, anticipating the possible suspension of Advice No. 1684, U S WEST proposes the attached filing to ensure that a flat line option is available on October 4, 1997, as required by House Bill 3168.

The estimated annualized revenue impact of this filing can be found herein under confidential cover.

The Honorable Roger Hamilton, Commission Chair  
Oregon Public Utility Commission  
Advice No. 1689

Page 2

**Attachment B contains commercially valuable information and/or trade secrets and is submitted to Staff in confidence pursuant to ORS 192.501 and 192.502. We understand that you will notify us prior to release of any such information in sufficient time to seek a protective order from the Commission or to otherwise preserve its confidentiality.**

If you have questions concerning this filing, please contact Kathy Brady on (503)242-5623.

Yours very truly,

By   
Vice President - Oregon  
U S WEST Communications, Inc.

Attachments

EXCHANGE AND NETWORK SERVICES  
P.U.C. OREGON NO. 25

<u>SECTION</u>	<u>SHEET</u>	<u>REVISION</u>
5	57.1	1st
5	60	4th
5	61	6th
5	62	3rd

U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON NO. 25  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
1st Revised Sheet 57.1  
Cancels Original Sheet 57.1

5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS (Cont'd)

5.5.7 PUBLIC ACCESS LINE SERVICE

A. Description

Public Access Line (PAL) Service provides telephone service to all Payphone Service Providers (PSP) pay telephones with or without coin collecting devices. Basic PAL access to the network will be provided on a flat, measured, measured with 300 call allowance, message or message with 300 call allowance or Carrier Package (out only) basis.

(T)

(T)

Smart PAL Service is a flat or message, two-way or outgoing only line which utilizes central office coin control features. This service provides:

- Coin signaling, including coin collect and coin return.
- Company completed and carried local and intraLATA toll messages, both sent paid and non-sent paid.
- Company operator services/systems for all 0-, 0+ and 1+ intraLATA toll calls, and 0+ local calls.
- Routing to the presubscribed carrier for all 0+ and 00- interLATA calls.
- Pay-per-call blocking (e.g. 900 and 976).
- Incoming and outgoing call screening.
- Access to:
  - Directory assistance,
  - 911 emergency code,
  - All interexchange carriers,
  - 800/800-type service and 950 telephone numbers,
  - Company repair service.



U S WEST COMMUNICATIONS, INC.

P.U.C. OREGON No. 25  
EXCHANGE AND  
NETWORK SERVICES

SECTION 5  
4th Revised Sheet 60  
Cancels 3rd Revised Sheet 60



5. EXCHANGE SERVICES

5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS

5.5.7 PUBLIC ACCESS LINE SERVICE

B. Terms and Conditions (Cont'd)

- 12. The Company is not liable for shortages of coins deposited and/or collected from the pay telephones used on PAL Service.
- 13. The Company is not liable for end-user fraud associated with failure of the customer's pay telephones to perform correctly.
- 14. Message rates apply to all applicable local and EAS calls. No message rate is assessed for long distance calling. (T)
- 15. Loop Diversity and/or Avoidance
  - a. Loop Diversity and/or Avoidance defined in the Private Line Transport Services Price List are available with Basic Public Access Lines.
  - b. Customers subscribing to Loop Diversity must also subscribe to additional facilities for the diverse route.
- 16. The following terms and conditions are specific to Smart PAL Service:
  - a. Separate lines are used for each pay telephone instrument installed. Off premises extensions are not permitted.
  - b. Until other carriers can provide sent-paid InterLATA coin service, all direct dialed InterLATA and International (1+, 10XXX+1, and 011+) calls will be forwarded to AT&T for coin rating and completion.
  - c. The customer must insure that the telephone sets used with Smart PAL Service are capable of rating sent-paid local calls and are compatible with, and cause no harm to the Company's network.

(D)

**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 25  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
6th Revised Sheet 61  
Cancels 5th Revised Sheet 61**

**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS  
5.5.7 PUBLIC ACCESS LINE SERVICE (Cont'd)**



**C. Rates and Charges**

	USOC	NONRECURRING CHARGE	MONTHLY RATE	
<b>1. Each Basic Public Access Line</b>				
• Measured				
- Two-way, per line[1]	17Q	[2]	\$18.00	
- Outgoing only, per line[1]	16Q	[2]	18.00	
• Measured with 300 Call Allowance				
- Two-way, per line[1,3]	15W	[2]	30.87	
• Message				
- Two-way, per line[4]	1MA	[2]	18.00	
• Message with 300 Call Allowance				(M)
- Two-way, per line[3,4]	1W3	[2]	30.87	(T-M)
• Flat				(N)
- Two-way, per line[3]	1KY	[2]	34.77	(N)
• Carrier Package[5]	1N8	[2]	25.00	(T-M)

[1] In addition, Business Measured Service usage rates from 5.2 of the Exchange and Network Services Price List, apply.

[2] The business access line nonrecurring charge specified in 5.2 applies.

[3] Flat business EAS rates, specified in 5.1.1 of the Exchange and Network Service Price List, apply.

[4] Message usage charge specified, following, applies.

[5] Outgoing only service commonly used by Interexchange Carriers. Service includes CUSTOMNET Service and local call restrictions. (T-M)  
(M)

(M) Material moved from Sheet 62.



**U S WEST COMMUNICATIONS, INC.**

**P.U.C. OREGON NO. 25  
EXCHANGE AND  
NETWORK SERVICES**

**SECTION 5  
3rd Revised Sheet 62  
Cancels 2nd Revised Sheet 62**



**5. EXCHANGE SERVICES**

**5.5 PUBLIC COMMUNICATIONS SERVICE - COIN AND COINLESS**

**5.5.7 PUBLIC ACCESS LINE SERVICE**

**C. Rates and Charges (Cont'd)**

	USOC	NONRECURRING CHARGE	MONTHLY RATE	(M)
<b>2. Each Smart Public Access Line</b>				
• Flat				
- Outgoing only, per line[1]	5FO	[2]	\$39.50 (R)	(T)
- Two-way, per line[1]	5FP	[2]	39.50 (R)	(T)
• Message				
- Outgoing only, per line[3]	14C	[2]	20.74	(T)
- Two-way, per line[3]	1NH	[2]	20.74	(T)
<b>3. Message Usage Charges</b>				
		<b>MESSAGE RATE</b>		
• Per message		\$0.07		

[1] Flat business EAS rates, specified in 5.1.1 of the Exchange and Network Service Price List, apply. (T)

[2] The business access line nonrecurring charge from 5.2 applies. (T)

[3] Message usage charge specified, following, applies. (T)

(M)

(M) Material moved to Sheet 61.

Advice No. 1689  
Issued by U S WEST Communications, Inc.  
By C. A. Lenard  
OR97-053

Effective: October 22, 1997  
Title Vice President

Exhibit 3  
Page 7 of 7

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing AFFIDAVIT OF SHEILA M. HARRIS on:

Brooks E. Harlow  
David L. Rice  
Miller Nash LLP  
601 Union St Ste 4400  
Seattle, WA 98101-2352

Jason Jones  
State of Oregon Department of Justice  
1162 Court Street, N.E.  
Room 100  
Salem, OR 97301-4096

Alex Duarte  
Qwest Corporation  
421 SW Oak Street, Room 810  
Portland, OR 97204

by causing a full, true, and correct copy thereof, addressed to the last-known office address of the attorney (except when served by fax), to be sent by the following indicated method or methods, on the date set forth below:

by **mailing** in a sealed, first-class postage-prepaid envelope and deposited with the United States Postal Service at Portland, Oregon.

DATED: January 4, 2005.

**PERKINS COIE LLP**

By 

Lawrence Reichman, OSB No. 86083

Attorneys for Respondent Qwest Corporation

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DR 26/ UC 600

THE NORTHWEST PUBLIC	)	
COMMUNICATIONS COUNCIL,	)	
	)	
Complainant,	)	PUBLIC UTILITY
	)	COMMISSION OF OREGON
v.	)	STAFF'S REPLY TO QWEST'S
	)	CROSS-MOTION FOR
QWEST CORPORATION,	)	SUMMARY JUDGMENT
	)	
Defendant	)	

**INTRODUCTION**

The Public Utility Commission of Oregon Staff ("Staff") takes this opportunity to comment on the cross-motions of the Northwest Public Communications Council ("NPCC") and Qwest Corporation ("Qwest") that have been filed in this docket. At this time, Staff's comments are limited to a discussion of its understanding of the interplay of this docket with the Oregon Court of Appeals decision to reverse and remand the Public Utility Commission of Oregon's ("Commission") UT 125 rate design order determination that Qwest's payphone access line ("PAL") rates are compliant with the new services test as outlined by federal law. While Staff does not presently take a position on the merits of the cross-motions for summary judgment, Staff reserves the right to comment on the parties' positions as this docket proceeds.

**DISCUSSION**

**1. The Court of Appeals remand of the Commission's order in UT 125.**

On November 10, 2004, the Oregon Court of Appeals reversed and remanded the portion of the Commission's Order No. 01-810, the final order issued in Docket UT 125, which determined that Qwest's PAL rates were consistent with the federal new services test. The Court, in brief, determined that the Commission-approved PAL rates were not consistent with the federal new services test.

Based upon the Oregon Court of Appeal's decision, the matter is currently again before the Commission to determine PAL rates consistent with the federal new services test and the Court's remand. However, it is Staff's understanding that the ultimate determination as to the appropriate PAL rates is independent and separate from the issues presented in the parties cross-motions for summary judgment and does not, and should not, be considered as part of this particular proceeding.

The UT 125 remand will establish a PAL rate that is consistent with the federal new services test. That determination, however, is independent of this proceeding. If, and only if, the Commission were to determine that Qwest was subject to refund liability for its PAL rates in this proceeding would the UT 125 remand be pertinent. Furthermore, the UT 125 remand decision would only be pertinent to the calculation of the *amount* of refunds. However, if it turns out that there is refund liability and thus a refund amount, Staff's expectation is that it would be determined, at a later time, in this proceeding and not the UT 125 remand proceeding. The UT 125 proceeding is separate and distinct from the issues presented in this docket and unnecessary for resolution of this proceeding.

**2. The parties' cross-motions for summary judgment only request a determination of refund liability and not a refund calculation.**

The NPCC has made clear that it is only requesting summary judgment on Qwest's liability to refund money to NPCC members and not the refund amount. *See* NPCC's Motion for Summary Judgment at 2-3. Thus, calculation of possible damages is not in front the Commission at this time.

Of course, if the Commission determines there is refund liability, there may be issues related to what is the correct refund amount. For example, as Qwest as pointed out the NPCC members have received refunds for rates charged during a portion of the time period for which it they currently seek a refund. *See* Qwest's Summary Judgment Opening Memorandum at 24-25. As mentioned above, Staff's expectation is that if the Commission were to determine that Qwest had refund liability, the amount of refunds

would be determined, at a future time, in this docket (as opposed to the UT 125 remand proceeding). Staff reserves the right, if refund liability is determined, to participate in determining the appropriate amount of refunds.

**3. At this time, Staff does not have a position of the issue of refund liability.**

The current issue presented appears to revolve around a Federal Communications Commission (“FCC”) Waiver Order and, specifically, whether Qwest relied on the Waiver Order. As noted throughout both parties’ motions, the issue of refund liability is based entirely upon FCC orders. At the heart of this dispute is the issue of whether Qwest relied on the Waiver Order. This is not an issue that Staff participated in at the time, nor does Staff have any specialized information or documentation as to whether Qwest relied on the Waiver Order.

According to the parties, the Waiver Order and its component refund provisions were a result of an agreement that the FCC made with the RBOC Coalition, of which Qwest was a member. While both the parties seemingly accept that this issue is within the jurisdiction of the Oregon Commission, Staff is uncertain as to why the issue would not be more appropriately decided by the FCC, the agency that issued the Waiver Order and is familiar with the particular facts and circumstances surrounding the Waiver Order. Staff would be interested in hearing from the parties on why the FCC is not a more appropriate forum and reserves the right to comment on whether the Oregon Commission is the appropriate jurisdictional forum for this dispute.

In sum, Staff views the current issue in this proceeding as whether Qwest relied on the Waiver Order and, if so, what reliance on the Waiver Order means regarding refund liability. Staff does not have a position of the merits of that issue, as it currently understands it. Staff, however, reserves the right to comment as appropriate and as issues arise.<sup>1</sup>

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<sup>1</sup> For example, Qwest raises this issue of the filed rate doctrine. *See* Qwest’s Summary Judgment Opening Memorandum at 20. However, Qwest seems to agree that the Waiver Order creates an exception to the filed rate doctrine, if it had relied on the Waiver Order. *See Id.* at 9. Thus, Qwest’s reliance on the filed

CONCLUSION

Staff takes this opportunity to comment on its view of the interplay between this proceeding and the proceeding related to the Oregon Court of Appeals remand of the Commission's final order in UT 125. Staff's understanding is that the current issue before the Commission is limited to whether Qwest has any refund liability for PAL rates. Whether or not Qwest has refund liability for PAL rates revolves around whether it relied on the FCC Waiver Order (and what obligations such reliance would create). While Staff does not have comments on the merits of that issue, it wonders why the FCC, which issued the Waiver Order, is not the more appropriate forum for this dispute. Staff also reserves its rights to comment on issues that may develop in this proceeding.

DATED this \_\_\_\_\_ day of January 2005.

Respectfully submitted,

HARDY MYERS  
Attorney General

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Jason W. Jones, #00059  
Assistant Attorney General  
Of Attorneys for Public Utility  
Commission of Oregon Staff

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rate doctrine seems to be limited to potential relief based upon Oregon law, other than the Waiver Order. In the current posture of the case, Staff does not believe that the filed rate doctrine under Oregon law is ripe for extended discussion. If the filed rate doctrine under Oregon law becomes the issue, Staff would contemplate participating in that discussion.



ISSUED: March 23, 2005

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

DR 26/UC 600

THE NORTHWEST PUBLIC )  
COMMUNICATIONS COUNCIL, )  
 )  
Complainant, )  
 )  
v. )  
 )  
QWEST CORPORATION, )  
 )  
Defendant. )

RULING

DISPOSITION: PROCEEDING HELD IN ABEYANCE

**Introduction**

This matter is before the Public Utility Commission of Oregon (OPUC) on cross motions for summary judgment filed by the Northwest Public Communications Council (NPCC) and Qwest Corporation (Qwest).<sup>1</sup> The principal issue concerns whether Qwest is bound by the refund provisions set forth in the Federal Communications Commission (FCC) Order DA 97-805 (hereafter, the *Waiver Order*). More specifically, the issue is whether the *Waiver Order* requires Qwest to refund a portion of the intrastate Payphone Access Line (PAL) rates paid by Payphone Service Providers (PSPs) since April 15, 1997, because those rates do not comply with the "New Services Test" (NST) established in the FCC's *Payphone Orders*.

**Background**

Section 276 of the Telecommunications Act of 1996 was enacted to "promote competition among PSPs, and promote the widespread deployment of payphone service to the benefit of the general public."<sup>2</sup> To advance these goals, Congress directed the FCC to prescribe regulations preventing the regional Bell operating companies (RBOCs) from subsidizing or discriminating in favor of their own payphone service. Section 276(b) requires the FCC to meet five specific

<sup>1</sup> For purposes of this ruling, "Qwest" includes its predecessor, U S WEST Communications, Inc.

<sup>2</sup> 47 U.S.C. 276(b).

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requirements, including “prescribing a set of non-structural safeguards for BOC payphone service . . . equal to those adopted in the Computer Inquiry III proceeding.”<sup>3</sup>

The FCC implemented Section 276 in a series of orders, beginning with the so-called *Payphone Orders*.<sup>4</sup> The *First Payphone Order*, released September 30, 1996, addressed the five statutory requirements of Section 276(b). That decision requires, among other things, that “in order to receive compensation for completed calls originating from its payphones, a LEC PSP must be able to certify that it has complied with several requirements, including the institution of “effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate [payphone] subsidies.”<sup>5</sup> To implement the nonstructural safeguards requirement of Section 276(b)(1)(C), the FCC held that LECs must unbundle payphone line services and file tariffs using the NST.<sup>6</sup> The FCC concluded that LEC PSPs could begin receiving “dial around compensation” (DAC) for the use of their payphones if intrastate payphone tariffs complying with the requirements of the *First Payphone Order* were in effect by April 15, 1997.

On November 8, 1996, the FCC released its *Payphone Reconsideration Order*, modifying certain requirements for LEC tariffing of payphone services and unbundled network functions. Among other things, the FCC clarified that the states, not the FCC, would review the LEC’s intrastate payphone tariffs. The states were directed to ensure that intrastate payphone service tariffs are cost-based, consistent with the requirements of Section 276, nondiscriminatory, and in compliance with the *Computer III* tariffing guidelines (i.e., NST-compliant).<sup>7</sup> The *Payphone Reconsideration Order* acknowledged that, in those cases where a LEC had already filed intrastate payphone tariffs, the state could conclude that the LEC’s existing tariffs complied with the requirements of the payphone orders, in which case no further filings would be required. LECs that did not have intrastate payphone tariffs in compliance with the

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<sup>3</sup> *New England Public Communications Council, Inc., v. Federal Communications Commission, et al.*, 334 F.3d 69, 71 (D.C. Cir. 2003) (hereafter *New England PCC v. FCC*). See also, *In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, CC Docket No. 90-623, Report and Order, 6 FCC Rcd 7571 (Dec. 20, 1991) (*Computer III*).

<sup>4</sup> *Id.*, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, First Report and Order, 11 FCC Rcd 20541 (Sept. 20, 1996) (*First Payphone Order*); Order on Reconsideration, 11 FCC Rcd 21233 (Nov. 8, 1996) (*Payphone Reconsideration Order*), *aff’d in part and remanded in part, Illinois Pub. Telecomms. Ass’n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997); Second Report and Order, 13 FCC Rcd 1778 (Oct. 9, 1997) (Second Payphone Order), vacated and remanded, *MCI Telecomms. Corp. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998); Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (Feb. 4, 1999) (*Third Payphone Order*), *aff’d, American Pub. Communications Counsel v. FCC*, 215 F.3d 51 (D.C. Cir. 2000). The *First Payphone Order* and the *Payphone Reconsideration Order* are collectively known as the *Payphone Orders*.

<sup>5</sup> *Payphone Reconsideration Order* at para. 131.

<sup>6</sup> *Id.* at para. 199; See also *In the Matter of Wisconsin Public Service Commission*, Order Directing Filings, Bureau/CPD No. 00-01, FCC 02-25 (rel. January 31, 2000) at para. 12.

<sup>7</sup> *New England PCC v. FCC, supra* at 72.

*Payphone Orders* were directed to file tariffs with the states no later than January 15, 1997. Rates were to be effective no later than April 15, 1997.<sup>8</sup>

Qwest filed new PAL<sup>9</sup> tariffs with the OPUC on January 15, 1997, in Advice No. 1668. The Advice stated that the tariffs were “intended to meet the requirements in FCC Order 96-388 (paragraphs 146-147) (*First Payphone Order*) as modified in FCC Order 96-439 (paragraph 163) (*Reconsideration Order*).” Paragraph 163 of the *Reconsideration Order* specifically states that the intrastate PAL rate filings must meet the Computer III standards (*i.e.*, the NST).

The OPUC considered and approved Qwest's new intrastate PAL rates at its April 1, 1997, public meeting. An OPUC staff report presented at the public meeting reiterated that the filing was intended to meet the requirements established by the FCC in its *Payphone Orders*.<sup>10</sup>

The OPUC-approved PAL rates became effective on April 15, 1997. On the same day, the FCC's Common Carrier Bureau adopted and released its *Waiver Order*. Among other things, the *Waiver Order* granted a request by a coalition of RBOCs, including Qwest, to extend the time to file intrastate tariffs for payphone services. Paragraph 2 states:

Because some LEC intrastate tariffs for payphone services are not in full compliance with the Commission's guidelines, we grant all LECs a limited waiver until May 19, 1997 to file intrastate tariffs for payphone services consistent with the ‘new services’ test, pursuant to the federal guidelines established in the Order on Reconsideration, subject to the terms discussed herein. This waiver enables LECs to file intrastate tariffs consistent with the ‘new services’ test of the federal guidelines detailed in the Order on Reconsideration and the Bureau Waiver Order, including cost support data, within 45 days of the April 4, 1997 release date of the Bureau Waiver Order and remain eligible to receive payphone compensation as of April 15, 1997, as long as they are in compliance with all of the other requirements set forth in the Order on Reconsideration.

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<sup>8</sup> *Payphone Reconsideration Order* at para. 163.

<sup>9</sup> As defined in Qwest's tariff, Public Access Line, or PAL, service “provides telephone service to all Payphone Service Providers (PSP) pay telephones with or without coin collecting devices.” The new PAL rates filed by Qwest on January 15, 1997, included “Smart PAL Service” which is defined in the tariff as “a flat or message, two-way or outgoing only line which utilizes central office coin control features.” See, U S WEST Communications, Inc., PUC Oregon No. 25, Exchange and Network Services, Section 5, Original Sheet 57.1.

<sup>10</sup> The transcript of the April 1, 1997, public meeting does not indicate that NPCC entered an appearance or submitted comments regarding Qwest's proposed PAL rates. *Qwest Memorandum in Opposition to NPCC's Motion for Partial Summary Judgment and in Support of Qwest's Motion for Summary Judgment (Qwest Memorandum)*, Affidavit of Lawrence Reichman, Exhibit 3, January 4, 2005.

Under the terms of this limited waiver, a LEC must have in place intrastate tariffs for payphone services that are effective by April 15, 1997. The existing intrastate tariffs for payphone services will continue in effect until the intrastate tariffs filed pursuant to the Order on Reconsideration and this Order become effective. A LEC who seeks to rely on the waiver granted in the instant Order must reimburse its customers or provide credit from April 15, 1997 in situations where the newly tariffed rates, when effective, are lower than the existing tariffed rates. This Order does not waive any of the other requirements with which the LECs must comply before receiving compensation. (Footnotes omitted.)

The *Waiver Order* makes clear that the waiver authorized by the FCC was limited in duration and was granted for the purpose of enabling the states to ensure that intrastate tariffs were filed in accordance with FCC rules, including the NST. Paragraphs 23 and 24 state:

Waiver of Commission rules is appropriate only if special circumstances warrant a deviation from the general rule and such deviation serves the public interest. Because the LECs are required to file, and the states are required to review, intrastate tariffs for payphone services consistent with federal guidelines, which, in some cases, may not have been previously filed in this manner at the intrastate level, we find that special circumstances exist in this case to grant a limited waiver of brief duration to address this responsibility. In addition, for the reasons stated above, our grant of a waiver in this limited circumstance, does not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96-128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated by payphones. Moreover, the states' review of the intrastate tariffs that are the subject of this limited waiver will enable them to determine whether these tariffs have been filed in accordance with the Commission's rules, including the 'new services' test. Accordingly, we grant a limited waiver for 45 days from the April 4, 1997 release date of the Bureau Waiver Order the requirement that LEC intrastate tariffs for payphone services comply with the 'new services' test of the federal guidelines, as set forth in paragraph 163 of the Order on Reconsideration, subject to the terms discussed herein. This Order does not waive any of the other requirements set forth in paragraphs 131-132 of the Order on Reconsideration. (Footnotes omitted.)

In this Order, the Bureau grants a limited waiver of the Commission's requirement that effective intrastate tariffs for

payphone services be in compliance with federal guidelines, specifically that the tariffs comply with the 'new services' test, as set forth in the Payphone Reclassification Proceeding. LECs must comply with this requirement, among others, before they are eligible to receive the compensation from IXC that is mandated in that proceeding.<sup>11</sup>

Qwest did not file new PAL tariffs prior to the May 19, 1997, date established in the *Waiver Order*. It contends that the refund requirements of the *Waiver Order* apply only to LECs that actually filed new intrastate tariffs within the specified 45-day period (*i.e.*, between April 4, 1997, and May 19, 1997). Qwest claims that refund provisions in the *Waiver Order* do not apply to its Oregon intrastate PAL rates because those rates were not filed within the 45-day period, but, in fact, had already been approved by the OPUC at its April 1, 1997, public meeting.

NPCC claims that Qwest remains liable to pay refunds under the terms of the *Waiver Order*, notwithstanding the fact that Qwest did not file new tariffs during the 45-day waiver period. NPCC asserts:

1. The *Payphone Orders* required Qwest to file NST-compliant Oregon intrastate PAL tariffs effective April 15, 1997. Those tariffs were required to be filed before Qwest was eligible to receive DAC for its own payphones.
2. Qwest's Oregon intrastate PAL tariffs have never been NST-compliant. This was determined by the Oregon Court of Appeals in November 2004 in *Northwest Public Communications Council v. OPUC*.<sup>12</sup> The Court remanded the case back to the OPUC with instructions to develop NST-compliant rates.
3. Because Qwest: (a) did not file NST-compliant Oregon intrastate PAL tariffs within the 45-day waiver period specified by the *Waiver Order*, and (b) nevertheless began collecting DAC effective April 15, 1997, Qwest remains subject to the refund requirements set forth in the *Waiver Order*. The applicable refund period extends from April 15, 1997, until such time as NST-compliant PAL rates are established by the OPUC in accordance with the Court of Appeals remand in *NPCC v. OPUC*.

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<sup>11</sup> On May 20, 1997, Qwest sent a letter to interexchange carriers certifying that: (a) it had effective intrastate payphone service tariffs in compliance with the *Payphone Orders*, including the NST; and (b) was eligible to receive DAC as of April 15, 1997, in 13 of the 14 states in which it provided service, including Oregon. *Qwest Memorandum*, Affidavit of Lawrence Reichman, Exhibit 5, January 4, 2005.

<sup>12</sup> 196 Ore. App. 94, 100 P.3d 776, 2004 Ore. App. LEXIS 1471 (November 10, 2004) (hereafter, *NPCC v. OPUC*).

In response, Qwest reiterates that the refund provisions in the Waiver Order do not apply, and advances affirmative defenses based on the filed rate doctrine, res judicata, standing, and the federal statute of limitations. NPCC asserts that the affirmative defenses raised by Qwest are either inapplicable or preempted.

#### **Petitions for Declaratory Ruling with FCC**

Oregon is not the only jurisdiction where an outstanding controversy exists concerning whether refunds are owed by an RBOC for failure to implement NST-compliant rates on April 15, 1997. The Illinois Public Telecommunications Association, the Independent Payphone Association of New York, and the Southern Public Communications Association have filed petitions with the FCC in CC Docket 96-128, requesting a declaratory ruling that PSPs are entitled refunds where rates charged by RBOCs have exceeded those required by the NST. The FCC consolidated the petitions for consideration on January 5, 2005 (hereafter, “the consolidated petitions”).

Among the issues raised by the consolidated petitions is whether the FCC’s *Payphone Orders*, including the *Waiver Order*, require RBOCs to refund PAL rates retroactive to April 15, 1997, to the extent that NST-compliant rates are determined to be less than the rates that were actually charged to PSPs. The petitions also ask the FCC to preempt decisions by state commissions and courts that have reached a contrary conclusion.<sup>13</sup>

NPCC has filed comments in the consolidated proceedings supporting the issuance of a declaratory ruling by the FCC authorizing refunds to PSPs and preempting state decisions to the contrary. NPCC’s comments detail the nature of its dispute with Qwest and urge the FCC to provide guidance on the refund issue so that the matter may be brought to resolution within “a reasonable timeframe.” NPCC emphasizes that without FCC guidance it could be a very long time before its dispute with Qwest is finally resolved. In particular, it states:

And the NPCC will continue to litigate against Qwest in Oregon for as long as necessary. However, without FCC guidance, that could be a long time. Assuming the NPCC prevails at the OPUC on refunds, Qwest is likely to appeal, since Qwest has shown no sign of relenting and Qwest’s refund obligation is estimated to be in excess of \$6 million in Oregon. Accordingly, the NPCC believes that if this Commission grants IPANY’s petition, it would be very helpful in ensuring that

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<sup>13</sup> For example, the Supreme Court of New York, Appellate Division, concluded that the *Waiver Order* does not require refunds where a LEC did not file new rates within the 45-day period prescribed by the FCC. See, *Independent Payphone Association of New York, Inc., v. Public Service Commission of the State of New York, and Verizon New York, Inc.*, 5 A.D.3d 960, 2004 N.Y. App. Div. LEXIS 3442 (March 25, 2004).

refund disputes in Oregon and other states are resolved quickly.<sup>14</sup>

### Telephone Conference

At the telephone conference held on March 3, 2005, I suggested that this proceeding be held in abeyance pending a decision by the FCC on the consolidated petitions for declaratory ruling now pending in CC Docket 96-128. The parties expressed certain reservations with that proposal. NPCC noted that the consolidated petitions are not a high-priority item for the FCC and may not be considered in the near future. Qwest expressed concern that postponing disposition of the proceeding might increase its financial exposure in the event that NPCC prevails on the refund issue.

### Decision

After considering the filings and the arguments made by the parties at the telephone conference, I find that the most reasonable procedural approach is to hold this proceeding in abeyance pending a decision by the FCC on the consolidated petitions for declaratory ruling. The reasons for my decision are as follows:

1. The threshold question presented in this proceeding concerns the scope of the refund obligation contemplated by the FCC's *Payphone Orders*, and, in particular, the *Waiver Order*. That issue and other related matters are squarely before the FCC in its review of the consolidated petitions. Since the RBOCs' refund liability under the *Payphone Orders* is ultimately a question of federal law, it makes sense to allow the FCC the opportunity to provide guidance to the states concerning the proper interpretation of those orders. While this Commission could certainly opine on what the FCC intended in its *Payphone Orders*, the FCC itself is in the best position to articulate what its decisions require.
2. An OPUC decision on the pending motions is unlikely to shorten the time necessary to resolve the dispute between the parties. In its comments to the FCC, NPCC acknowledges that Qwest is virtually certain to appeal an OPUC decision in NPCC's favor. An appeal could easily take years to wind its way through the Oregon appellate courts. It is very doubtful that this process would be concluded before the FCC's decision on the consolidated

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<sup>14</sup> *In the Matter of Independent Payphone Association of New York's Petition for Pre-Emption and Declaratory Ruling Concerning Refund of Payphone Line Rate Charges*, CC Docket No. 96-128, Comments of Northwest Public Communications Council and the Minnesota Independent Payphone Association, in Support of Petition for a Declaratory Ruling, p. 6, January 18, 2005.

petitions.<sup>15</sup> On the other hand, if Qwest were to prevail, it is likely that NPCC will ask the FCC to preempt the OPUC decision, just as it has done in the pending consolidated petition proceeding. In my view, it makes little sense to expend time and resources litigating this matter before the OPUC and state courts when it is unlikely to produce a final outcome, especially when the identical issues are pending before the FCC.

3. Qwest has raised a number of affirmative defenses to NPCC's request for refunds pursuant to the *Waiver Order*. All of these defenses have been raised in the consolidated petition proceeding, with the possible exception of Qwest's claim that NPCC's refund request is barred by the federal statute of limitations. To the extent that the FCC grants the petitions for declaratory ruling, however, it seems probable that the FCC will have occasion to consider all of these defenses, including the federal statute of limitations.<sup>16</sup>
4. Qwest has expressed concern that a delay in the resolution of this proceeding may increase its financial exposure in the event refunds are found to be due. As emphasized above, however, an OPUC decision on the pending motions is unlikely to accelerate the final resolution of this matter. Moreover, because a federal question is involved and the matter currently resides in a federal forum, any potential RBOC financial exposure will remain until the federal proceedings are finally resolved. Consequently, a decision to hold this proceeding in abeyance pending the outcome of the FCC's action on the consolidated petitions will not increase Qwest's financial exposure beyond what it would be otherwise.<sup>17</sup>

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<sup>15</sup> Moreover, even if the state court appeals were finalized before the federal proceedings are concluded, it would not settle the preemption issue. As noted above, NPCC claims that state decisions declining to authorize PSP refunds are contrary to the FCC's *Payphone Orders* and are therefore preempted. For example, NPCC's comments filed in support of the petition for declaratory ruling filed by the Illinois Public Telecommunications Association state that "payphone service providers are entitled to refunds where regional Bell operating companies . . . overcharge PSPs for payphone services under the new services test, and state commissions are preempted from holding otherwise." *In the Matter of the Illinois Public Telecommunications Association's Petition for Declaratory Ruling Regarding the Remedies Available for Violations of the Commission's Payphone Orders*, CC Docket No. 96-128, Comments of Northwest Public Communications Council, the Minnesota Independent Payphone Association, and the Colorado Payphone Association in Support of Petition for a Declaratory Ruling, p. 1, August 26, 2004.


<sup>16</sup> As noted above, NPCC's comments in support of the consolidated petitions describe in detail the circumstances surrounding NPCC's dispute with Qwest. If the FCC goes forward with the consolidated petitions, it is realistic to expect that Qwest will participate and raise its affirmative defenses in that proceeding.

<sup>17</sup> It should be noted that the petitioners in the consolidated petition proceeding have requested that the FCC

## RULING

For the reasons set forth above, this proceeding should be held in abeyance pending a decision by the FCC on the consolidated petitions for declaratory ruling in CC Docket 96-128. The parties may move to reopen the proceeding if circumstances arise warranting such action.

Dated at Salem, Oregon, this 23rd day of March, 2005.

  
Samuel J. Petrillo  
Administrative Law Judge

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require the RBOCs to either refund PAL rates paid in excess of NST compliant rates, or disgorge all of the DAC received since April 15, 1997. NPCC alleges that the amount of DAC received by the RBOCs dwarfs the refunds claimed to be owed to PSPs. To the extent this is true and the FCC determines that disgorgement is proper, Qwest's financial exposure could be much greater. The fact that different remedies may be imposed is yet another reason to allow these issues to be resolved by the FCC.

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

DR 26/UC 600

THE NORTHWEST PUBLIC )  
 COMMUNICATIONS COUNCIL, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 QWEST CORPORATION, )  
 )  
 Defendant. )

ORDER

DISPOSITION: ALJ RULING AFFIRMED

This matter is before the Public Utility Commission of Oregon (OPUC) on cross motions for summary judgment filed by the Northwest Public Communications Council (NPCC) and Qwest Corporation (Qwest).<sup>1</sup> The principal issue raised by the motions concerns whether Qwest is bound by the refund provisions of Federal Communications Commission (FCC) Order DA 97-805 (hereafter, the *Waiver Order*). More specifically, the issue is whether the *Waiver Order* requires Qwest to refund a portion of the intrastate Payphone Access Line (PAL) rates paid by Payphone Service Providers (PSPs) since April 15, 1997, because those rates do not comply with the "New Services Test" (NST) established in the FCC's *Payphone Orders*.<sup>2</sup>

On March 23, 2005, the Administrative Law Judge (ALJ) issued a Ruling holding this proceeding in abeyance pending a decision by the FCC on certain petitions for declaratory ruling in CC Docket 96-128 (Consolidated Petition Proceeding.) Among the reasons cited by the ALJ for his decision is the fact that the issues raised by the

<sup>1</sup> For purposes of this order, "Qwest" includes its predecessor, U S WEST Communications, Inc.

<sup>2</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, First Report and Order, 11 FCC Rcd 20541 (Sept. 20, 1996) (*First Payphone Order*); Order on Reconsideration, 11 FCC Rcd 21233 (Nov. 8, 1996) (*Payphone Reconsideration Order*), aff'd in part and remanded in part, *Illinois Pub. Telecomms. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997); Second Report and Order, 13 FCC Rcd 1778 (Oct. 9, 1997) (Second Payphone Order); vacated and remanded; *MCI Telecomms. Corp. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998); Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (Feb. 4, 1999) (*Third Payphone Order*), aff'd, *American Pub. Communications Counsel v. FCC*, 215 F.3d 51 (D.C. Cir. 2000). The *First Payphone Order* and the *Payphone Reconsideration Order* are collectively known as the *Payphone Orders*.

DOCKETED 02

parties in this case are currently pending before the FCC in the Consolidated Petition Proceeding.

On April 4, 2005, NPCC filed a motion requesting certification of the ALJ's Ruling pursuant to OAR 860-014-0091(1)(a). NPCC argues that holding this proceeding in abeyance pending FCC action may result in substantial detriment to the public interest and undue prejudice to NPCC's members. It states that its "sole concern" is the potential delay that may take place before the FCC decides whether to proceed in the Consolidated Petition Proceeding. It emphasizes that any undue delay would severely prejudice NPCC members because of the substantial and continuing decline of the payphone industry.

In the alternative, NPCC requests that the Commission petition the FCC to address several issues set forth in its motion. As a further alternative, it suggests that the Commission Chairman request the FCC act promptly to resolve the Consolidated Petition Proceeding and provide guidance on the issues NPCC poses.

On April 11, 2005, Qwest responded to NPCC's motion for certification. Although it disagrees with the ALJ's decision to hold this proceeding in abeyance, Qwest maintains that NPCC's motion does not meet the requirements of OAR 860-014-0091(1)(a). If the matter is certified, Qwest will not oppose a Commission decision reversing the Ruling and allowing the case to proceed without delay.

Qwest also disagrees with NPCC's request that the Commission petition the FCC to resolve issues in this docket. It asserts that the latter proposal is: (a) outside the scope of the ALJ Ruling, (b) requests the Commission to do what NPCC has deliberately chosen not to do; and (c) asks the Commission to pose questions to the FCC that are stated in an unfair and argumentative manner.

Although the prospect of procedural delay is generally not sufficient to meet the requirements of OAR 860-014-0091(1)(a), the ALJ certified his Ruling to the Commission because of the unusual circumstances surrounding this proceeding. Upon review, the Commission concludes that the ALJ's decision to hold this proceeding in abeyance should be affirmed for the reasons set forth on pages 8-9 of the Ruling.

NPCC's primary reason for challenging the ALJ's Ruling centers around its concern that the FCC will not act in a timely manner to resolve the issues in the Consolidated Petition Proceeding. As the ALJ explains, however, a decision by this Commission interpreting the *Waiver Order* will not expedite the resolution of this dispute. Given the amounts at issue, it is virtually certain that any decision we reach will be appealed, a process that we agree may take years to conclude. After a decision by the Oregon appellate courts, it is equally certain that the losing party will petition the FCC to preempt the state court decision pursuant to Section 276(c) of the

Telecommunications Act.<sup>3</sup> Thus, in the end, the parties will find themselves in the same place as the petitioners in the Consolidated Petition Proceeding.

Another reason for holding this matter in abeyance is that it will provide the FCC an opportunity to fashion a comprehensive solution to the issues in a manner consistent with the requirements set forth in its *Payphone Orders*. As noted by the ALJ, the petitioners in the Consolidated Petition Proceeding have requested the FCC to consider remedies that go well beyond what NPCC has requested in this case. We agree with the ALJ that it is reasonable to allow the FCC time to determine whether it will undertake to resolve these matters.

In reaching this decision, we note that the ALJ's decision does not postpone this matter indefinitely. The Ruling allows the parties to move to reopen the proceeding if circumstances arise warranting such action. To ensure there is no undue delay, the parties may ask the Commission to revisit this matter if the FCC has not acted by the end of this year.

It is also important to emphasize that our decision to affirm the ALJ's Ruling does not affect our obligation to ensure that Qwest's PAL rates are consistent with the NST, as required by the remand of the Oregon Court of Appeals in *Northwest Public Communications Council v. OPUC*.<sup>4</sup> The Commission intends to move forward with that process, notwithstanding any action taken by the FCC in the Consolidated Petition Proceeding.

As a final matter, the Commission declines NPCC's invitation to pose questions to, or seek guidance from, the FCC. We agree with Qwest that NPCC's request is inappropriate. NPCC is effectively asking the Commission to do what NPCC has deliberately chosen not to do; that is, file a petition with the FCC for enforcement of the *Waiver Order*. As explained in the ALJ's Ruling, NPCC has already filed extensive comments in the Consolidated Petition Proceeding that articulate the details of its dispute with Qwest and request guidance from the FCC on specific issues. If NPCC believes that it is necessary to pose additional questions to the FCC, there is no reason why it cannot do so.<sup>5</sup>

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<sup>3</sup> Section 276(c) provides: "To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements." All of the petitioners in the Consolidated Petition Proceeding have alleged preemption. As noted by the ALJ, NPCC has joined in these claims.

<sup>4</sup> 196 Ore. App. 94, 100 P.3d 776, 2004 Ore. App. LEXIS 1471 (November 10, 2004).

<sup>5</sup> Qwest claims that NPCC is asking the Commission to advance NPCC's litigation strategy to avoid violating the prohibition against simultaneously litigating the same claim in two forums. *Qwest Response* at 3. NPCC could overcome such a problem by withdrawing its Complaint/Request for Declaratory Ruling in this docket, and refiled at a later date, if necessary.

ORDER

IT IS ORDERED that the Ruling issued by the Administrative Law Judge in this matter on March 23, 2005, is affirmed.

Made, entered, and effective           MAY 03 2005          .

  
\_\_\_\_\_  
**Lee Beyer**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
\_\_\_\_\_  
**Ray Baum**  
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. The request must be filed with the Commission within 60 days of the date of service of this order and must comply with the requirements in OAR 860-014-0095. A copy of the such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UT 125/PHASE II  
RATE DESIGN

In the Matter of the Application of QWEST CORPORATION for an Increase in Revenues.

MOTION TO SET PROCEDURAL CONFERENCE TO ESTABLISH ISSUES AND PROCEDURES ON REMAND

**INTRODUCTION**

The Northwest Public Communications Council (“NPCC”) (f/k/a Northwest Payphone Association or NWPA) moves the Commission for an order or memorandum scheduling a procedural conference. The reason for this motion is that the Commission’s final order in this docket was reversed and remanded for further proceedings in November 2004. Since that time, no action has been taken by the parties or the Commission to comply with the order and judgment on remand. At the procedural conference, the NPCC suggests the following matters be addressed:

- 1. Identification of issues on remand;
- 2. Determination of whether further evidence needs to be submitted and whether additional evidentiary hearings are necessary;
- 3. Identification of the parties on remand; and
- 4. Establishment of an appropriate procedural schedule.

Until the Commission determines the positions of the parties regarding remand, it is difficult to predict what type of procedural schedule is appropriate. The best way to make this

1 determination is to convene the scheduling conference to determine the parties' positions and  
2 appropriate procedural requirements.

3  
4 **ARGUMENT**

5 On September 14, 2001, the Commission entered its final order on Phase II, Rate  
6 Design, in this docket. Order No. 01-810. A portion of that order dealt with rates for public  
7 access lines ("PAL") and CustomNet services. The only parties that participated actively  
8 regarding those issues were the NPCC, Qwest, and Staff. On January 8, 2002, the Commission  
9 entered its Order On Reconsideration which denied the NPCC's application for reconsideration  
10 regarding PAL and CustomNet rates. Order No. 02-009. The NPCC appealed those orders to  
11 the Circuit Court for Marion County, which affirmed, and then to the Oregon Court of Appeals.  
12 The only parties that participated on the appeal were the NPCC, Qwest, and Staff. On November  
13 10, 2004, the Oregon Court of Appeals reversed the PUC's orders opinion stated that, "The PUC  
14 must reconsider its order in light of the New Services Order and other relevant FCC orders".  
15 *Northwest Public Comm's Council v. PUC*, 196 Or. App. 94, 100, 100 P.3d 776, 779 (2004).

16 Neither Qwest nor the PUC sought further appeal of the November 10, 2004  
17 decision. Accordingly, the decision of the Oregon Court of Appeals became final and  
18 unappealable by operation of law. Pursuant to the opinion of the Oregon Court of Appeals, the  
19 Marion County Circuit Court entered a judgment on March 17, 2005 that provided:

20 THIS MATTER IS HEREBY REMANDED to the Oregon Public Utility  
21 Commission for reconsideration consistent with the opinion of the Oregon Court  
22 of Appeals filed on November 10, 2004.

23 Exhibit B. Since this matter was remanded by the Oregon courts to this Commission for  
24 reconsideration more than a year ago, the Commission has taken no action of record.<sup>1</sup> The

25 \_\_\_\_\_  
26 <sup>1</sup> This is not to say that the staff and parties have not been active on the matter behind the scenes.  
Such presumptive efforts have not, however, lead to the required order on remand as the court  
directed.

Page 2 - MOTION TO SET PROCEDURAL CONFERENCE TO ESTABLISH ISSUES AND  
PROCEDURES ON REMAND

1 decision of the Court of Appeals requires PUC action (“the PUC **must** reconsider”) 196 Or. App.  
2 at 100, 100 P.3d at 779 (emphasis added).

3           Although the Court of Appeals and Circuit Court specified no time frame for the  
4 PUC’s reconsideration, the PUC must act within a reasonable time. The NPCC respectfully  
5 submits that it is time for the PUC to start the process that is necessary to comply with the  
6 court’s directives to reconsider the portions of the Final Order and Order On Reconsideration  
7 that were reversed. The process could be as simple as a stipulation or briefing by the parties or  
8 could require further evidentiary proceedings. The appropriate process can be determined when  
9 the parties identify their issues.

10           NPCC believes it is premature to request a specific hearing or briefing schedule at  
11 this time. Rather, the most efficient approach is to schedule a procedural conference. As would  
12 be typical in a pre-hearing conference, the parties should come to the conference prepared to  
13 identify and discuss the issues to be addressed on remand. Once the issues are on the table, the  
14 parties can discuss (and hopefully agree on) an appropriate procedural schedule, which may or  
15 may not require the submission of further evidence.

16           Additionally, the NPCC suggests that interested parties who do not attend the  
17 scheduling conference be required to seek intervention in this docket on remand to remain on the  
18 party list. This is essential, because Phase II of this docket had numerous parties interested in a  
19 panoply of issues that were unrelated to the relatively narrow issues that are likely to be  
20 addressed on remand. Many of those parties no longer exist (*e.g.*, MCI) or do not have current  
21 contact information on file. Most of the parties in Phase II of this docket had no interest in PAL  
22 or CustomNet issues and likely will have no interest in the outcome on remand, depending on the  
23 scope of the issues list that is developed.

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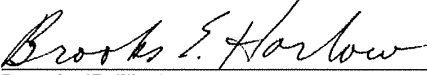
**CONCLUSION**

For the foregoing reasons, NPCC seeks an order or memorandum scheduling a procedural conference in the near future and requiring interested parties to attend and be prepared to discuss the following:

- 1. Identification of issues on remand;
- 2. Determination of whether further evidence needs to be submitted and whether additional evidentiary hearings are necessary;
- 3. Identification of the parties on remand or setting deadline for intervention on remand; and
- 4. Establishment of an appropriate procedural schedule.

Respectfully submitted this 9th day of February, 2006.

MILLER NASH LLP



Brooks E. Harlow  
OSB No. 03042  
David L. Rice

Attorneys for Intervenors  
Northwest Public Communications  
Council



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February 9, 2006

**VIA ELECTRONIC MAIL & FEDERAL EXPRESS**

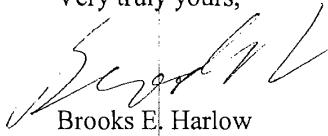
Public Utility Commission of Oregon  
Attn: Filing Center  
550 Capitol Street NE, #215  
Salem, Oregon 97308-2148

Subject: UT 125/Phase II

Dear Filing Center:

Enclosed, for filing are an original and one copy of the Motion To Set Procedural Conference To Establish Issues And Procedures On Remand on behalf of the Northwest Public Communications Council in the above-referenced docket.

Very truly yours,



Brooks E. Harlow

cc w/enc: Jason W. Jones  
Phil Nyegaard

**Service List for  
OPUC Docket No. UT-125**

I hereby certify that a true and correct copy of the Motion To Set Procedural Conference To Establish Issues And Procedures On Remand has been electronically mailed and also sent by United States first class mail, postage prepaid in sealed envelopes to the following:

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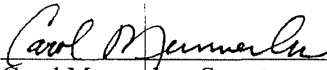
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DATED this 9<sup>th</sup> day of February 2006 at Seattle, Washington.

  
\_\_\_\_\_  
Carol Munneerlyn, Secretary

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 125

In the Matter of	)	
	)	
QWEST CORPORATION, fka U.S. WEST	)	FIRST CONFERENCE REPORT
COMMUNICATIONS, INC.	)	
	)	
Application for an Increase in Revenues.	)	

A telephone conference was held in this matter on March 13, 2006. The purpose of the conference was to discuss issues and establish procedures relating to the remand ordered by the Oregon Court of Appeals in *Northwest Public Communications Council v. Public Utility Commission of Oregon*, 196 Or App 94, 100 P3d 776 (2004). The conference was attended by representatives of the Northwest Public Communications Council (NPCC), Qwest Corporation (Qwest), and the Public Utility Commission Staff (Staff).

**Issues.** The conference participants identified two issues that should be addressed by the Commission on remand:

**Issue No. 1: The calculation of revised rates for Public Access Line (PAL) service and Fraud Protection Service (formerly known as CustomNet service).** The *NPCC v. OPUC* decision requires that the Commission reconsider the calculation of these rates based upon the Federal Communications Commission's (FCC) New Services Order<sup>1</sup> and other relevant FCC orders. At the conference, Qwest and NPCC indicated that those parties may no longer dispute the appropriate rate calculation of PAL service and Fraud Protection service, and that a stipulation on this issue may be forthcoming.

**Issue No. 2: Whether and to what extent other Qwest rates should be adjusted because of the recalculation of the rates for PAL and Fraud Protection service.** The conference participants indicated that Issue No. 2 raises the following three subissues:

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<sup>1</sup> *In the Matter of Wisconsin Public Service Commission*, 17 F.C.C.R. 2051 (2002) (Order Directing Filings) ("New Services Order").

- (a) Does the Commission have legal authority to adjust other Qwest rates as a result of the recalculation of PAL and Fraud Protection rates?
- (b) Assuming the Commission has legal authority to adjust other Qwest rates, is it appropriate for the Commission to do so?
- (c) Assuming the Commission has legal authority to adjust other Qwest rates, and determines that it is appropriate to do so, what Qwest rates should be adjusted in response to the recalculation of rates for PAL and Fraud Protection service?

**Possible Bifurcation of Issues No. 1 and No. 2.** The Administrative Law Judge (ALJ) raised the question of whether Issues No. 1 and 2 should be bifurcated for determination, given that there appears to be no dispute regarding Issue No. 1, and the possibility that Issue No. 2 may generate substantial controversy. No agreement was reached on whether the issues should be bifurcated. That determination will be made at a later date.

**Involvement of Other Qwest Customers.** Because the resolution of Issue No. 2 could result in a change in the rates paid by other Qwest customers, the ALJ and conference participants agreed that other potentially interested persons should receive notice and have an opportunity to participate in this proceeding. Accordingly, this conference report and other Commission notices will be mailed to all of the parties in UT 125 as well as the Commission’s telecommunications service list.

**Procedural Schedule.** The conference participants agreed to the following procedural schedule:

Qwest files proposed PAL and Fraud Protection rates and proposed revisions to other Qwest retail rates.	March 31, 2006
Deadline for Petitions to Intervene	April 21, 2006
Settlement Conference	May 1, 2006
Parties File Final Issues List	May 5, 2006
ALJ convenes Telephone Conference	May 10, 2006
Qwest Files Opening Testimony	May 26, 2006
Other Parties and Staff File Responsive Testimony	July 7, 2006
Qwest Files Rebuttal Testimony	August 11, 2006
Hearing	To be set at later date

The parties are advised that this is a preliminary hearing schedule and is subject to revision based upon other developments, including the possibility that the ALJ or Commission may decide to bifurcate the issues or require the filing of briefs on matters relating to legal or policy issues.

Any questions regarding the conference or the procedures in this matter should be directed to the Administrative Hearings Division at 503-378-6607.

Dated at Salem, Oregon, this 21st day of March, 2006.

---

Samuel J. Petrillo  
Administrative Law Judge

UT 125 Conference Rpt 3-15-06





# Oregon

Theodore R. Kulongoski, Governor

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**Public Utility Commission**

550 Capitol St NE, Suite 215

**Mailing Address:** PO Box 2148

Salem, OR 97308-2148

**Consumer Services**

1-800-522-2404

Local: (503) 378-6600

**Administrative Services**

(503) 373-7394

October 15, 2007

OREGON PUBLIC UTILITY COMMISSION  
ATTENTION: FILING CENTER  
PO BOX 2148  
SALEM OR 97308-2148

RE: **Docket No. UT125 PHASE II** - In the Matter of the application of QWEST CORPORATION – Public Access Lines Rates.

Enclosed for electronic filing in the above-captioned docket is the Stipulation between Qwest Corporation, Northwest Public Communications Council and Staff.

*/s/ Kay Barnes*

Kay Barnes

Regulatory Operations Division

Filing on Behalf of Public Utility Commission Staff

(503) 378-5763

Email: [kay.barnes@state.or.us](mailto:kay.barnes@state.or.us)

c: UT 125 Service List - parties

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**PUBLIC UTILITY COMMISSION  
OF OREGON**

---

**UT 125**

**STIPULATION**

**Entered into between  
Qwest Corporation, Northwest Public  
Communications Council and Staff**

**QWEST CORPORATION  
UT 125 Phase II—Public Access Line Rates**

**OCTOBER 15, 2007**

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 125

In the Matter of  
the Application of QWEST CORPORATION | STIPULATION  
for an Increase in Revenues.

This Stipulation is entered into for the purpose of resolving the Oregon Court of Appeals remand of Commission Order Nos. 01-810 and 02-009. Specifically, this Stipulation concludes that the rates proposed by Qwest on March 31, 2006, in response to the Court of Appeals remand, comply with federal requirements.

**PARTIES**

1. The parties to this Stipulation are the Public Utility Commission of Oregon Staff (Staff), Qwest Corporation (Qwest), and the Northwest Public Communications Council (NPCC) (collectively, the "Parties").

**BACKGROUND**

2. On April 14, 2000, the Public Utility Commission of Oregon (Commission) entered Order No. 00-190, adopting a Stipulation between U S WEST Communications, Inc. (now Qwest Corporation), and Staff in the revenue requirement phase (Phase I) of this docket.

3. On September 14, 2001, the Commission entered Order No. 01-810 establishing a rate design for the stipulated revenue requirement approved in Order No. 00-190. As part of Order No. 01-810, the Commission approved revised rates for public assess lines (PAL) and CustomNet service, adopting the rate recommendations proposed by Qwest and agreed to by Staff. The Northwest Payphone Association (now, NPCC) opposed the PAL and CustomNet rates adopted by the Commission, arguing that the rates were not developed in compliance with Section 276 of the Telecommunications Act of 1996.

///

1           4. On November 13, 2001, NPCC filed an application for reconsideration of Order No.  
2 01-810. On January 8, 2002, the Commission entered Order No. 02-009 denying NPCC's  
3 application for reconsideration.

4           NPCC appealed Order Nos. 01-810 and 02-009 ("the rate design orders") to Marion  
5 County Circuit Court. On October 1, 2002, the Court entered a judgment affirming the  
6 Commission's orders. NPCC thereafter filed an appeal with the Oregon Court of Appeals.

7           5. On November 10, 2004, the Court of Appeals entered a decision reversing and  
8 remanding Order Nos. 01-810 and 02-009. The Court determined that the rate design orders  
9 were unlawful in that: (1) the Commission's rates for PAL did not comply with certain federal  
10 requirements, and (2) the Commission did not adequately consider whether Qwest's proposed  
11 rates for CustomNet were subject to the same federal requirements.

12           6. On March 13, 2006, the presiding Administrative Law Judge (ALJ) convened a  
13 telephone conference to establish procedures necessary to comply with the Court's remand.  
14 During the conference, Qwest indicated that it would file proposed PAL and Fraud Protection  
15 (formerly CustomNet) rates to comply with the Court's decision. Qwest also indicated that it  
16 would seek to adjust other Qwest rates because of the recalculation of payphone service rates.

17           7. On March 31, 2006, Qwest filed its proposed PAL and Fraud Protection rates<sup>1</sup>. On  
18 April 25, 2006, Qwest filed a letter on behalf of the parties requesting that the Commission  
19 decide, as a threshold matter, whether Qwest may raise any customer rates to offset reduced  
20 revenues resulting from a Commission decision approving lower PAL and Fraud Protection  
21 rates. On September 11, 2006, the Commission entered Order No. 06-515 denying Qwest's  
22 proposal to raise residential Caller ID rates to offset a decrease in PAL and Fraud Protection  
23 rates resulting from the Court-ordered remand in Docket No. UT 125.

24

25

26 <sup>1</sup> These were the same rates that Qwest submitted in Advice 1935 and that the Commission  
approved on March 17, 2003.



1 hearing and recommend that the Commission issue an order adopting settlements contained  
2 herein.

3 15. The Parties have negotiated this Stipulation as an integrated document. If the  
4 Commission rejects all or any material portion of this Stipulation, or imposes additional material  
5 conditions in approving this Stipulation, any party disadvantaged by such action shall have the  
6 rights provided in OAR 860-14-0085 and shall be entitled to seek reconsideration or appeal of  
7 the Commission's Order.

8 16. By entering into this Stipulation, no party shall be deemed to have approved,  
9 admitted, or consented to the facts, principles, methods, or theories employed by any other party  
10 in arriving at the terms of this Stipulation including those set forth in the written testimony of  
11 Staff submitted in support of this Stipulation, other than those specifically identified in the body  
12 of this Stipulation. No party shall be deemed to have agreed that any provision of this  
13 Stipulation is appropriate for resolving issues in any other proceeding.

14 17. The Stipulation may be executed in counterparts and each signed counterpart shall  
15 constitute an original document.

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1 This Stipulation is entered into by each party on the date entered below such party's  
2 signature.

3 QWEST CORPORATION

NORTHWEST PUBLIC COMMUNICATIONS  
4 COUNCIL (NPCC)

5 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

6 By: \_\_\_\_\_  
7 Print name

By: \_\_\_\_\_  
Print name

8 Signed: \_\_\_\_\_

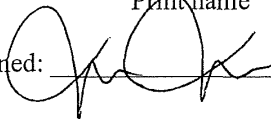
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10 PUBLIC UTILITY COMMISSION STAFF

11 Dated: 10/10/07

12 By: Jason Jones  
13 Print name

14 Signed:  \_\_\_\_\_

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1 This Stipulation is entered into by each party on the date entered below such party's  
2 signature.

3 QWEST CORPORATION

NORTHWEST PUBLIC COMMUNICATIONS  
COUNCIL (NPCC)

4  
5 Dated: 10/10/07

Dated: \_\_\_\_\_

6 By: Alex M. Duarte

By: \_\_\_\_\_

7 Corporate Counsel  
8 Signed: \_\_\_\_\_

Print name

Signed: \_\_\_\_\_

9  
10 PUBLIC UTILITY COMMISSION STAFF

11 Dated: \_\_\_\_\_

12 By: \_\_\_\_\_

Print name

13  
14 Signed: \_\_\_\_\_



1 This Stipulation is entered into by each party on the date entered below such party's  
2 signature.

3 QWEST CORPORATION

NORTHWEST PUBLIC COMMUNICATIONS  
COUNCIL (NPCC)

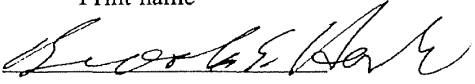
5 Dated: \_\_\_\_\_

Dated: 10/10/07

6 By: \_\_\_\_\_  
7 Print name

By: BROOKS E. HARLOW  
Print name

8 Signed: \_\_\_\_\_

Signed: 

10 PUBLIC UTILITY COMMISSION STAFF

11 Dated: \_\_\_\_\_

12 By: \_\_\_\_\_  
13 Print name

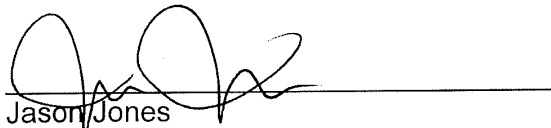
14 Signed: \_\_\_\_\_

## CERTIFICATE OF SERVICE

UT 125

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-13-0070, to the following parties or attorneys of parties.

Dated at Salem, Oregon, this 15th day of October, 2007.

A handwritten signature in black ink, appearing to read "Jason Jones", is written over a horizontal line.

Jason Jones  
Assistant Attorney General  
Of Attorneys for Public Utility Commission's Staff  
1162 Court Street NE  
Salem, Oregon 97301-4096  
Telephone: (503) 378-6322

**UT 125**  
**Service List (Parties)**

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<b>VERIZON NORTHWEST INC</b>  DEAN RANDALL (C)	20575 NW VON NEUMANN DR STE 150 MC OR030156 HILLSBORO OR 97006 dean.randall@verizon.com
<b>WORLDCOM INC</b>  MICHEL SINGER-NELSON REGULATORY ATTORNEY	707 - 17TH ST STE 4200 DENVER CO 80202

1  
2  
3  
4 BEFORE THE PUBLIC UTILITY COMMISSION  
5 OF OREGON  
6

7 THE NORTHWEST PUBLIC COMMUNICATIONS  
8 COUNCIL, on behalf of PSPs A to Z, and NPCC  
9 MEMBERS: Central Telephone, Inc; Communication  
10 Management Services, LLC; Davel Communications  
11 a/k/a Phonetel Technologies, Inc., Interwest Tel, LLC;  
12 Interwest Telecom Services Corporation; NSC  
13 Communications Public Services Corporation; National  
14 Payphone Services, LLC; Pacific Northwest Payphones;  
15 Partners in Communication; T & C Management, LLC;  
16 Corban Technologies, Inc.; and Valley Pay Phones, Inc

12 Complainants,

13 v.

14 QWEST CORPORATION,

15 Defendant.

DOCKET NO. DR 26/UC 600

CONSOLIDATED MOTIONS TO ENFORCE  
ORDERS AND TO BIFURCATE AND  
PARTIALLY ABATE PROCEEDINGS

16 TO: Oregon Public Utility Commission

17 AND TO: All Parties

18 Complainants, MOVE the Commission to enforce the Orders of the Oregon Public Utilities  
19 Commission (the PUC) in the proceedings of UT 125 and related to it and to issue refunds to the Complainants to  
20 which they are entitled and the subject of their Complaint and as Amended and to Bifurcate and Partially Abate the  
21 proceedings to allow for judicial economy in this case and the Complaint of the Complainants filed in the United  
22 States District Court of Oregon under case No. CV 09 1351 BR. This Motion should result in this proceeding to be  
23 bifurcated into two segments:

24 1. The First Segment of the case should be restricted to the claims and remedies encompassed within  
25 Count Four of the Second Amended Complaint such claims are referred to herein as the Oregon Refund Claims.  
26 The Oregon Refund Claims have two components.

Page 1 CONSOLIDATED MOTIONS TO ENFORCE ORDERS AND TO BIFURCATE AND PARTIALLY  
ABATE PROCEEDINGS

FRANK G. PATRICK, OSB 76022  
PO Box 231119 PORTLAND, OR 97281  
Phone (503) 245-2828 Fax (503) 245-1448

1 a. One component is based on enforcement of Complainants' right to refunds under Oregon statutes  
2 as alleged in Count Four of the Second Amended Complaint.

3 b. The second component is a claim for refund based on orders issued in dockets UT 80 and UT 125  
4 and, although encompassed within Count Four, is independent of the Second Amended Complaint.  
5 It is enforcement of these orders that is requested as part of the Complainants' current motion.

6 2. The Second segment consists of all the other claims, which should be held in abeyance for the  
7 reasons set forth in the supporting memorandum.

#### 8 **AUTHORITY FOR MOTION**

9 Pursuant to OAR 860-011-000(3) and 53B of the Oregon Rules of Civil Procedure, the PUC clearly has  
10 the authority to bifurcate the case and address the Oregon Refund Claims alleged in Count Four of the Second  
11 Amended Complaint while holding for a separate trial all the other claims that require clarification in terms of  
12 interpretations of applicable law and/or the authority of the PUC to address either the claim or provide the requested  
13 remedy. *See e.g. Berg v. Berg*, 211 Ore. App. 703, 156 P.3d 171 (Ore. App. 2007), *Black, et al v. Arizala, et al*, 182  
14 Ore. App. 16, 48 P.3d 843 (Ore. App. 2002) and *McDowell Welding & Pipefitting, Inc. v. United States Gypsum*  
15 *Co.*, 209 Ore. App. 441, 149 P.3d 173 (Ore. App. 2006) all stating the trial court has, within its discretion, the  
16 authority to bifurcate issues and try them separately.

#### 17 **STATEMENT OF REQUEST**

18 This case was filed in May 2001 as a precautionary matter, pending the proceedings of PUC Docket  
19 UT 125 (the Rate Case). Those proceedings extended from late 1995 until concluded in November 2007. During  
20 that time, and as a precaution to maintain it right to claim refunds, when that claim should become ripe, this case  
21 was filed by the NPCC in 2001. The "ripeness" of the claims arose finally in November 2007, when the UT 125  
22 proceedings were concluded to result in "effective" rates under the regulation of the Commission with its Order No.  
23 07-497, that were compliant with the Telecommunications Act of 1996 (the Act).

24 The Commission's Order 07-497 and its companion Orders No. 00-190, 00-191, 01-810, 02-009 and  
25 06-515 make clear that Qwest currently has not complied with the Orders of the Commission to calculate and pay  
26 refunds of overcharges as established by the Commission proceedings in UT 125 and the related proceedings.

Complainants hereby move the Commission to enforce its prior orders for Qwest to calculate and pay  
the refunds already ordered by the PUC to Complainants; to bifurcate the remaining Oregon Refund Claims alleged

Page 2 CONSOLIDATED MOTIONS TO ENFORCE ORDERS AND TO BIFURCATE AND PARTIALLY  
ABATE PROCEEDINGS

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PO Box 231119 PORTLAND, OR 97281  
Phone (503) 245-2828 Fax (503) 245-1448

1 in Count Four of the Amended Complaint from the rest of the claims in the Second Amended Complaint; and to  
2 Order the Oregon Refund Claims down for immediate calculation and payment consistent with its prior orders and  
3 holding in abeyance all other claims asserted in the Second Amended Complaint. There is no reason the Motion  
4 should not be granted in all respects.

5 Dated: January 27<sup>th</sup>, 2010

/S/

FRANK G. PATRICK, OSB 76022  
Attorney for Complainants





**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

DR 26/UC 600

THE NORTHWEST PUBLIC COMMUNICATIONS  
COUNCIL, on behalf of PSPs A to Z, and NPCC  
MEMBERS: Central Telephone, Inc.; Communication  
Management Services, LLC; Davel Communications,  
a/k/a Phonetel Technologies, Inc.; Interwest Tel, LLC;  
Interwest Telecom Services Corporation; NSC  
Communications Public Services Corporation; National  
Payphone Services, LLC; Pacific Northwest Payphones;  
Partners in Communication; T & C Management, LLC;  
Corban Technologies, Inc.; and Valley Pay Phones, Inc.,

Complainants,

v.

QWEST CORPORATION,

Defendant.

ORDER

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

**I. INTRODUCTION**

In this Order, we grant, in part, the Qwest Corporation (Qwest) Motion to Strike First Amended Complaint and, in its entirety, the Qwest Motion to Strike Second Amended Complaint. We deny the Motion to Allow Second Amendment to the Complaint filed by the Northwest Public Communications Council (NPCC).

**II. PROCEDURAL HISTORY**

In Order No. 09-155, entered May 4, 2009, we granted in part and denied in part NPCC's February 26, 2009, Motion for Leave to Amend Complaint and Amended Complaint

(Motion). We denied the portion of the Motion seeking to add new claims against Qwest. The claims NPCC sought to add were for refunds relating to Qwest's provision of "CustomNet" fraud prevention services. We found that granting the request to add the new claims would have: (1) joined claims not sufficiently related to the subject matter of the initial complaint--Public Access Line (PAL) service--to relate back to it, and (2) violated the statute of limitation provisions applicable to the new claims that NPCC proposes to add to this proceeding.

We granted the February 26, 2009, Motion to the extent that we allowed the addition of 13 new plaintiffs. In that Motion, and in the NPCC Reply to Qwest's opposing pleading, NPCC asserted that there would be no change in the claims asserted or the discovery process and that discovery, claims, and damages theories would be the same. The parties proposed to be added by the amendment were the parties with the pecuniary interest in the original complaint, and the amendment served to clarify the true parties with a pecuniary interest in and knowledge of the transactions that were the subject of the complaint. Those parties, not NPCC, had the knowledge and the records, and NPCC had been acting throughout this litigation on their behalf. They would be the ones cross-examined.<sup>1</sup> Therefore, we concluded that Qwest was not prejudiced by their inclusion as parties-plaintiff. NPCC did not request that we reconsider our decision; neither did it appeal our Order, which therefore became final on July 6, 2009.

After substitution of counsel on July 22, 2009, and several subsequent extensions of time in which to file an amended complaint, on November 16, 2009, NPCC simultaneously filed a First Amended Complaint and a Second Amended Complaint and Precautionary Motion to Allow Amendment.<sup>2</sup>

On December 8, 2009, Qwest filed a Motion to Strike First Amended Complaint and a supporting Declaration of Lawrence Reichman (Reichman Declaration) and a Motion to Strike Second Amended Complaint and Response to Complainants' Precautionary Motion to Allow Second Amendment to the Complaint.

On December 22, 2009, NPCC filed a Reply (NPCC Reply) and Memorandum in Support of NPCC Complainants Reply to Qwest Motions to Strike (Reply Memorandum) and supporting Declarations of Charles W. Jones (Jones Declaration) and Frank G. Patrick (Patrick Declaration).

### III. DISCUSSION

#### A. NPCC First and Second Amended Complaints

The First Amended Complaint asks the Commission to order Qwest to pay refunds for "payphone services overcharges" collected by Qwest since April 15, 1997, or approximately 13 years ago. These services include: (1) PAL, and (2) services under various

<sup>1</sup> Order No. 09-155 at 3, 5-6, 8.

<sup>2</sup> On November 13, 2009, NPCC filed a Complaint for Declaratory Relief and Damages in the United States District Court for the District of Oregon, essentially requesting relief similar to that requested in the complaints filed with the Commission on November 16, 2009.

names such as Fraud Protection, CustomNet, Selective Class of Call Screening or Originating Line Screening, which were referred to in Order No. 09-155, alternatively and collectively, as “CustomNet.” Pursuant to Ordering Clause 2 of Order No. 09-155, NPCC now lists the additional Complainants in Exhibit A to the First Amended Complaint.

The bulk of the First Amendment is a detailed history of the litigation and the actions and inactions of federal and state agencies. NPCC asserts that the outcome of docket UT 125 was a finding that Qwest’s Payphone Services rates did not comply with the new services test and Section 276 of the Telecommunications Act of 1996.<sup>3</sup> NPCC contends that the purpose of this Amendment is to join the Payphone Service Providers (PSP) as named Complainants and “conform the Complaint to the evidence developed in the Docket UT-125 proceeding and the developments in the law that have occurred since NPCC filed the original complaint in May of 2001.” NPCC asks the Commission to issue an order that Qwest: (1) make refunds for payphone services rates to the extent that they exceeded lawful rates under Section 276 and the new services test since April 15, 1997; (2) refund to the complainants the amount by which Qwest’s Payphone Services rates exceeded the legal rates; and (3) calculate those refunds based on the amount by which the rates charged since April 15, 1997, exceeded the Payphone Services rates established in the final order in docket UT 125.<sup>4</sup>

The Second Amended Complaint asserts that it represents “Unidentified Payphone Service Providers A to Z” as well as the NPCC member companies whose interests NPCC had previously represented who “purchase or have purchased Payphone Services from Qwest in Oregon.” As in the First Amended Complaint, the subject services are both PAL and CustomNet services, “as well as those services which were the subject of the OPUC Rate Case UT-125.” NPCC asserts that it will act on behalf of the “Unidentified Payphone Service Providers A to Z” in a “representative” capacity.<sup>5</sup> The remainder of the Second Amended Complaint largely repeats the First Amended Complaint but claims that the purpose is also “to assert claims arising from the same series of original transactions and related actions that led to the filing of the original Complaint and to take additional evidence as Ordered by the Marion County Circuit Court, if necessary to show that the Complaint of the Complainants is not and was not made moot by the OPUC orders 01-810 and 02-009 in UT-125.”<sup>6</sup> NPCC also alleges that Qwest made material representations and promises to the FCC and the Commission when it requested a waiver of the rules and that, due to Complainants’ reliance on the representations and promises, “Qwest is estopped from denying their obligation to pay the Federal Refund to Plaintiffs” for the difference between the compliant and non-compliant tariffs during the April 15, 1997, to November 15, 2007, period.<sup>7</sup>

In addition to asking the Commission to issue an order that Qwest make refunds as set forth in the First Amended Complaint, the Second Amended Complaint seeks refunds, based upon the differences between the charged and final rates for the period between April 15, 1997, and November 15, 2007, when the stipulated order establishing final rates in UT 125 was

<sup>3</sup> First Amended Complaint at 5-7.

<sup>4</sup> *Id.* at 8-9.

<sup>5</sup> Second Amended Complaint at 2-3.

<sup>6</sup> *Id.* at 12-13.

<sup>7</sup> *Id.* at 14-15.

entered, the award of damages for “discrimination and preferential treatment of its own Payphone Services and those of any third party,” interest at the highest rate allowed by law, and attorneys’ fees both before the Commission and the Oregon circuit and appellate courts.<sup>8</sup>

#### **B. Qwest’s Motions to Strike First and Second Amended Complaints**

Qwest contends that the First Amended Complaint doesn’t comply with Order No. 09-155 because the First Amended Complaint “clearly continues to include a claim for refund of CustomNet charges, which are expressly included within the operative term ‘Payphone Services’ in the First Amended Complaint” and, giving no excuse for failure to comply with the order, should therefore be stricken.<sup>9</sup> Qwest contends that any assertion that NPCC’s members are not bound by Order No. 09-155 and are thus permitted to file a claim for refund of CustomNet services notwithstanding the Commission’s decision is without merit for several reasons. First, NPCC has consistently purported to act exclusively on behalf of its members and asked that its members, not itself, be paid, filing the amendment to add its members only to “remove the distraction of [Qwest’s] spurious defense” with respect to the issue of its standing. Second, Qwest asserts that the claim is time-barred and that points of law relating to recovery for alleged overcharges for CustomNet Services may not be relitigated or reconsidered after having been decided at an earlier stage of the same case. This principle applies whether or not the NPCC members were represented by NPCC at the time the Commission issued its decision. Third, regardless of the issue of standing, “The Order was solidly based on Ninth Circuit precedent directly on point” and there is no reason to believe that the Commission would reach a different conclusion because of a change in the status of the complainant. Finally, Qwest asserts, when the individual complainants received permission from the Commission to become parties to the case, they did not seek or obtain leave from the Commission to include CustomNet Services in their complaint.<sup>10</sup>

Qwest asks the Commission to strike the Second Amended Complaint because it was filed without leave of the Commission as required by Oregon law and because it violates an existing Commission Order.<sup>11</sup> Qwest also objects to the Complainants’ Precautionary Motion to Allow Second Amendment to the Complaint (Precautionary Motion) for several reasons. First, Qwest objects to its inclusion of a claim for refund of CustomNet charges in violation of our order. Second, the Complainants have added additional claims unrelated to the refunds under the FCC’s payphone orders, thus expanding the scope of the proceeding.<sup>12</sup> Finally, Qwest notes with disapproval the bringing of claims on behalf of unidentified non-members,

<sup>8</sup> *Id.* at 17-18.

<sup>9</sup> Qwest Motion to Strike First Amended Complaint at 3-4.

<sup>10</sup> *Id.* at 4-6.

<sup>11</sup> Qwest Motion to Strike Second Amended Complaint at 1, 5-7.

<sup>12</sup> *Id.* at 1-2, 7-14. Qwest asserts that one of the claims raises new factual and legal issues relating to the circumstances surrounding the FCC’s issuance of the Waiver Order in 1997: whether an affirmative claim for estoppel even exists and whether the alleged representations were actually made and is without foundation. Similarly, it asserts that the claim for refunds relating to the last Qwest general rate case is both baseless and beyond the scope of the proceeding, as are the claims for discrimination and “prohibited acts” for which NPCC asserts its members are entitled to relief under ORS 759.455. With respect to attorneys’ fees, Qwest notes that the statutes referred to by NPCC relate to costs of judicial review of agency orders by the Court of Appeals, not by the Commission.

asserting that NPCC lacks standing to bring such claims and that the Commission lacks authority to order refunds to such non-parties.<sup>13</sup>

### C. NPCC's Reply

On December 22, 2009, NPCC filed a Reply to Qwest Motion to Strike Complainants' First Amended Complaint and Second Amended complaint (Reply). NPCC asserts that Qwest has made a number of pleading errors and "reveals its confusion as to the authority concerning any amendment before the PUC."<sup>14</sup> After discussing the legal evolution of the amending process and the interaction of the Oregon Rules of Civil Procedure (ORCP) and the statutes and Commission Rules relative to such amendments, NPCC asserts:

Given a proper reading and application of ORCP 23, the newly added real parties in interest are entitled to the filing of not only the First Amended Complaint, but also the Second Amended Complaint by which they filed their first amendment under ORCP 23A. Following the addition of the "real parties in interest" they have only for the first time appeared by the filing of the First Amended Complaint \* \* \*. Being named as a party gave them, for the first time, the right to appear on their own, to obtain a refund by a PUC order, and each had the right to file its own Complaint \* \* \*. That amended filing was a matter of right \* \* \* without the necessity of filing an additional motion to amend.<sup>15</sup>

NPCC contends that Qwest is incorrect in its assertion that the added parties are bound by prior pleadings; they are not because they have never been heard before and cannot be bound, having been a non-party at the time of the motion.

Furthermore, the assumptions as to the knowledge and complicity of the newly named Complainants in the motion by Qwest reaches far beyond its knowledge of the parties and their relationship to prior counsel and even the Motion to amend. It is clear that there was some kind of impasse in that earlier relationship or new counsel would not now be present. Suffice to provide that there was an unresolved conflict in direction which necessitated the substitution of new counsel, but that cannot tar nor bind the newly added Complainants \* \* \*.<sup>16</sup>

NPCC next notes that since no economic relief could have been allowed or ordered until the addition of the real parties in interest, the case and the real parties' rights did not really commence until they entered the case and that they therefore may pursue all refunds regardless of their age or the completion and finality of prior dockets. "It would be a travesty for

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<sup>13</sup> *Id.* at 15-17.

<sup>14</sup> Reply at 2.

<sup>15</sup> *Id.* at 4-5.

<sup>16</sup> *Id.* at 5-6.

the Commission to cut short the claims pled by a Complaint which claims could not have been (sic) pled prior to the completion of the over 8 year litigation to develop lawful rates in UT-125 in compliance with Federal law \* \* \* the most of the claims alleged therein did not come into existence until November 15, 2007 when final NST compliant rates were adopted and made effective.”<sup>17</sup>

NPCC concludes that the law in Oregon is clearly to allow for a trial on the merits and that a pleading error is to be disregarded unless it affects a substantial right, under ORCP 12, and the amendment is to be liberally granted. Qwest has never filed an Answer or responded to the allegations of the Complaint, and this is the first opportunity they have had to bring their case and obtain reward from the Commission. The Commission granted prior counsel the right to file an Amended Complaint and, the First Amended Complaint was filed in the form as attached to that Motion. Now that the PSP payphone services have been established by UT 125, the Commission should allow the Complainants to proceed under the Second Amended Complaint.<sup>18</sup>

#### **D. Analysis and Opinion**

The history of this proceeding was recently summarized in our Order No. 09-155 and will not be repeated here. There we made it abundantly clear that the sole allowed purpose of an NPCC Amendment was to permit the NPCC member PSPs who would be subject to cross-examination by Qwest regarding PAL services and would receive any damages if awarded to become named parties to the proceeding. The February 26, 2009, Motion unequivocally stated at the time “The addition of the members to this case would not change the claim asserted, the discovery process or the amount being sought from Qwest. The NPCC members seek from Qwest the same relief that NPCC now seeks on its members’ behalf. There is no imaginable prejudice or disadvantage to Qwest.”<sup>19</sup>

In Order No. 09-155, we rejected the attempt by NPCC (and by extension based upon NPCC’s representation, any member PSP) to broaden the scope of the case by the inclusion of CustomNet services, as they did not relate back to the original claim.<sup>20</sup> Our finding that Qwest would not be prejudiced by our decision, *i.e.*, that its exposure to litigation of other issues or additional parties beyond those then represented by NPCC would not change, was explicitly set forth:

Qwest is not prejudiced because it knew or should have known that *these parties* were the most likely targets of its efforts at discovery and cross-examination; there is *no significance* in the timing of mentioning their names specifically as the parties; and the *amendment serves to clarify* the true parties with a pecuniary

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<sup>17</sup> *Id.* at 6-8.

<sup>18</sup> *Id.* at 8-10.

<sup>19</sup> Motion at 7.

<sup>20</sup> Order No. 09-155 at 7-8.

interest in and knowledge of the transactions that are the subject of the complaint.<sup>21</sup>

In both its First and Second Amended Complaints, NPCC and its member PSPs, collaterally attack our opinion in Order No. 09-155, essentially claiming that, with new plaintiffs, all prior rulings and orders are not binding. NPCC then recites the bases on which it believes CustomNet services, and a reopening of issues regarding rights to refunds based on the outcome in docket UT 125, are properly the subject of recovery by its member companies (and any others it might subsequently find along the way).

If that is indeed NPCC's view, it could and should have directly challenged Order No. 09-155, timely seeking either clarification, rehearing, or appeal. It did none of those. Instead, it attempts to identify differences between prior counsel and its clients as a reason why our previous decision should not apply, while failing to provide supporting facts for allegations of inadequate or improper representation of PSPs' interests by prior counsel as the basis for not binding the individual PSPs to our order. We find NPCC's position to be without merit.

The First Amended Complaint should be allowed solely to the extent that we join the entities listed in Exhibit A thereof as Complainants and allow the inclusion of allegations relative to PAL charges. Allegations and argument relative to any other services or charges should be stricken in all respects. The Precautionary Motion should be denied and the Second Amendment not accepted in the proceeding.

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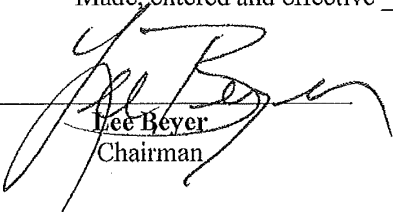
<sup>21</sup> *Id.* at 10 (emphasis added.)

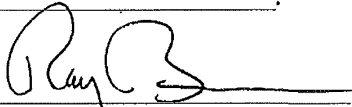
**IV. ORDER**

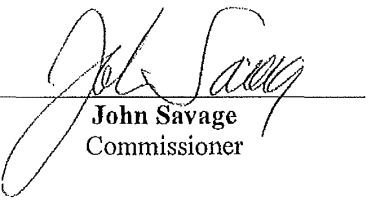
IT IS ORDERED that:

- 1. The First Amended Complaint is accepted with the following conditions:
  - A. The entities named in Exhibit A of the First Amended Complaint are made parties to the proceeding.
  - B. References to various services generally included under the description "CustomNet" are stricken from the First Amended Complaint.
  - C. The use of the term "Payphone Services" shall only mean Public Access Line services and references to any other services are stricken from the First Amended Complaint.
  - D. All references to docket UT 125 and the calculation of any refund claims thereunder are stricken from the First Amended Complaint.
- 2. The Precautionary Motion to Allow Second Amendment is denied. The Second Amended Complaint of NPCC *et al.* is not accepted.

Made, entered and effective FEB 01 2010

  
 \_\_\_\_\_  
 Lee Beyer  
 Chairman

  
 \_\_\_\_\_  
 Ray Baum  
 Commissioner

  
 \_\_\_\_\_  
 John Savage  
 Commissioner





ITEM #113

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IN THE COURT OF APPEALS OF THE STATE OF OREGON

NORTHWEST PUBLIC  
COMMUNICATIONS COUNCIL;  
PSPs A to Z; and NPCC MEMBERS  
CENTRAL TELEPHONE INC., *et al.*,

Petitioners,

v.

QWEST CORPORATION; OREGON  
PUBLIC UTILITIES COMMISSION;  
and STEPHEN BLOOM, SUSAN  
ACKERMAN, and JOHN SAVAGE, in  
their capacities as Commissioners,

Respondents.

TRANSMITTAL OF ENTIRE RECORD  
AND CERTIFICATE

Appellate Court No. CA No. A150775

Agency Case No. DR 26/UC 600

TRANSCRIPT  
OF  
FEBRUARY 4, 2010  
TELEPHONE PREHEARING CONFERENCE

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

THE NORTHWEST PUBLIC  
COMMUNICATIONS COUNCIL, on behalf  
of PSPs A to Z, and NPCC MEMBERS;  
Central Telephone, Inc.; et al.

Complainants,

v.

QWEST CORPORATION,

Defendant.

**TRANSCRIPT  
OF  
FEBRUARY 4, 2010  
TELEPHONE PREHEARING CONFERENCE**

TRANSCRIPT OF PROCEEDING

ALJ ARLOW: Good afternoon. Today is Thursday, February 4, 2010, and this is a further telephone prehearing conference in Docket DR 26/UC 600, before the Public Utility Commission of Oregon. My name is Allan Arlow I am the administrative law judge designated by Commission to preside in this matter, the case styled The Northwest Public Communications Council on behalf of PSPs A to Z, and NPCC Members; et al, Complainants against Qwest Corporation, Defendant. I note for the record the following appearances of counsel. On behalf of Northwest Public Communications Council, which I'm referring to as NPCC, and as it's members well included in that name, are Mr. Frank Patrick. On behalf of Qwest Corporation, Mr. Lawrence Reichman and Mr. Alex Duarte, and on behalf of the Commission staff, Mr. Jason Jones. I trust that all parties and staff have seen the most recent Commission order. Is that correct? Everybody seen Order No. 10-027?

1 MR. REICHMAN: Yes, we have, Your Honor.

2 MR. PATRICK: Yes, Your Honor, for Frank Patrick.

3 ALJ ARLOW: All right. Thank you.

4 MR. PATRICK: Yes, Your Honor.

5 ALJ ARLOW: Good. The first question I have then is in light of that  
6 order, I note the outstanding motion and memorandum and declaration, the consolidated motion  
7 to enforce orders and bifurcate proceedings. I wanted to know, Mr. Patrick, if your intention is  
8 to maintain that motion in its present form or do you intend to withdraw and recraft something or  
9 do you have any other immediate procedural plans in light of the Commission's action?

10 MR. PATRICK: Well, in light of the Commission's action, I would actually  
11 like some instruction, uh, from -- from you, Your Honor, because the -- the complaint that was  
12 before the Commission and was, as I understand it, allowed as the amended complaint, it was the  
13 proposed amended complaint of the Miller, Nash firm, has in it the -- essentially the same  
14 elements that we were looking to resolve with the bifurcation, which is to handle those portions  
15 of the results of UT 125, and based on the way I see the order of the Commission, uh, in 10-027,  
16 uh, (1)(D) basically says all references to Docket No. UT 125, and any of the calculations shall  
17 be stricken under the first amended complaint, and the first amended complaint was attached to  
18 the motion and was -- of the Miller, Nash firm, uh, back in May of this year, and was allowed,  
19 and so I'm now taking the instruction that you would provide as to what is the meaning of (D), if  
20 it's not the clear meaning that says that first amended complaint has now been, uh, basically  
21 stricken down to, I'm not sure. Quite candidly I'm not sure the status of the -- of the complaint  
22 at this moment. Now, I can recraft the complaint and send it in but I would assume that it's  
23 going to have to have some references to 125 based on what the proposed, uh, complaint was  
24 that was submitted to the Commission and was allowed. At least that's the way I understood it.  
25

1 ALJ ARLOW: Mr. Reichman? Mr. Duarte?

2 MR. REICHMAN: Thank you, Your Honor. I guess I'll -- I'll try to -- to be  
3 clear, uh, as -- as to my understanding of the significance of UT 125. As I understand the claims  
4 that they have been pled, uh, sort of all along in this case, the complainants have been --

5 ALJ ARLOW: I'm having a hard time hearing you, Larry.

6 MR. REICHMAN: Oh, I'm sorry. Can you hear me now?

7 ALJ ARLOW: Yep. Um hmm.

8 MR. REICHMAN: Okay. Anybody else having a hard time hearing me? I'll  
9 try to speak up. As -- as the complaint has been presented, as the claims have been presented,  
10 uh, from the -- from the inception, uh, NPCC has sought to have refunds calculated based upon  
11 the difference between the rates that they have paid over time, dating back to 1997, and the rate  
12 for PAL service as ultimately found to comply with the new services test in UT 125, in the -- in  
13 the rate-setting portion of UT 125. To that extent we have no objection to -- to UT 125 being  
14 referenced, uh, simply for the -- the rate determination aspect. What I -- what I understand and  
15 what we took exception to in the second amended complaint, I don't think it was in the first, but  
16 I haven't checked back, but what we took exception to is the second amended complaint and  
17 what I understood the Commission's latest order to -- to agree with was a -- a different use of UT  
18 125. That is a claim that -- that the complainants are entitled to further refunds based upon the  
19 refund orders that the Commission had issued in UT 125. Very briefly, the -- the Commission  
20 had ordered Qwest to refund a substantial amount of money, in excess of \$200 million, in UT  
21 125, in certain orders, also combined with an order -- at least one order out of Docket UT 80, uh,  
22 and NPCC had most recently in -- in the proposed second amended complaint, crafted an -- an  
23 argument that somehow Qwest still needs to refund more money under those refund orders. That  
24 is the claim that I understood the Commission was not allowing in the second amended  
25

1 complaint, and that is the precise claim to which I understand the motion to enforce order was  
2 referring to. So, it -- it would be my understanding and Qwest's position, based on the  
3 Commission's order denying the second amended complaint, that the motion should be  
4 withdrawn or summarily denied or stricken or something to that effect.

5 MR. DUARTE: Your Honor, this is Alex Duarte. I guess the other  
6 comment that I would have is that, you know, to the extent that there was, uh, an amended  
7 complaint -- a proposed amended complaint that was filed, I believe it was in February of last  
8 year, uh, by the Brooks -- by the -- uh, Miller, Nash firm, uh, and to the extent that all references  
9 to the Custom Net were deleted from it then I think that complaint would be fine because that is  
10 what the plaintiff's moved to amend back in February, that was what was granted, minus the  
11 Custom Net provision. And so, you know, the rest of that alleg -- of that complaint, you know,  
12 are -- are not inappropriate. So, I think, a simply red-lining of what was submitted in February  
13 of '09, would probably do the trick.

14 ALJ ARLOW: Uh, that means just removing the references to Custom Net  
15 Services when describing pay phone services?

16 MR. PATRICK: Okay. You're -- I don't know who's speaking but I'm not--

17 ALJ ARLOW: This is Judge Ar -- Judge Arlow. In other words, basically  
18 what you're asserting is that moving all references to Custom Net Services or any services that  
19 would fall under that general and broad description and going forward with PAL -- P-A-L  
20 services and PAL services, using the calculations in UT 125, would be all right? Is that what  
21 you're saying, Mr. Duarte?

22 MR. DUARTE: Yes. Basically if you grab that February '09, proposed  
23 amended complaint, and then just strike all references, you know, the count -- or the claim for  
24 were Custom Net but also, you know, within the text of the -- of the complaint., if there are  
25

1 references to Custom Net. I know that they've define pay phone services as both PAL and  
2 Custom Net. You'd obviously need to excise those Custom Net portions of it in any claim for  
3 relief, based on Custom Net, then I think that that's the complaint that Your Honor -- that the  
4 Commission had ruled long time ago should be the complaint at this issue -- at issue with this  
5 case before we got into, you know, first amended complaint, and the second amended complaint,  
6 and -- and everything else.

7 ALJ ARLOW: That was my understanding. And, of course, with the  
8 substitution of the parties because of the fact that they were the ones who'd be the real parties at  
9 interest, and NPCC had been acting on their behalf, and that's why I stated that there would be  
10 no prejudice to Qwest on that basis because of -- of the addition of those parties but they didn't  
11 give those parties any right separate from it. Now, the only question which I note in looking  
12 over the record, there was some statement to the fact that the parties who are now named in the  
13 proceeding, uh, that they are going to have difficulty pulling their records up. That those -- they  
14 said that the computers were going to be -- the programs were old or something along those  
15 lines. Mr. Patrick, do you know anything about that?

16 MR. PATRICK: I have spoken to, uh -- uh, several of the complainants and  
17 that does not mean all of them at this moment because -- and I have confirmed that we've got  
18 boxes and boxes of -- of paper produced records. We also have at least two of the complainants  
19 that have electronic disks as well. The difficulty as I understand it, Your Honor, has to do with  
20 two of the -- of the complaints who have been merged with other companies, uh, and those  
21 records are now in storage. It's my understanding that there is about three pallets of paper  
22 records in one location and I have spoken recently to the person who's in charge of that and she  
23 has indicated to me that it was her understanding that Qwest had already discussed, uh, the fact  
24 that because they'd already issued some refunds, which we've all acknowledged that there have  
25

1 been some refunds paid, that Qwest certainly has that electronic data available. I assume that  
2 that is correct, and I -- I was involved in the first discussions with that having to do, uh, with  
3 the -- with the difficulty or the -- the ease with which records can be raised, but I -- I've always  
4 made the assumption that the electronic records are -- are available because Qwest had, in fact,  
5 paid refunds based upon the initial orders that -- that I've reviewed. So, I -- I -- maybe Mr.  
6 Reichman can tell me if he has no ability to produce electronic records it was in my  
7 understanding at one point that Qwest said that they hadn't found them but then Mr. Harlow had  
8 indicated to me that he had heard otherwise, that they had, in fact, retrieved the electronic record.  
9 So, I -- I -- I can only speak to what, uh, two of them have said. They've said, look, we have  
10 paper records but you're talking literally thousands of pages, maybe hundreds of thousands of  
11 pages.

12 ALJ ARLOW: Do you think that, uh, parties would be able to agree on the  
13 scope of the complaint that they agree should be litigated and the part -- the scope of the  
14 complaint that they have differences on with respect to need to be litigated as far as bifurcating  
15 the proceeding is concerned?  
16

17 MR. PATRICK: Well, I'd certainly be willing to sit down and see if we can  
18 work that out because it sounds like to me that that's part of the, uh -- uh, element that I think  
19 Mr. Reichman raised, uh, in an earlier discussion is that he believed that all refunds have been  
20 paid, uh, and I don't know -- I don't want to put words in Larry's mouth but it seems like to me  
21 that that's -- that comes to the crux of what my motion is, is that we believe that there are refunds  
22 yet to be paid based upon the final effective rates as they were established in November of 2007.

23 ALJ ARLOW: Right. But the thing is your filings came prior to the time  
24 that the order was issued.  
25

1 MR. PATRICK: Now, which filings are you referring to, Your Honor, the  
2 bifurcation motion?

3 ALJ ARLOW: Yeah. The bifurcation motion.

4 MR. PATRICK: Okay. And -- and I'm willing to sit down with Larry and  
5 do that and I'm sorry that I wasn't able to get ahold of Larry before even this meeting to do that.  
6 I just didn't have the time to do it. I want to make sure that with respect to the earlier filings that  
7 the court -- that you are clearly aware that the -- the complaint, the DR 26 complaint, was filed in  
8 May of 2001, and the remand order was issued in late 2004, and so when we started talking  
9 about what had been done and what hadn't been done, uh, it -- it becomes complicated because  
10 what was known at one point and what the status of the remand and the Court of Appeals kind of  
11 changes the complaint that we originally had sitting in DR 26.

12 ALJ ARLOW: Well, what I would hope the parties might be able to do  
13 was to -- see what you agree on, as far as the scope of the complaint, what you didn't agree on,  
14 and what issues that you believe are still open with respect to each of those, uh, rather -- because  
15 other than that I'll have to wait for Mr. Reichman and Mr. Duarte to craft a response to your  
16 bifurcated motion, but I think this is one of those situations where it might be best if the parties  
17 can sit down and sort of understand what the scope of their agreements and disagreements are so  
18 that at least with respect to P-A-L services we know exactly what the open issues are.

19 MR. REICHMAN: Your Honor, this is Larry Reichman. I -- from our  
20 perspective, uh, the -- the issues that are or are not in this case are very simple, and I'd just like  
21 to take a stab at it while we're all here on the phone. I think there have been -- there has been  
22 discussion of refunds in two contexts. One is based upon FCC order issued back in 1997. That's  
23 what this case has always been about and that's what we think it should only be about. The other  
24 issue that Mr. Patrick has been trying to inject recently is a refund based not on federal law, not  
25



1 on any FCC order, but based on this Commission's orders in Qwest's last general rate case. We  
2 don't think that there -- first of all, we don't think that there are any additional refunds due under  
3 that order to any party nor do we think that that has anything, uh -- it just doesn't belong in this  
4 docket in any -- in any way, shape or form. So -- so that's -- I think that's a pretty, uh, stark  
5 statement of what our position is with respect to refunds, uh, and -- and the motion to enforce we  
6 understand relates only to the second part refunds that NPCC wishes to claim based on the  
7 Commission's rate case order, not based on Federal Communications Commission action and we  
8 understand that that has not been allowed in this docket based on the denial of the second  
9 amended complaint and --

10 ALJ ARLOW: Okay I'm losing -- missing some of your words, Larry.

11 MR. REICHMAN: Well, I -- I --

12 MR. PATRICK: I'm -- I'm catching it.

13 ALJ ARLOW: No, I --

14 MR. REICHMAN: Good. I don't know whether I want to start again. Uh -- I  
15 think that, Your Honor, I -- I don't know how much, uh -- I -- I think that -- that our position as  
16 to what does belong in this docket and what -- what does not, as well as the Commission's recent  
17 order, make it pretty clear. So, I'm not sure what would be gained by our sitting down and trying  
18 to hash through it, unless I'm just --

19 ALJ ARLOW: Right.

20 MR. PATRICK: Your -- Your Honor, we -- I -- I sort of have -- I won't say  
21 it's a proposal but here's the way I sort of look at this. I see this case as being kind of back to  
22 where we were when the Commission allowed NPCC to add the individual pay phone service  
23 providers but did not allow them to add the Custom Net claim. So, to me, uh, in many ways, I --  
24 I find, given Your Honor's ruling -- or the Commission's ruling, that, you know, the recent  
25

1 motion to bifurcate, to consolidate, and to enforce orders, which I see it's sort of a summary  
2 adjudication of you-own me the money pay up right now kind of motion, that to me is all moot in  
3 light of the Commission's recent order. It would seem to me now that what -- what should be the  
4 next step, which should be for the NPCC and plaint -- and the PSPs, what's called the plaintiffs,  
5 to file their amended complaint, that's compliant with the order, which I -- in my view would be  
6 the previous proposed amended complaint minus the Custom Net allegations, we file an answer.  
7 Obviously, if Mr. Patrick feels he needs to file any kind of motion he certainly would have a  
8 right to do that, but the way we approached it back in 2005, uh, you know, which I think would  
9 make sense now, is to have motions for whether you want to call them summary judgment or  
10 summary adjudication or you want to call them, you know, legal briefs, but on the legal issues,  
11 as we had pending before the Commission, before Judge Petrillo, uh, decided to stay the case to  
12 hopefully get some guidance from the FCC, that guidance didn't come in 2005, it didn't come in  
13 2008, and it hasn't come yet, and so it seems to me that we should just go forward with the  
14 briefing, obviously updated from 2005, uh, after, of course, you would have a complaint on file,  
15 and an answer on file, and then the Commission can rule on some of these legal issues, including  
16 whether or not the refunds that had been sought since 2001, are -- are, you know, appropriate or  
17 not, uh, and then, of course, if -- for example, if Qwest prevails then I think we don't get into  
18 damages, and if -- and if NPCC prevails, in whole or in part, then, you know, presumably the  
19 next step would be what are the damages --

21 ALJ ARLOW: A second phase of the proceeding. Right.

22 MR. PATRICK: --- and -- from there goes up. So, that's the way I sort of  
23 look at it but -- and that's kind of where the case was headed in 2005, before Judge Petrillo  
24 stayed the case.

25 ALJ ARLOW: Yeah.

1 MR. PATRICK: My impression and intention was that we would have the  
2 complaint, uh, as filed by Miller, Nash last spring, minus the Custom Net charges, the way that  
3 the Commission's order originally came out, saying, yes, you can add the Plaintiff, but, no, you  
4 can't add the other issues. That was the way I saw the case.

5 ALJ ARLOW: Okay.

6 MR. PATRICK: And the other issue being the Custom Net. Let me, uh -- let  
7 me address that for just a moment because I -- I think that, uh, you know, at the end of the day if  
8 I don't agree with that we end up, you know, appealing the whole case and I'm trying to avoid  
9 just further appeals, quite candidly, but, uh, I -- I want to make sure that I -- I understand. If I  
10 take the complaint and that would be the first amended complaint that -- that I filed and I delete  
11 the issues with respect to Custom Net, it sounds like to me that Qwest would find that to be an  
12 acceptable complaint, and, uh, I suspect that that's the simplest and easiest way to get this thing  
13 to a point of understanding what the Commission's order has done because I -- I think that -- I  
14 think that's the case. The only problem that I have with that, uh, at this point right now is to  
15 resolve one of the issues having to do with the party. At the time that I took this case over, uh, I  
16 talked to former counsel and what he indicated to me was is that the reason why he had avoided  
17 until late in this matter and, of course, it's early in the case in one sense, uh, just late in -- in  
18 numbers of days, is he says there are a group of pay phones out there that I have not identified  
19 and I don't know what the -- what you, Your Honor, would have me do with respect to that. I  
20 had tried to preserve whatever rights would be in those people that I don't have fee agreements  
21 with and I'm calling them unidentified pay phone operators. Under the statute, it appears to me  
22 that if they become identified, and I'm not in a process of trying to identify them, but I did not  
23 want to have, uh, somebody come in and say wait a minute we thought you were protecting all of  
24  
25

1 our rights here or the Commission to say wait a minute you were protecting all these other  
2 people as well.

3 ALJ ARLOW: The language in the complaint that was filed by Miller,  
4 Nash was perfectly clear, in so far as, it made representations that there was no -- there was  
5 going to be no difference in the potential liability of Qwest. That these people were people that  
6 you had already represented or that Miller, Nash had already represented as part of NPCC, and  
7 that there would be no prejudice to Qwest, no possible prejudice, I think is -- no conceivable  
8 prejudice, I think was maybe the language that was used in that, uh, complaint to Qwest in the --  
9 in the argument in the motion in support of the complaint, no conceivable, uh, you know,  
10 detriment to Qwest, and here by adding additional -- or by looking for additional parties, you are  
11 essentially increasing the potential liability of Qwest, which is contrary to the representations  
12 that were made earlier.

13 MR. PATRICK: Okay. Just so -- just so I'm clear on that. I -- I recognize  
14 what you're saying. My difficulty is, is that I was left with an impression from -- from former  
15 counsel that when the briefing issue came out on -- on how they were representing -- NPCC was  
16 representing this group of claimants, he treated it as though there might be potentially more. So,  
17 out of an abundance of caution, not out of an effort to expand this, but out of an abundance of  
18 caution, I didn't want someone to come up and say, hey, wait a minute, you've cut out a group of  
19 people that you originally, uh -- who were relying upon some kind of representation by the  
20 NPCC. Now, since that originally was done, okay, I have learned of no new complainant. I just  
21 don't want someone to come back and say the NPCC has -- has let these people down, not  
22 because I had some kind of a duty but that -- that they were out there thinking that they were  
23 being represented, and that's what the conversation I had with Mr. Harlow the last time we spoke  
24 he says, well, look, he said, you know, we're -- we're representing all pay phones in a  
25

1 representational manner. Now, I suspect he had forgotten, you know, his comments to the  
2 Commission, and maybe he had, maybe he hadn't, I don't know, but I didn't understand him to  
3 be saying, well, look, if there's somebody else that comes in and they're entitled to relief under,  
4 uh, what the Commission ultimately ruled and I said, okay, I understand that now. Now --

5 ALJ ARLOW: Well, when 09-155 came out, in specific period of time,  
6 when parties could have sought clarification or rehearing or appeal, in that order, and that didn't  
7 happen. There was plenty of opportunity at that time to say when you say we can add new  
8 parties does this mean people we can find along the way. There was no motion for clarification  
9 filed with the Commission on any kind of a timely basis. I believe that --

10 MR. PATRICK: I'm not suggesting (unintelligible) --

11 ALJ ARLOW: -- (unintelligible) -- your order became law.

12 MR. PATRICK: -- that was what they were intending to do. I'm just  
13 suggesting to that I may have been told something that I understood in one matter, which, in fact,  
14 nobody else understood and -- or understood and maybe there was something else out there that  
15 I -- I still don't understand, I just didn't want the Commission, uh, or some other party coming in  
16 saying wait a minute we had a relationship with the NPCC because the NPCC, I -- I was  
17 ostensibly representing the NPCC only for purposes of -- of achieving a -- a hand-off of the case  
18 to the real parties in interest.

19 MR. DUARTE: Your Honor, it seems to me that --this is Alex Duarte, that  
20 the -- and I'm trying to follow this -- this argument, that a -- it's -- it's an argument about trying  
21 to represent clients that aren't your clients yet, and that's where apart from assuming that you --  
22 Your Honor, raised about additional prejudice, additional potential liability, uh, I -- I'm not sure,  
23 you know, how someone can say, well, I need to present the interests of those who aren't here  
24  
25

1 because there might be some other company, some other pay phone providers out there that don't  
2 have representation.

3 ALJ ARLOW: Yes.

4 MR. DUARTE: I mean if they don't have representation, they don't have  
5 representation, but it's not anybody's --

6 ALJ ARLOW: It -- it sounds like a class action --

7 MR. DUARTE: -- humble duty to represent somebody that they don't  
8 represent.

9 MR. REICHMAN: Yeah. Well, and -- and beyond the client -- this is Larry  
10 Reichman, again, uh, beyond the -- sort of the attorney/client relationship, uh, in the relationship  
11 between NPCC, as an association, and its members, as I understand it, NPCC has a --

12 ALJ ARLOW: Just a little louder, Larry.

13 MR. REICHMAN: NPCC has been appearing on behalf of its members and the  
14 additional plaintiffs here are NPCC members. I don't know how anyone could ever claim that  
15 NPCC has some kind of an obligation to speak on behalf of non-members nor, frankly, does --  
16 does it seem appropriate if these companies have chosen not to join the association, that they  
17 should somehow be -- be spoken for by it, so --

18 ALJ ARLOW: Yeah. This is not a class action situation where you have a  
19 large number of aggrieved but unknown people for whom a firm has decided to take up the  
20 cudgel.

21 MR. PATRICK: It's certainly the case, uh, Your Honor, Frank Patrick, it --  
22 it was my understanding that Qwest had paid, uh, refunds and I would assume that they would  
23 have known who the other plaintiff -- complainants might be, other than the 12 that we've added  
24 to this -- to this group of complainants, uh, and I thought that that would probably come out at  
25

1 some point. I just don't want to have, quite candidly, a continuing duty with respect to, uh -- uh,  
2 the non-members of the NPCC, and if the --

3 ALJ ARLOW: Do you mean an ethical --

4 MR. PATRICK: -- opposing counsel had some concern about that, and I'm  
5 not exactly sure, uh, why that was -- that concern was raised but he did raise that concern. So,  
6 uh, to that extent that's the whole point of my -- my unidentified plaintiff. I -- what I'd like to do  
7 is I'd like to take a crack at doing a red line, uh, on that issue and then, uh, getting that to, uh,  
8 Mr. Reichman and see if we can reach that. I -- I think that probably I can do that fairly quickly,  
9 uh, but I do want to -- to address that motion to bifurcate. So, it -- for a moment. So, if we want  
10 to move from the -- the drafting of the complaint what I'll commit to do is getting a draft of what  
11 would now become the third amended complaint and in fashion that falls, as we've just  
12 discussed, and as, uh -- uh, Mr. Duarte is, I think, what you've indicated is -- is the status of this  
13 matter, uh, at the time of, uh -- I think it's the February or -- actually I think it's a May order --  
14

15 MR. DUARTE: May order of February motion.

16 MR. REICHMAN: Right. Right.

17 MR. DUARTE: Well, I -- I'm not sure when you said -- Your Honor, if I  
18 can just speak for a second. When you said you're going to take a -- a crack at redlining but it  
19 was -- it came at the heels of this whole discussion about representation of -- of an unnamed  
20 party and so I don't know if we're going to deal with that, I -- I don't think we're going to find  
21 agreement. I -- I mean, if -- if we're going to grab that old amended complaint that was  
22 proposed back in February, uh, and redline the Custom Net, and that's it, then I agree that that's  
23 what the Commission allowed NPCC to do, and now NPCC and the providers, and that'd be  
24 fine, but if there's anything more than that, uh, I think we're -- I can say right now we're not  
25

1 going to agree, uh, voluntarily and so we're going to have to probably deal with more motions  
2 down the road. I'm hoping we don't have to do that, obviously.

3 MR. PATRICK: Well, that's what I'm suggesting, Mr. Duarte, is that I -- is I  
4 go ahead and I produce that complaint, uh, get it over to you and Mr. Reichman and then, uh,  
5 maybe we can come back and -- and chat with the -- if there's some dispute about what the  
6 complaint says then we can come back and -- and talk to, uh -- uh, Judge Arlow to resolve that  
7 issue. If that would be acceptable then I'm suggesting that we continue this hearing just to  
8 accomplish that.

9 ALJ ARLOW: Mr. Duarte? Mr. Reichman?

10 MR. DUARTE: Well, I'm not sure if that's really necessary. I mean, I  
11 don't want to be difficult, I mean, if that's what -- you know, what Your Honor would like us to  
12 do that'd be fine, but to me it seems like it's very easy -- it doesn't take, you know, a lot of  
13 rocket science to -- to, you know, redline that complaint from February and May, uh, into a third  
14 amended complaint and then, you know, uh, we could respond to that, uh, but -- so -- so I guess,  
15 I -- I just, uh -- I'm not sure why we need to come back -- you know, why we need to stop now  
16 and then come back, uh, because to me that, you know, in the end -- the complaint should be a  
17 real simple drafting thing really. It's more of a -- you'd use your -- your redlining and your --  
18 your word processing and then you've got it done.

19 ALJ ARLOW: Right. Mr. Patrick, do you --

20 MR. PATRICK: I think what I'm -- I'm suggesting, uh, Mr. Duarte, is that --  
21 is that I take the complaint, and we sit down and -- and see if there's any, uh, issue that -- that we  
22 can resolve by the impending motion, the bifurcation motion, and -- and then we can get back  
23 but, uh, I mean, I -- we can do it in two chunks or one chunk, it doesn't matter to me but I'm  
24  
25



1 trying to avoid just, uh, additional briefing that goes forever and ever, so, uh, that -- that was my  
2 suggestion.

3 MR. DUARTE: Well, Your Honor, it would seem to me that that whole  
4 motion to bifurcate, slash, consolidate, slash, uh -- uh, enforce orders, uh, was premised on what  
5 the Commission has already knocked out. So, to me, you know, to try to salvage that in -- in  
6 some way doesn't -- to me doesn't make sense. To me it would seem like if Mr. Patrick had  
7 some kind of motion to bifurcate, based on what the complaint that should be at issue, uh, is,  
8 then, you know, he certainly has the right to do that, and -- and we can respond accordingly,  
9 but -- but to go back to the motion to bifurcate that exists now, uh, that was filed on Monday or  
10 whenever, to me that -- that's kind of futile exercise. It -- it seems to me that the case has  
11 changed quite dramatically with -- with the Commission's order this week.

12 ALJ ARLOW: Right. And the question -- Mr. Patrick, one of the first  
13 things I asked you was whether you wanted to withdraw the pending motions that you have and  
14 perhaps fashion a new motion based upon your current knowledge of the status of the  
15 Commission's orders in the case or whether you want to let your previous motion stand.

16 MR. PATRICK: Well, no, I don't think there -- I don't think it makes sense  
17 to letting the previous motion stand. Uh --

18 ALJ ARLOW: Why don't we start off by withdrawing those -- formerly  
19 withdrawing those and then you can, uh, you know, start again, and Qwest will then have the  
20 opportunity to answer whatever comes this time out.

21 MR. PATRICK: Okay. My -- I -- my proposal was I sit down with Mr.  
22 Reichman and -- and see if I -- if we can work out whatever else is out, and maybe we can come  
23 up with a briefing schedule, uh, but let's -- let's go ahead and do that. I will withdraw my  
24 motion.  
25

1 ALJ ARLOW: Okay. Well, actually, I'll take it, uh -- I will take it right  
2 here on the record having withdrawn that. You don't need to file anything.

3 MR. PATRICK: I withdraw my motion. I -- I assume that that's -- while  
4 without prejudice, that -- to refile a motion, obviously, and I will, uh -- I will get the amended  
5 complaint in and in the meantime I will actually be talking to Mr. Reichman before I send it in to  
6 make sure that he's happy with the draft of that and we'll go from there.

7 ALJ ARLOW: And then once you do that you'll approach me with the  
8 schedule?

9 MR. PATRICK: Uh, that would -- yes, sure, that would be fine. I -- you  
10 mean a schedule with respect to having the amended complainant?

11 ALJ ARLOW: Yeah. To the briefing. Right.

12 MR. PATRICK: Uh, well, okay. You -- you mean after we talk to that?

13 ALJ ARLOW: Yeah.

14 MR. PATRICK: I guess we could do that. I can get the amended complaint  
15 and, uh, if you'd give me a week, and I've -- I've got a real tough -- tough couple of days here  
16 coming up, if you'd give me until next Friday to get that in that would be helpful.

17 ALJ ARLOW: All right.

18 MR. PATRICK: And, Larry, maybe, uh, he and I can sit down and chat  
19 with, uh -- on a briefing schedule from that point on.

20 ALJ ARLOW: Okay. So, the third amended complaint will be due in on  
21 the 12<sup>th</sup>? Is that what you're saying potentially?

22 MR. PATRICK: Yes.

23 ALJ ARLOW: Complaint due on the 12<sup>th</sup>. And, Mr. Reichman, uh, your  
24 response?  
25

1 MR. REICHMAN: No. That sounds fine. We're happy to work, uh -- work  
2 with him on the, uh -- the amended complaint, which as we've discussed, we would expect to  
3 look very similar to what the one -- the one that was proposed about a year ago, minus Custom  
4 Net. Uh, the -- with respect to any motion to bifurcate, uh -- uh, really there -- there is  
5 essentially one claim in that case. So, uh, I'm not sure that there would be a need for -- for any  
6 kind of bifurcation, other than what we would propose is that we would then proceed to address  
7 issues of -- of liability and that that might -- that be bifurcated from any damages issues, which is  
8 how we approach this case. Uh, I'm afraid to say it was about five years ago when the parties  
9 filed cross motions for summary judgment on the -- the issues of liability. That -- the -- when we  
10 talked about schedule for briefing, just to be clear, that is the kind of schedule that --

11 ALJ ARLOW: Right.

12 MR. REICHMAN: -- that we would be anticipating.

13 ALJ ARLOW: And that's kind of the same thing we'll be having.

14 MR. PATRICK: I'm -- I'm losing some of your words, Larry, but assuming  
15 I'm -- I'm hearing you say that we can talk about a briefing schedule. Is that what I heard you  
16 say?  
17

18 MR. REICHMAN: Right.

19 ALJ ARLOW: What -- what he's saying basically is that he would expect  
20 that, uh, we would -- any bifurcation would be -- first based upon cross motions for summary  
21 judgment on the, uh, issue of liability.

22 MR. PATRICK: Um hmm.

23 ALJ ARLOW: And then, uh, if you would prevail on the issue of liability  
24 then we would have a second proceeding on -- basis on damages and that's when you'd have all  
25 your discovery, et cetera.

1 MR. PATRICK: Uh, well, let's -- that may or may not be necessary but,  
2 yeah, I understand that. Um hmm. That's a potential that we may have to do.

3 ALJ ARLOW: Is that your understanding, Mr. Reichman and Mr. Duarte?

4 MR. DUARTE: Uh, yes. The way -- the way that you, uh, articulated that is  
5 how we would see the case going.

6 ALJ ARLOW: All right. Well, that should be simple then. I would hope,  
7 however, that, uh -- I guess it's a vein hope that the FCC will act on this matter. Nobody's filed  
8 a -- a writ of mandamus in the D.C. Court of Appeals, huh?

9 MR. PATRICK: No one has filed nor do I believe anyone ever will. That's  
10 the reason why we filed our precautionary matter here in the U.S. District Court, as of the -- of  
11 the timeline that we were looking at. It -- it's real clear that there -- that nobody is going to act at  
12 the FCC.

13 ALJ ARLOW: Okay. All right. Anything further before we adjourn?

14 MR. REICHMAN: So, Your Honor, just to have clarity. So, uh, Mr. Patrick  
15 would amend his complaint by what date again?  
16

17 ALJ ARLOW: The 12<sup>th</sup>.

18 MR. REICHMAN: The 12<sup>th</sup> of February?

19 ALJ ARLOW: Yes.

20 MR. REICHMAN: A week from now?

21 ALJ ARLOW: Right.

22 MR. REICHMAN: And then what's the timeframe for -- for Qwest to respond  
23 to that amended motion?

24 ALJ ARLOW: Uh, well, what do you feel you need? Do you want more  
25 than a week on that? Would you respond by the 19<sup>th</sup> or do you want the 26<sup>th</sup>?

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MR. REICHMAN: Uh, I -- I would think two weeks should be fine.

ALJ ARLOW: Okay. So, response on the 26<sup>th</sup>.

MR. PATRICK: I -- I think you used the words amended motion but I think that --

ALJ ARLOW: Oh, I'm sorry. Amended complaint.

MR. REICHMAN: Amended complaint. I'm sorry.

MR. PATRICK: Okay.

ALJ ARLOW: Okay. And reply on the 26<sup>th</sup>.

MR. REICHMAN: And -- and I think what we would be doing is simply answering.

ALJ ARLOW: Right. Answering. Yes. Answering the complaint. Answer on the 26<sup>th</sup> and then based upon that we'd have, uh, cross motion. Okay.

MR. REICHMAN: And then -- and to be clear, we'd be answering, as well -- assuming the complaint that we're anticipating would be filed. If there's anything different we may have to move again but we'll just leave -- hopefully we won't be there.

MR. PATRICK: (Chuckling)

ALJ ARLOW: Okay.

MR. PATRICK: Let -- let me ask this question, Your Honor. I -- I will -- I will get this done -- I -- I assume that you produce your own orders on this issue. Is that correct or not?

ALJ ARLOW: Oh, that -- that's correct.

MR. PATRICK: Okay. And, uh -- and on procedural issues, uh, I guess I still have an open door to somebody at staff and so I -- I probably will ask questions with respect to, uh, any of the -- of the other procedural issues, uh, outside the context of this hearing.

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ALJ ARLOW: I'm not exactly sure what you mean by that.

MR. PATRICK: I'm still confused with respect to, uh, the right of the claimant, uh, to move to enforce orders separate from DR 26 and it seems like to me that that's -- that's -- that's the question I'm going to have to answer for myself, I guess.

ALJ ARLOW: Uh --

MR. DUARTE: Your Honor, I'm still not sure I understand.

ALJ ARLOW: And neither -- neither do I.

MR. PATRICK: Okay. I'll -- I'll withdraw the question and -- and pursue an answer in a separate -- as a separate discussion, uh, because, uh, I -- I'm very confused as to, uh, where -- if -- if there's an order that is unenforced at this moment in the minds of -- of a complainant where do they file, uh, to do that. It seemed like DR 26 is -- is where all the refunds were anticipated to be paid. So, uh, I'm still a little confused but maybe as I finish up with the amended complaint, uh, it'll be all clear to me.

ALJ ARLOW: To me that sounds like a separate docket that would be outside the scope of this proceeding. I'll wait to see what comes in.

MR. PATRICK: All right. That sounds good.

ALJ ARLOW: All right. Anything further from any of the parties? Anything from you, Mr. Jones?

MR. JONES: No, Your Honor.

MR. REICHMAN: Nothing for me, Your Honor.

MR. PATRICK: Nothing for me, Your Honor.

ALJ ARLOW: Well, I guess we're adjourned then. Thank you all.

MR. PATRICK: Thank you much.

MR. REICHMAN: Thank you.

MR. DUARTE: Thank you.

MR. JONES: Thank you.

(Concluded)


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**CERTIFICATE**

I, Jim Berg, an independent contractor under contract with the Public Utility Commission of Oregon, certify that I listened to the audio recording of the above-referenced Telephone Prehearing Conference, transcribed in writing such recording, and that such transcript is a complete and accurate record thereof.

Dated 3/16/12

  
\_\_\_\_\_  
Jim Berg  
Owner/Operator  
Work Processors Company  
(503) 362-4559



**Summary Report****UT 125 U S WEST COMMUNICATIONS INC****Category:** Telephone Rate Case**Filed By:** QWEST CORPORATION

In The Matter of

U.S. WEST COMMUNICATIONS, INC.

Application for an Increase in Revenues, Filed By Penny Bewick For Molly Hastings. Direct

Testimony Of Carl Inouye, Phil Grate, Peter C Cummings, Lawrence Mcdonald,&amp; Ann

Koehler-christensen. Cpm To...

**Filing Date:** 11/15/1999 **Advice No:** 1806**Effective Date:** 1/31/2001 **Expiration Date:** 1/31/2001 **Status:** WITHDRAWN**See also:** UC 509

ADVICE 1849

**Final Order:** 07-497**Signed:** 11/15/1999**SCHEDULE:****Date:** 11/1/2006 9:45 AM **Event:** TELEPHONE CONFERENCE**Location:** VIA TELEPHONE**Date:** 8/11/2006 **Event:** TESTIMONY/EXHIBITS DUE**Date:** 7/7/2006 **Event:** TESTIMONY/EXHIBITS DUE**Date:** 6/23/2006 **Event:** BRIEF DUE**Date:** 6/19/2006 3:15 PM **Event:** TELEPHONE CONFERENCE**Location:** CAVE - PUC  
VIA TELEPHONE**Date:** 5/26/2006 **Event:** TESTIMONY/EXHIBITS DUE**Date:** 5/19/2006 **Event:** BRIEF DUE**Date:** 5/10/2006 **Event:** TELEPHONE CONFERENCE**Date:** 5/5/2006 **Event:** ISSUE STATEMENT DUE**Date:** 4/21/2006 **Event:** PETITION TO INTERVENE DUE**Date:** 3/31/2006 **Event:** OTHER FILING DUE**Date:** 3/13/2006 2:30 PM **Event:** TELEPHONE CONFERENCE**Location:** MEADOW CONF RM - PUC  
VIA TELEPHONE**Date:** 4/16/2002 **Event:** OTHER FILING DUE**Date:** 1/15/2002 **Event:** FINAL ORDER DUE DATE**Date:** 1/11/2002 **Event:** FINAL ORDER DUE DATE**Date:** 12/7/2001 **Event:** COMMENTS/RESPONSES DUE**Date:** 12/1/2001 **Event:** COMMENTS/RESPONSES DUE

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 12/1/2001	<b>Event:</b> COMMENTS/RESPONSES DUE
<b>Date:</b> 11/28/2001	<b>Event:</b> COMMENTS/RESPONSES DUE
<b>Date:</b> 11/21/2001	<b>Event:</b> COMMENTS/RESPONSES DUE
<b>Date:</b> 7/16/2001	<b>Event:</b> BRIEF DUE
<b>Date:</b> 6/29/2001	<b>Event:</b> BRIEF DUE
<b>Date:</b> 5/29/2001 1:00 PM <b>Location:</b> LARGE HEARING ROOM - AGRICULTURE BLDG 635 CAPITOL ST NE , SALEM OR, OR	<b>Event:</b> HEARING
<b>Date:</b> 5/10/2001	<b>Event:</b> INTERROGATORIES DUE
<b>Date:</b> 5/3/2001	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 4/10/2001	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 4/10/2001	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 3/14/2001	<b>Event:</b> ISSUE STATEMENT DUE
<b>Date:</b> 3/7/2001	<b>Event:</b> SETTLEMENT CONFERENCE
<b>Date:</b> 2/16/2001	<b>Event:</b> OTHER FILING DUE
<b>Date:</b> 2/12/2001	<b>Event:</b> OTHER FILING DUE
<b>Date:</b> 1/31/2001	<b>Event:</b> EFFECTIVE DATE/ STATUTORY DEADLINE
<b>Date:</b> 1/31/2001	<b>Event:</b> EXPIRATION DATE
<b>Date:</b> 11/15/2000	<b>Event:</b> PETITION TO INTERVENE DUE
<b>Date:</b> 11/15/2000	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 10/4/2000 9:30 AM <b>Location:</b> MAIN HEARING ROOM - PUC 550 CAPITOL ST NE , SALEM OR, OR	<b>Event:</b> CONFERENCE
<b>Date:</b> 9/5/2000 1:30 PM <b>Location:</b> MAIN HEARING ROOM - PUC 550 CAPITOL ST NE , SALEM OR, OR	<b>Event:</b> STAFF WORKSHOP
<b>Date:</b> 6/29/2000	<b>Event:</b> EFFECTIVE DATE/ STATUTORY DEADLINE
<b>Date:</b> 6/29/2000	<b>Event:</b> EXPIRATION DATE

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 6/28/2000 9:30 AM	<b>Event:</b> SETTLEMENT CONFERENCE
<b>Location:</b> SHR - PUC 550 CAPITOL ST NE , SALEM OR, OR	
<b>Date:</b> 6/5/2000	<b>Event:</b> MISCELLANEOUS
<b>Date:</b> 2/11/2000	<b>Event:</b> BRIEF DUE
<b>Date:</b> 1/25/2000	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 1/25/2000	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 1/12/2000	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 1/10/2000	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 12/30/1999	<b>Event:</b> ANSWERS TO INTERROGATORIES DUE
<b>Date:</b> 12/29/1999	<b>Event:</b> EFFECTIVE DATE/ STATUTORY DEADLINE
<b>Date:</b> 12/14/1999	<b>Event:</b> PUBLIC MEETING
<b>Date:</b> 11/29/1999 9:30 AM	<b>Event:</b> CONFERENCE
<b>Location:</b> MAIN HEARING ROOM - PUC 550 CAPITOL ST NE - STE 215 , SALEM, OR 97301-2551, OR	
<b>Date:</b> 4/20/1998	<b>Event:</b> HEARING
<b>Date:</b> 4/9/1998 9:30 AM	<b>Event:</b> CONFERENCE
<b>Location:</b> MHR	
<b>Date:</b> 4/1/1998	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 3/6/1998	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 1/14/1998	<b>Event:</b> SETTLEMENT CONFERENCE
<b>Location:</b> MHR	
<b>Date:</b> 9/18/1997 9:30 AM	<b>Event:</b> HEARING
<b>Location:</b> MAIN HEARING RO - PUC 550 CAPITOL STREET NE , SALEM, OR	
<b>Date:</b> 8/22/1997	<b>Event:</b> MISCELLANEOUS
<b>Date:</b> 5/7/1997	<b>Event:</b> HEARING
<b>Date:</b> 4/18/1997	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 3/28/1997	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 3/3/1997	<b>Event:</b> SETTLEMENT CONFERENCE
<b>Date:</b> 2/24/1997	<b>Event:</b> MISCELLANEOUS

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 1/10/1997	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 12/16/1996 9:30 AM <b>Location:</b> SALEM	<b>Event:</b> MISCELLANEOUS
<b>Date:</b> 11/4/1996	<b>Event:</b> HEARING
<b>Date:</b> 10/28/1996	<b>Event:</b> MISCELLANEOUS
<b>Date:</b> 10/22/1996	<b>Event:</b> SETTLEMENT CONFERENCE
<b>Date:</b> 10/7/1996	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 8/28/1996 9:30 AM <b>Location:</b> SALEM	<b>Event:</b> CONFERENCE
<b>Date:</b> 8/8/1996	<b>Event:</b> TESTIMONY/EXHIBITS DUE
<b>Date:</b> 8/2/1996	<b>Event:</b> OTHER FILING DUE
<b>Date:</b> 7/3/1996	<b>Event:</b> MISCELLANEOUS
<b>Date:</b> 6/24/1996	<b>Event:</b> PETITION TO INTERVENE DUE
<b>Date:</b> 6/24/1996	<b>Event:</b> SETTLEMENT CONFERENCE
<b>Date:</b> 6/11/1996	<b>Event:</b> MISCELLANEOUS
<b>Date:</b> 6/3/1996	<b>Event:</b> CONFERENCE
<b>Date:</b> 2/20/1996	<b>Event:</b> PETITION TO INTERVENE DUE
<b>Date:</b> 2/1/1996 1:30 PM <b>Location:</b> SALEM	<b>Event:</b> CONFERENCE

**ACTIONS:**

<b>Date:</b> 11/15/2007	<b>Order:</b> 07-497	<b>Action:</b> ORDER
Order No. 07-497 signed by Commissioners Lee Beyer, John Savage, and Ray Baum; DISPOSITION: STIPULATION ADOPTED.		
Copies served electronically and via U.S. Mail on 11/16/07.		
<b>Date:</b> 10/15/2007	<b>Action:</b> STIPULATION	
Stipulation entered into between Qwest Corporation, Northwest Public Communications Council, and PUC Staff. Electronically filed by Jason W. Jones. Hard copy rec'd. 10/15/07.		
<b>Date:</b> 10/15/2007	<b>Action:</b> TESTIMONY & EXHIBITS	
Staff Direct Testimony and exhibits of John Reynolds (Staff Exhibits 1 - 3) (Staff Exhibit 2 is confidential and is located in locked cabinet, envelope #96(47)). Electronically filed by Jason W. Jones. Hard copy rec'd 10/15/07.		
<b>Date:</b> 11/2/2006	<b>Action:</b> LAW JUDGE CONFERENCE REPORT	
ALJ Petrillo's Conference Report.		
Copies served electronically and via U.S. Mail on 11/2/06.		

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 10/26/2006	<b>Action:</b> CONFERENCE
NOTICE OF TELEPHONE CONFERENCE scheduled 11/1/2006 9:45 AM Room: VIA TELEPHONE Reporter: NONE Law Judge: PETRILLO, SAM Dial-In: 503-378-3313	
Copies served electronically 10/26/06 and via U.S. Mail 10/27/06.	
<b>Date:</b> 10/16/2006	<b>Action:</b> MOTION
NPCC's Motion requesting a prehearing conference be scheduled to discuss new procedural schedule. Electronically filed by Brooks E. Harlow.	
<b>Date:</b> 9/11/2006	06-515 <b>Action:</b> ORDER
Order No. 06-515 signed by Commissioners Lee Beyer, John Savage, and Ray Baum; DISPOSITION: QWEST RATE REBALANCING PROPOSAL DENIED.	
Copies served electronically and via U.S. Mail on 9/13/06.	
<b>Date:</b> 7/13/2006	<b>Action:</b> OTHER FILING/PLEADING
INTEGRA TELECOM, INC.'s Letter requesting Jay Nusbaum be added to the docket service list; Filed by Suzy Beesley on behalf of Jay Nusbaum; Electronic version rec'd 7/14/06. (Certificate of Service rec'd 7/21/06.)	
<b>Date:</b> 6/23/2006	<b>Action:</b> BRIEF
Staff's Reply Brief; Filed by Jason W. Jones; Electronic version & hard copy rec'd 6/23/06.	
<b>Date:</b> 6/23/2006	<b>Action:</b> BRIEF
Northwest Public Communications Council's Reply Brief; Filed electronically by Brooks E. Harlow; Hard copy rec'd 6/26/06.	
<b>Date:</b> 6/23/2006	<b>Action:</b> BRIEF
Qwest's Response Brief Supporting Proposal to Rebalance Rates, with attached exhibit; together with Declaration of Don K. Mason; Filed electronically by Lawrence H. Reichman; Hard copy rec'd 6/26/06.	
<b>Date:</b> 6/21/2006	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Petrillo's Ruling Granting Staff's Motion to Disallow Deposition. Copies served electronically and via U.S. Mail on 6/21/06.	
<b>Date:</b> 6/19/2006	<b>Action:</b> MOTION
Staff's Motion in Opposition to Qwest's Notice of Deposition of Phil Nyegaard and Request for Oral Argument. Electronically filed by Jason W. Jones. Hard copy rec'd 6/19/06.	
<b>Date:</b> 6/19/2006	<b>Action:</b> CONFERENCE
TELEPHONE CONFERENCE scheduled 6/19/2006 Room: CAVE Building: PUC Address: VIA TELEPHONE Reporter: NONE Law Judge: PETRILLO, SAM	
Notice of Telephone Conference and Oral Argument served electronically and via U.S. Mail on 6/19/06. (Dial-in #503-378-3313, ref #6464.)	
<b>Date:</b> 6/14/2006	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Petrillo's Ruling extending briefing schedule by one week.	
Copies served electronically and via U.S. Mail on 6/14/06.	
<b>Date:</b> 6/13/2006	<b>Action:</b> MOTION
Qwest's letter to Judge Petrillo requesting an extension of time to file its brief. Electronically filed by Lawrence Reichman. Hard copy rec'd 6/14/06.	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 6/7/2006	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Petrillo's Memorandum.	
Copies served electronically on 6/7/07 and via U.S. Mail on 6/8/06.	
<b>Date:</b> 5/19/2006	<b>Action:</b> BRIEF
Staff's Opening Brief. Electronically filed by Jason W. Jones. Hard copy rec'd 5/19/06.	
<b>Date:</b> 5/19/2006	<b>Action:</b> BRIEF
Qwest Corporation's Opening Brief. Electronically filed by Lawrence H. Reichman. Hard copy rec'd 5/23/06.	
<b>Date:</b> 5/4/2006	<b>Action:</b> OTHER FILING/PLEADING
AT&T's correspondence requesting that David J. Miller be replaced by Daniel Foley on Service List. Emailed by Agnes Ng. (Change made.)	
<b>Date:</b> 5/4/2006	<b>Action:</b> OTHER FILING/PLEADING
Integra's correspondence requesting that Deborah Harwood be replaced by Carol Wirsbinski on Service List. Emailed by Deborah Harwood. (Change made.)	
<b>Date:</b> 5/1/2006	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Ruling suspending procedural schedule; establishing briefing schedule.	
Copies served electronically and via U.S. Mail on 5/2/06.	
<b>Date:</b> 4/25/2006	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Petrillo's Ruling Granting parties request to cancel settlement conference scheduled for 5/1/06.	
Copies served electronically on 4/25/06 and via U.S. Mail on 4/26/06.	
<b>Date:</b> 4/25/2006	<b>Action:</b> MOTION
UT 125 Staff Motion to Cancel Settlement Conference submitted by Jason W. Jones	
<b>Date:</b> 4/25/2006	<b>Action:</b> MOTION
Qwest's Motion regarding altering docket schedule to address threshold issue. Electronically filed by Lawrence Reichman. Hard copy rec'd 4/27/06.	
<b>Date:</b> 4/21/2006	<b>Action:</b> CONFERENCE
TELEPHONE CONFERENCE scheduled 5/10/2006 9:45 AM	
Room: CAVE Building: PUC	
Address: VIA TELEPHONE	
Reporter: NONE	
Law Judge: PETRILLO, SAM	
Notice of Telephone Conference served electronically and via U.S. Mail on 4/21/06. (Dial in #503-378-3313; ref #6287.)	
<b>Date:</b> 4/10/2006	<b>Action:</b> OTHER FILING/PLEADING
Correspondence from Richard J. Busch advising that he can be removed from service list. Filed by Richard J. Busch. Removed from service list.	
<b>Date:</b> 4/7/2006	<b>Action:</b> OTHER FILING/PLEADING
Staff letter to parties. Filed by Lance Ball.	
<b>Date:</b> 3/31/2006	<b>Action:</b> OTHER FILING/PLEADING
Qwest's Letter regarding ALJ Petrillo's First Conference Report, including Attachment A with Confidential exhibits to Attachment A located in locked cabinet, envelope #96(46). Nonconfidential portion electronically filed by Lawrence H. Reichman. Hard copy with confidential material rec'd. 3/31/06.	
<b>Date:</b> 3/24/2006	<b>Action:</b> OTHER FILING/PLEADING
Qwest's request to replace Don Mason with Alex Duarte on service list. Filed by Carla Butler.	
<b>Date:</b> 3/21/2006	<b>Action:</b> LAW JUDGE CONFERENCE REPORT
ALJ Petrillo's First Conference Report (identifying issues and setting schedule); Copies served electronically and via U.S. Mail to the UT 125 docket service list, & via U.S. Mail only to the TC list on 3/21/06.	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC****Date:** 3/2/2006 **Action:** CONFERENCE

TELEPHONE CONFERENCE scheduled 3/13/2006 2:30 PM  
 Room: MEADOW CONF RM Building: PUC  
 Address: VIA TELEPHONE  
 Reporter: NONE

Notice of Telephone Conference served electronically on 3/2/06 and via U.S. Mail on 3/3/06. (Dial-in #503-378-3003, ref. #6172.)

**Date:** 2/9/2006 **Action:** SUPPLEMENTAL APPLICATION

In the Matter of  
 U. S. WEST COMMUNICATIONS, Inc.  
 Northwest Public Communications' Motion to Set Procedural Conference to Establish Issues and Procedures on Remand; electronically filed by Carol J. Munnerlyn for Brooks E. Harlow. Hard copy rec'd 2/10/06.

**Date:** 11/18/2002 **Action:** OTHER CORRESPONDENCE (ACKN, SVC, LTR)

Request that Kath Thomas be replaced with Lon E. Blake on the service list; electronically received from Lon. E. Blake, Director of Regulatory Affairs, Advanced Telcom Inc.

**Date:** 7/8/2002 02-443 **Action:** ORDER

Order No. 02-443 signed by Chairman Roy Hemmingway and Commissioners Lee Beyer and Joan H. Smith;  
 DISPOSITION: MEMORANDUM OF UNDERSTANDING ADOPTED.

Copies served 7/10/02.

**Date:** 6/18/2002 **Action:** MOTION

Staff's Stipulated Motion to Have Commission Issue Order Adopting MOU; filed by Jason Jones for Michael T. Weirich.

**Date:** 6/12/2002 **Action:** APPEAL

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.

**Date:** 6/10/2002 **Action:** CANCELLATION/CHANGE

PRECONFERENCE scheduled for 6/13/2002 CANCELLED. NOTICE OF CANCELLATION OF PREHEARING CONFERENCE provided electronically and served via mail on 6/10/02.

**Date:** 5/13/2002 **Action:** CANCELLATION/CHANGE

Notice of Postponement of Prehearing Conference set for May 16 served 5/13/02 faxed, emailed, and served 5/13/02.

**Date:** 5/13/2002 **Action:** CONFERENCE

CONFERENCE scheduled 6/13/2002 9:30 AM  
 City: SALEM OR  
 Room: MAIN HEARING ROOM Building: PUC  
 Address: 550 CAPITOL ST NE  
 Reporter: NONE  
 Law Judge: CROWLEY, RUTH

Notice of Prehearing Conference faxed, emailed, and served 5/13/02.

**Date:** 5/9/2002 **Action:** OTHER CORRESPONDENCE (ACKN, SVC, LTR)

NOTE TO FILE:

Email from Michael Weirich requesting the prehearing conference scheduled for 5/16 be reset in about a month and ALJ Crowley's email to support staff requesting cancellation of 5/16 conference and resetting it for mid June.

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 5/6/2002	<b>Action:</b> CONFERENCE
CONFERENCE scheduled 5/16/2002 9:30 AM City: SALEM OR Room: MAIN HEARING ROOM Building: PUC Address: 550 CAPITOL ST NE Reporter: NONE Law Judge: CROWLEY, RUTH	
Corrected Notice of Prehearing Conference (Order Number Changed) served 5/6/02.	
<b>Date:</b> 4/30/2002	<b>Action:</b> CONFERENCE
CONFERENCE scheduled 5/16/2002 9:30 AM City: SALEM OR Room: MAIN HEARING ROOM Building: PUC Address: 550 CAPITOL ST NE Reporter: NONE Law Judge: CROWLEY, RUTH	
Notice of Prehearing Conference served on 4/30/02.	
<b>Date:</b> 4/26/2002	<b>Action:</b> OTHER FILING/PLEADING
Qwest's revised Attachment G to Qwest's Report in response to Order 02-192 filed on 4/16/02 (with cover letter); filed by Don Mason.	
<b>Date:</b> 4/23/2002	<b>Action:</b> OTHER FILING/PLEADING
Staff's Response to Qwest's Request for Hearing (ORS 756.515); filed by Michael T. Weirich.	
<b>Date:</b> 4/16/2002	<b>Action:</b> OTHER FILING/PLEADING
Qwest's Report in response to OPUC Order No. 02-192 (with Attachments A-J); filed by Ron L. Trullinger for Don Mason.	
<b>Date:</b> 4/10/2002	<b>Action:</b> OTHER FILING/PLEADING
Qwest's Request for Hearing Pursuant to ORS 756.515; faxed by Jay P. Nusbaum. (Fax copy sent to Utility.) Hard copy rec'd 4/11/02.	
<b>Date:</b> 4/9/2002	02-258 <b>Action:</b> ORDER
Order No. 02-258 signed by Chairman Roy Hemmingway and Commissioners Lee Beyer and Joan H. Smith; DISPOSITION: MOTION FOR APPROVAL OF TARIFF REVISIONS NUNC PRO TUNC GRANTED.	
Copies served 4/9/02.	
<b>Date:</b> 3/26/2002	02-192 <b>Action:</b> ORDER
Order No. 02-192 signed by Chairman Roy Hemmingway, Commissioner Lee Beyer, and Commissioner Joan H. Smith. Disposition: Motion to Show Cause Granted; Qwest to File Report (no later than 3 weeks from date of order). Copies mailed to UT 125 service list on 3/26/02.	
<b>Date:</b> 3/26/2002	<b>Action:</b> OTHER FILING/PLEADING
STAFF's Response to Qwest's Motion For Approval of Tariff Revisions Nunc Pro Tunc; filed by Michael Weirich.	
<b>Date:</b> 3/11/2002	<b>Action:</b> APPEAL
Summons Received, Marion County Circuit Court Case No. 02C12247, Attorneys for NORTHWEST PUBLIC COMMUNICATIONS COUNCIL (fka THE NORTHWEST PAYPHONE ASSOCIATION) = Richard Busch and D. Gary Christensen. Appeal of Order Nos. 01-810 and 02-009. (dated 3/8/02).	
<b>Date:</b> 3/7/2002	<b>Action:</b> MOTION
QWEST CORPORATION 's Motion for Approval of Tariff Revisions Nunc Pro Tunc and Supporting Memorandum; Filed by Lawrence Reichman.	
<b>Date:</b> 2/4/2002	<b>Action:</b> OTHER FILING/PLEADING
Staff's Reply to Qwest's Response (to Staff's Show Cause motion). Filed by Michael T. Weirich.	



**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 1/31/2002	02-068	<b>Action:</b> ORDER
Order No. 02-068 signed by Commissioners Roy Hemmingway, Lee Beyer and Joan H. Smith; Disposition: Settlement Approved; Order Nos. 00-190 and 00-191 Modified; (UC 570/UT 125 (Phase I)/UT 80) Copies served on the following service lists on 2/1/02: UC 570/UT 125/UT 80.		
<b>Date:</b> 1/22/2002		<b>Action:</b> OTHER FILING/PLEADING
QWEST CORPORATION 's Response to Staff's Motion for an Order Requiring Qwest to Show Cause How its Tariff Filing Complies with Order No. 01-810 and to Provide Further Information; Filed by Lawrence Reichman.		
<b>Date:</b> 1/16/2002		<b>Action:</b> OTHER FILING/PLEADING
Qwest's resubmission of a copy pf pages 1 through 6 of Settlement Agreement and Release of Claims (entire agreement originally filed 10/12/01) with the signature of Benjamin E. Rawlins for Portland State University, University of Oregon, and Oregon State University on page 6 of document (Mr. Rawlins replaced signature of Tim Johnston for Portland State University); faxed by Lisa F. Rackner. (SEE UT 125 AND UC 570) Hard copy rec'd 1/17/02 .		
<b>Date:</b> 1/16/2002		<b>Action:</b> OTHER FILING/PLEADING
TRACER's Filing of page 6 of Settlement Agreement and Release of Claims with signature of Benjamin E Rawlins for Portland State University, University of Oregon, and Oregon State University; faxed by Lisa F. Rackner.		
<b>Date:</b> 1/10/2002		<b>Action:</b> OTHER FILING/PLEADING
Qwest's Correspondence advising that it intends to file a response to Staff's Motion for an Order Requiring Qwest to Show Cause How Its Tariff Filing Complies With Order No. 01-810; faxed by Lawrence Reichman. (fax copy to Utility) Hard copy rec'd 1/11/02.		
<b>Date:</b> 1/8/2002	02-009	<b>Action:</b> ORDER
Order No. 02-009 signed by Chairman Roy Hemmingway and Commission Lee Beyer; Commissioner Smith Was Unavailable for Signature; DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED.  Copies served 1/8/02.		
<b>Date:</b> 1/7/2002		<b>Action:</b> MOTION
Staff's Motion (and Memorandum) for an Order Requiring Qwest to Show Cause How Its Tariff Filing Complies With Order 01-810 and to Provide Further Information; filed by Michael T. Weirich.		
<b>Date:</b> 12/24/2001		<b>Action:</b> OTHER FILING/PLEADING
AT&T's request to remove Rebecca DeCook and Laurene Wilson from the service list and to add David J. Miller and Cathy Brightwell; filed by Janet Browne. (Changes made.)		
<b>Date:</b> 12/21/2001	01-1098	<b>Action:</b> ORDER
Order No. 01-1098 signed by Chairman Roy Hemmingway and Commissioners Joan H. Smith and Lee Beyer; DISPOSITION: APPLICATION FOR RECONSIDERATION GRANTED; MEMORANDUM OF UNDERSTANDING APPROVED.  Copies served 12/26/01.		
<b>Date:</b> 12/20/2001	01-1075	<b>Action:</b> ORDER
Order No. 01-1075 signed by Commissioners Roy Hemmingway, Lee Beyer and Joan H. Smith; Disposition: Application For Reconsideration Denied. Copies served 12/20/01.		
<b>Date:</b> 12/12/2001		<b>Action:</b> OTHER FILING/PLEADING
NWPA's Reply to Responses of Qwest and Staff to its Application; filed by David L. Rice.		
<b>Date:</b> 12/11/2001		<b>Action:</b> OTHER FILING/PLEADING
Qwest's Reply to Staff's Opposition to Qwest's Second Application for Reconsideration and Response to Staff's Request for Extension of Effective Date for New Rates; faxed by Lawrence Reichman.; faxed by Lawrence Reichman. Hard copy rec'd. 12/12/01.		
<b>Date:</b> 12/7/2001		<b>Action:</b> OTHER FILING/PLEADING
Staff's Final Comments; filed by Michael T. Weirich.		
<b>Date:</b> 12/5/2001		<b>Action:</b> OTHER FILING/PLEADING
NWPA's request to remove Chuck Truman from service list and replace with Randy Linderman (changes made); filed by Angie Giordano.		

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

- Date:** 12/3/2001 **Action:** OTHER FILING/PLEADING  
AT&T Communications of the Pacific Northwest, Inc., and Worldcom, Inc.'s Joint Reply in Opposition to Qwest's Second Application for Reconsideration; faxed by Mark Trinchero. Hard copy rec'd 12/4/01.
- Date:** 12/3/2001 **Action:** OTHER FILING/PLEADING  
Staff's Response in Opposition to Qwest's Second Application for Reconsideration; Staff's request for Commission Decision on the Application Before January 2, 2002 or, in the alternative, a Ruling Extending the Effective Date for New Rates; filed by Michael T. Weirich.
- Date:** 11/28/2001 **Action:** OTHER FILING/PLEADING  
QWEST CORPORATION 's Response to Northwest Payphone Association's Application For Partial Reconsideration; Faxed by Lawrence Reichman, hard copy received 11/29/01.
- Date:** 11/28/2001 **Action:** OTHER FILING/PLEADING  
Staff's Response to NWPA's Application for Partial Reconsideration. Filed by Paul A. Graham (for Jason W. Jones).
- Date:** 11/16/2001 **Action:** RECONSIDERATION  
QWEST CORPORATION 's Application for Reconsideration and Approval of MOU; Filed by Lawrence Reichman.  
  
Response Due: 12/1/01  
Order Due: 1/15/2002
- Date:** 11/16/2001 **Action:** RECONSIDERATION  
QWEST CORPORATION 's Second Application for Reconsideration; Filed by Lawrence Reichman.  
  
Response Due: 12/1/01  
Order Due: 1/15/2002
- Date:** 11/13/2001 **Action:** RECONSIDERATION  
Northwest Payphone Associaton's Application for Partial Reconsideration, together with confidential documents located in locked cabinet env. #96(44); Filed by Richard J. Busch.  
  
Response Due: 11/28/01  
Order Due: 1/11/2002
- Date:** 10/25/2001 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Memorandum addressing Qwest and TRACER's Joint Motion to Modify Commission Orders 00-190 and 00-191 and giving the parties until 11/21/01 to file Opening Comments and until 12/7/01 to file Reply Comments.  
  
Copies served on UC 570 and UT 125 (Phase I)/UT 80 on 10/25/01.
- Date:** 10/18/2001 **Action:** OTHER CORRESPONDENCE (ACKN, SVC, LTR)  
Rhythms Links' request to be removed from UT 125 service list; filed by Lisa F. Rackner.
- Date:** 10/12/2001 **Action:** MOTION  
Qwest's and TRACER's Joint Motion to Modify Order Nos. 00-190 and 00-191; filed by Lawrence Reichman and Lisa Rackner. (SEE UC 570.)
- Date:** 10/12/2001 **Action:** BRIEF  
Qwest's and TRACER's Joint Explanatory Brief in Support of Voluntary Settlement and in Support of Joint Motion to Modify Order Nos. 00-190 and 00-191 and Exhibit A; filed by Lawrence Reichman and Lisa Rackner. (SEE UT 80 and UC 570.)
- Date:** 10/12/2001 **Action:** MOTION  
Qwest's and TRACER's Joint Motion for Approval of Settlement; filed by Lawrence Reichman and Lisa Rackner. (SEE UC 570.)
- Date:** 9/17/2001 **Action:** OTHER CORRESPONDENCE (ACKN, SVC, LTR)  
Worldcom's request to replace Ann Hopfenbeck on Service List with Michel Singer-Nelson and advising that Worldcom's suite number has changed from #3600 to #4200.

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 9/14/2001	01-810	<b>Action:</b> ORDER
Order No. 01-810 signed by Chairman Roy Hemmingway, Commissioner Joan H. Smith, and Commissioner Lee Beyer: DISPOSITION: RATES APPROVED.		
Copies served 9/17/01.		
<b>Date:</b> 9/6/2001		<b>Action:</b> OTHER FILING/PLEADING
The Northwest Payphone Association's Notice of Supplemental Authority (with attached order) filed by Brooks E. Harlow.		
<b>Date:</b> 7/26/2001		<b>Action:</b> OTHER FILING/PLEADING
AT&Ts Signatory Page To Protective Order No. 96-045 on behalf of Eileen Benner, filed by Janet Browne.		
<b>Date:</b> 7/20/2001		<b>Action:</b> BRIEF
Advanced Telecom, Inc.'s. errata to their Opening Post-Hearing Brief regarding rate design issues; filed by Maria Carrasco.		
<b>Date:</b> 7/17/2001		<b>Action:</b> BRIEF
Northwest Payphone Association's Reply Brief; filed by David L. Rice dated 7/13/01.		
<b>Date:</b> 7/16/2001		<b>Action:</b> BRIEF
AARP's Reply Brief; filed by Robert F. Manifold.		
<b>Date:</b> 7/16/2001		<b>Action:</b> BRIEF
Northwest Payphone Association's Reply Brief [confidential information located in locked cabinet env. #96(42)]; filed by David L. Rice.		
<b>Date:</b> 7/16/2001		<b>Action:</b> BRIEF
Staff's Reply Brief; filed by Jason W. Jones.		
<b>Date:</b> 7/16/2001		<b>Action:</b> BRIEF
Qwest's Corporation's Post-Hearing Reply Brief with confidential information in locked cabinet env. #96(39); filed by Lawrence Reichman.		
<b>Date:</b> 7/16/2001		<b>Action:</b> BRIEF
AT&T and Pacific Northwest, Inc.'s Joint Brief; faxed by Traci A. Kirkpatrick. Hard copy rec'd 7/17/01 [with confidential information in locked cabinet env. #96(40)].		
<b>Date:</b> 7/16/2001		<b>Action:</b> BRIEF
Advanced Telecom, Inc.'s Reply Brief [confidential information to locked cabinet env. #96(41)]; filed by Richard J. Busch.		
<b>Date:</b> 7/10/2001		<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley Ruling admitting Ann E. Hopfenbeck of WorldCom, Inc., pro hac vice.		
Copies served 7/10/01.		
<b>Date:</b> 7/2/2001		<b>Action:</b> MOTION
WorldCom, Inc.'s Motion to Admit counsel Pro Hac Vice together with Affidavit of Ann E. Hopfenbeck in Support of Motion to Admit counsel Pro Hac Vice; FAXED by Donna Locke on behalf of Lisa Rackner.		
Hard copy rec'd. 7/3/01.		
<b>Date:</b> 7/2/2001		<b>Action:</b> BRIEF
AARP's Post Hearing Brief; filed by Robert Manifold.		
<b>Date:</b> 6/29/2001		<b>Action:</b> BRIEF
Northwest Payphone Association's 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); filed by Richard Busch.		
<b>Date:</b> 6/29/2001		<b>Action:</b> BRIEF
ADVANCED TELCOM INC Advanced Telcom Goup, Inc.'s Opening Post-hearing Brief re: Rate Design Issues, together with confidential exhibit of Info. for Post-Hearing Brief; Confidential material in locked cabinet in envelope #96(36); filed by Richard Busch.		

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 6/29/2001	<b>Action:</b> BRIEF
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST INC 's and WORLDCOM's Joint Opening Brief together with Exhibit A; Confidential materials in envelope #96(38) in locked cabinet; FAXED by Mark Trincherro.	
<b>Date:</b> 6/29/2001	<b>Action:</b> BRIEF
QWEST CORPORATION 's Post-Hearing Opening Brief together with Exhibits A - I; Confidential Exhibit A in envelope #96(37) in locked cabinet; filed by Lawrence Reichman.	
<b>Date:</b> 6/28/2001	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Memorandum asking Ms. Hopfenbeck to submit her pro hac vice motion at her earliest convenience.	
Copies served 6/28/01.	
<b>Date:</b> 6/28/2001	<b>Action:</b> BRIEF
Staff's Opening Brief (Phase II). Filed by Jason Jones.	
<b>Date:</b> 6/19/2001	<b>Action:</b> TESTIMONY & EXHIBITS
QWEST's replacement exhibits introduced at hearing: Qwest/232, 235, 236, and 237; [confidential--stored in locked cabinet, env. #96(34)]. Filed by Lawrence Reichman (dated 6/18/01).	
<b>Date:</b> 6/18/2001	<b>Action:</b> OTHER FILING/PLEADING
Advanced TelCom, Inc.'s signatory page for Brooks E. Harlow; filed by Brooks E. Harlow.	
<b>Date:</b> 6/15/2001	<b>Action:</b> OTHER FILING/PLEADING
Advanced TelCom, Inc.'s signatory page for Richard J. Busch; filed by Richard J. Busch.	
<b>Date:</b> 6/14/2001	<b>Action:</b> TRANSCRIPT
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); filed by Sue Price.	
<b>Date:</b> 6/14/2001	<b>Action:</b> OTHER FILING/PLEADING
Advanced TelCom, Inc.'s signatory page for Terry Berman; filed by Richard J. Busch.	
<b>Date:</b> 6/11/2001	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Ruling Granting Northwest Payphone Association's Motion to Admit Counsel, Brooks E. Harlow, pro hac vice.	
Copies served 6/11/01.	
<b>Date:</b> 6/11/2001	<b>Action:</b> OTHER FILING/PLEADING
Qwest's replacement exhibits (filed improperly) for exhibits introduced at the hearing that contain confidential information (Qwest/232, Qwest 235, Qwest 236, and Qwest/237; confidential material envelope #96/34; filed by Lawrence Reichman. (Replacement exhibits filed under seal as required rec'd 6/19/01.)	
<b>Date:</b> 6/8/2001	<b>Action:</b> MOTION
Northwest Payphone Association's Motion to Admit Counsel Pro Hac Vice of Brooks E. Harlow and Affidavit of Brooks E. Harlow; filed by Richard J. Busch.	
<b>Date:</b> 6/6/2001	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Correspondence (email) from Garth Morrisette, Eschelon Telecom, Inc., asking to be put on service list; emailed by Kathy Williams.	
<b>Date:</b> 6/5/2001	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Memorandum with a list of exhibits received at the 5/31-6/1 hearing asking parties to check for completeness and accuracy; opening briefs are due 6/20 (in hand) and reply briefs are due 7/16 (in hand).	
Copies served 6/5/01.	

## Summary Report

## UT 125 U S WEST COMMUNICATIONS INC

Date: 5/29/2001

Action: TESTIMONY &amp; EXHIBITS

Exhibit List from 5/29/02 - 6/1/ 02 hearing for exhibits admitted into evidence or of which official notice was taken (many of the documents listed below were prefiled and will be found in other parts of the record).

v = Admitted

vQwest 201	Teitzel direct testimony	
vQwest 202	(Teitzel) Basic Exchange Pricing Summary	(Residence)(Confidential)
vQwest 203	(Teitzel) Basic Exchange Pricing Summary	(business) (Confidential)
vQwest 204	(Teitzel) Extended Area Service (Confidential)	
vQwest 205	(Teitzel) Centrex Plus Services (Confidential)	
vQwest 206	(Teitzel) Vertical Features/services (Confidential)	
vQwest 207	(Teitzel) Listing Services (Confidential)	
vQwest 208	(Teitzel) Intralata Long Distance Services	(Confidential)(Replaced)
vQwest 209	McIntyre Direct Testimony	
vQwest 210	(McIntyre) Private Line Diagram	
vQwest 211	(McIntyre) Oregon Analog Private Line Proposal	(Confidential)
vQwest 212	(McIntyre) Oregon Digital Data Proposal	(Confidential)
vQwest 213	(McIntyre) DS1 Service Proposal (Confidential)	
vQwest 214	(McIntyre) Switched Access Network Diagram	
vQwest 215	(McIntyre) Current Switched Access Price	Structure
vQwest 216	(McIntyre) Proposed Switched Access Price	Structure
vQwest 217	(McIntyre) Oregon Switched Access Proposal	(Confidential)
vQwest 218	Brigham Direct Testimony	
vQwest 219	(Brigham) Summary of Selected Rate Design	Proposals (Confidential)
vQwest 220	(Brigham) Deaveraged Loop Zones Qwest-Oregon	
vQwest 221	(Brigham) Oregon Residence Access Line NRC	Study (Confidential)
vQwest 222	Teitzel Rebuttal Testimony	
vQwest 223	(Teitzel) Verizon responses to Qwest data requests	
vQwest 224	(Teitzel) Staff response to Qwest data request 11	
vQwest 225	(Teitzel) Metronet v. Qwest, granting Qwest's (USDC WD Seattle) Case C00-0013C	motion for summary judgment
vQwest 226	Banerjee Rebuttal Testimony	
vQwest 227	(Banerjee) Qualifications	
vQwest 228	Bailey Rebuttal Testimony	
vQwest 229	McIntyre Rebuttal Testimony	
vQwest 230	Brigham Rebuttal Testimony	
vQwest 231	(Brigham) New Mexico Proceedings transcript	
vQwest 232	WorldCom's supplemental responses to Qwest's requests; confidential	second set of data
vQwest 233	Draft UT 85 toll, access, and custom calling rates	
vQwest 234	Armando Levy article, "Semi Parametric	Estimates"
vQwest 235	WorldCom response to first set of data requests	and confidential attachments
vQwest 236	WorldCom response to third set of data requests attachments	and confidential
vQwest 237	WorldCom response to supplemental third set of confidential attachments	data requests and
vQwest 238	Amendments to HB 2659, updates AT&T 10	
vQwest 239	Data request response 01-003 (NWP) [date to	be provided]
vQwest 240	Data request response 03-033 (NWP)	
vQwest 241	Data request response 03-032 (NWP)	
vStaff/1	Ball Direct Testimony	
vStaff/2	(Ball) Qualifications; Recommended Rate Spread Class; Comparison of Category	by Service; By Customer Qwest and Staff Rate Spread by Major Service
vStaff/3	Van Landuyt Direct Testimony	

## Summary Report

## UT 125 U S WEST COMMUNICATIONS INC

vStaff/4	(Van Landuyt) Qualifications; Switched Access	Service
vStaff/5	(Van Landuyt) Switched Access Rate Design	(Confidential)
vStaff/6	(Van Landuyt) Private Line Service	
vStaff/7	(Van Landuyt) Private Line Rate Design	(Confidential)
vStaff/8	Turner Direct Testimony	
vStaff/9	(Turner) Qualifications; Message Toll Service	Rates Exhibits (tables; FCC
Study		
vStaff/10	(Turner) Toll Revenue and Demand Analysis	(Confidential)
vStaff/11	(Turner) Access Imputation Analysis (Confidential)	
vStaff/12	(Turner) Price Elasticity Study (Confidential)	
vStaff/13	Sloan Direct Testimony (Features; listings; Centrex	Plus; Centrex
21)		
vStaff/14	(Sloan) Nonconfidential exhibits in support of direct, pp.	1-12
vStaff/15	(Sloan) Pages 2-12, exhibits to Sloan testimony	issues (Confidential)
vStaff/16	Stanage Direct Testimony (EAS; Advanced	services, business and
residential local exchange	access; residential NRC)	
vStaff/17	(Stanage) Qualifications	
vStaff/18	(Stanage) Non confidential exhibits in support of	direct, pp. 1-8
vStaff/19	(Stanage) Exhibits in support of direct	(Confidential)
vStaff/20	Turner Rebuttal Testimony	
vStaff/21	(Turner) Status Report in UM 962 Wholesale	Discounts
vStaff 22	2 pp. CALLS analysis	
vAARP/1	Cameron Direct Testimony	
vAARP/2	(Cameron) Qualifications	
vAARP/3	Cameron Rebuttal Testimony	
vATG/1	Cornell Direct Testimony	
vATG/2	(Cornell) Qualifications	
vATG/3	Data request response 03-019	
vATG/5	July 10, 1997 memo Centrex Prime Pricing	documents from C00-0013C
(Confidential)		
vATG/6	C00-0013C Deposition of Hruska	
vATG/7	Centrex Prime issues p. 14 (Confidential)	
vATG/8	June 30, 1993 memo from Tedd Bell (Confidential)	
vATG/9	June 30, 1993 memo from J. Hemachandra	(Confidential)
vATG/10	WUTC order 4/11/96, 950200, rejecting tariff	revision
vATG/11	Data request response 02-014	
vATG/12	Data request response 02-004S1	
vAT&T/1	Starr Direct Testimony	
vAT&T/1	Starr Direct Testimony (Confidential)	
vAT&T/2	(Starr) Response to Data Request 003	
vAT&T/3	(Starr) Comparison of Qwest intrastate rates to FCC	interstate rates
vAT&T/4	(Starr) Response to Data Request 006, 007	
vAT&T/5	(Starr) Response to Data Request 002	
vAT&T/6	(Starr) Response to Data Request 001	
vAT&T/7	(Starr) Qwest proposed Oregon intrastate rates, %	markup over UM 844
price floors		
vAT&T/8	(Starr) Present Market Structure	
vAT&T/9	Response to data request 02-025	
vAT&T/10	DRAFT proposed amendments to HB 2659 (limited	purpose)
vAT&T/11	Data request response 04-026 and confidential	attachment
vAT&T/12	Data request response 04-027 and confidential	attachment
vAT&T/13	Data request response 04-028	
vAT&T/14	Data request response 04-037; Rappaport/Taylor	article
vAT&T/15	Qwest's Form 10Q	

## Summary Report

## UT 125 U S WEST COMMUNICATIONS INC

vAT&T/16 Data request response 04-040

vAT-W/1 Selwyn Direct Testimony  
vAT-W/1 Selwyn Direct Testimony (Confidential)  
vAT-W/2 (Selwyn) Qualifications  
vAT-W/3 (Selwyn) Percent Change in California Residence and Business MTS  
Rates  
vAT-W/4 (Selwyn) Percent Change in Residence MTS per Qwest's Proposal  
vAT-W/5 (Selwyn) Revised Toll Imputation Calculation (Confidential)

vNWPA/1 Wood Direct Testimony (non confidential version) pp. 1-41  
vNWPA/1 Wood Direct Testimony (Confidential)  
vNWPA/2 (Wood) Qualifications  
vNWPA/3 (Wood) Proposed PAL Rates (Confidential)  
vNWPA/4 (Wood) Alternative Proposed PAL Rates (Confidential)  
vNWPA/5 Data request response 03-009  
vNWPA/6 Data request response 03-011  
vNWPA/7 Data request response 04-039  
vNWPA/8 Data request response 04-037  
vNWPA/9 Data request response 04-040  
vNWPA/10 Data request response 05-053  
vNWPA/11 Data request response 05-050  
vNWPA/12 Data request response 03-035  
vNWPA/13 Data request response 03-021 and confidential attachment  
vNWPA/14 Data request response 03-030  
vNWPA/15 Data request response 04-036

vWorldCom/1 DiTirro Direct Testimony  
vWorldCom/2 Selwyn Colorado testimony  
vWorldCom/4 Qwest response to data request #22; supplemental response to request 011S1 and  
confidential attachments D, E, F; confidential attachment A-01-011

Official Notice: Order No. 94-160 (UX 16)  
Order No. 00-003 (UX 21)  
Order No. 97-239 (UM 844)  
Order No. 98-388 (UT 141)  
UM 731 Transcript pages 493, 534-541 (to be supplied by requesting party)  
Karen Stewart Affidavit from UC 335  
Order No. 98-372 (UC 335)  
Document filed with Commission by ATG in UM 962 12/2000

**Date:** 5/25/2001 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Ruling regarding evidentiary objections to testimony by expert witnesses.  
Copies sent via fax and mail on 5/25/01.

**Date:** 5/25/2001 **Action:** OTHER FILING/PLEADING  
ATG and NWPA's Response to Qwest's Objections (includes fax from Qwest to Miller Nash LLP of 5/22/01); faxed by  
Brooks E. Harlow. Hard copy rec'd 5/25/01.

**Date:** 5/23/2001 **Action:** OTHER FILING/PLEADING  
Qwests Correspondence Regarding scheduling for 5/29-6/1 hearing, faxed by Lawrence Reichman. Hard copy  
rec'd 5/24/01.

**Date:** 5/23/2001 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Memorandum regarding witness schedule for 5/29-6/1 hearings.

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 5/22/2001	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Memorandum Regarding scheduling of witnesses for the 5/29-6/1 hearing (witness scheduled attached) and addressing Qwest objections; ATG and NWPA have until 10 am on 5/25 to respond to Qwest's objections. Copies faxed and mailed 5/22/01.	
<b>Date:</b> 5/21/2001	<b>Action:</b> OTHER FILING/PLEADING
Staff's response to ALJ Crowley's Memorandum for witness cross-examination at the 5/29-6-1 hearing; filed by Michael Weirich.	
<b>Date:</b> 5/21/2001	<b>Action:</b> OTHER FILING/PLEADING
Northwest Payphone Association and Advanced Telecom Group's response to Ruth Crowley's memorandum regarding scheduling of witnesses for the 5/29-6/1 hearing; faxed by Brooks Harlow. Hard copy rec'd 5/23/01.	
<b>Date:</b> 5/21/2001	<b>Action:</b> OTHER FILING/PLEADING
Qwest's Correspondence regarding error in Rebuttal Testimony of Aniruddha Banerjee (including replacement page); filed by Lawrence Reichman.	
<b>Date:</b> 5/21/2001	<b>Action:</b> OTHER FILING/PLEADING
Qwest's letter regarding estimates of cross-examination and objections to prefiled testimony; faxed by Lawrence Reichman. Hard copy rec'd 5/22/01.	
<b>Date:</b> 5/21/2001	<b>Action:</b> OTHER FILING/PLEADING
AT&T's Letter regarding scheduling of cross-examination witnesses at 5/29-6/1 hearing; faxed by Mark P. Trincherro. Hard copy rec'd 5/22/01.	
<b>Date:</b> 5/21/2001	<b>Action:</b> OTHER FILING/PLEADING
Worldcom's Estimates of Cross-Examination for 5/29-6/1 hearing; faxed by John J. Conners.	
<b>Date:</b> 5/18/2001	<b>Action:</b> OTHER FILING/PLEADING
AARP's correspondence regarding witness scheduling for May 29 - June 1 hearing; filed by Robert F. Manifold.	
<b>Date:</b> 5/15/2001	<b>Action:</b> OTHER FILING/PLEADING
Qwest's Response to ALJ Crowley's 5/2/01 Memorandum regarding scheduling witnesses for upcoming hearing; filed by Lawrence Reichman. Hard copy rec'd 5/16/01.	
<b>Date:</b> 5/14/2001	<b>Action:</b> HEARING
HEARING scheduled 5/29/2001 1:00 PM begin, 6/1/2001 end. City: SALEM OR Room: LARGE HEARING ROOM Building: AGRICULTURE BLDG Address: 635 CAPITOL ST NE Reporter: PRICE Law Judge: CROWLEY, RUTH  Notice of Hearing mailed on 5/14/01.	
<b>Date:</b> 5/14/2001	<b>Action:</b> OTHER FILING/PLEADING
Northwest Payphone's Correspondence regarding witness scheduling for 5/29/01 hearing; filed by Brooks Harlow.	
<b>Date:</b> 5/11/2001	<b>Action:</b> OTHER FILING/PLEADING
Worldcom's Correspondence requesting that Witness Tony Di Tirro is available to testify only on 5/31/01 filed by Lisa F. Rackner.	
<b>Date:</b> 5/8/2001	<b>Action:</b> OTHER FILING/PLEADING
Qwest's Signatory Page to Protective Order 96-045 for Aniruddha Banerjee, faxed by Jay P. Nusbaum. Hard copy rec'd 5/9/01.	
<b>Date:</b> 5/7/2001	<b>Action:</b> OTHER FILING/PLEADING
ARPP's Correspondence stating that the two designated persons who should remain on the service list are Pamela Cameron and Robert F. Manifold; filed by Robert F. Manifold.	
<b>Date:</b> 5/3/2001	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Clarification regarding her 5/1/01 ruling. Copies mailed and faxed to parties on 5/3/01.	
<b>Date:</b> 5/3/2001	<b>Action:</b> TESTIMONY & EXHIBITS
AARP's prefiled Rebuttal Testimony of Pamela Cameron, filed by Robert F. Manifold.	



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- Date:** 5/3/2001 **Action:** TESTIMONY & EXHIBITS  
Staff Testimony of Thomas A. Turner.
- Date:** 5/3/2001 **Action:** TESTIMONY & EXHIBITS  
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); filed by Lawrence Reichman.
- Date:** 5/2/2001 **Action:** OTHER FILING/PLEADING  
Qwest's Letter seeking clarification on ALJ Crowley's 5/1/01 Ruling; faxed by Lawrence Reichman. Hard copy rec'd 5/3/01.
- Date:** 5/2/2001 **Action:** OTHER FILING/PLEADING  
AT&T's response to ALJ Crowley's 5/20/01 Memorandum stating it would like Rebecca DeCook and Mark Trinchero to remain on service list; faxed by Janet Browne. Hard copy rec'd 5/3/01.
- Date:** 5/2/2001 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Memorandum reinstating Commission rule that limits to two the sets of documents any one party must be served.  
  
Copies mailed and faxed 5/2/01.
- Date:** 5/2/2001 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Scheduling Memorandum:  
  
Rebuttal Testimony due 5/3/01, although there is a chance that Qwest will submit supplemental rebuttal testimony on 5/10/01.  
  
List of Issues and Cross-Examination Witnesses due 5/21/01.  
  
Evidentiary objections to prefiled testimony due 5/21/01 (in hand date).
- Date:** 5/1/2001 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Ruling issuing an expedited time frame for AT&T to file responses to:  
  
Data Requests 1 and 2 "as expeditiously as possible"; if AT&T fails to provide a response in time for Qwest to use it in its rebuttal testimony due May 3, Qwest may submit supplemental rebuttal testimony on this issue 3 business days after receipt of the response; cutoff date for supplemental testimony on this issue is 5/10/01  
  
Date Request 3 -- "as expeditiously as possible"; if AT&T fails to provide a response in time for Qwest to use it in its rebuttal testimony, the time frame and conditions set out for Data Requests 1 and 2 shall apply.  
  
Data Request 5 -- AT&T shall respond.  
  
Date Requests 4 and 6 -- Qwest's Motion to Compel is denied.  
  
Copies mailed and faxed 5/1/01.
- Date:** 5/1/2001 **Action:** OTHER FILING/PLEADING  
AT&T's Letter responding to Qwest's 4/19/01 filing; faxed by March Trinchero. Hard copy rec'd 5/2/01.
- Date:** 4/30/2001 **Action:** OTHER FILING/PLEADING  
QWEST Corporation's Reply in Support of its Motion to Compel AT&T to Respond to Data Requests or, Alternatively, to Strike AT&T's Testimony and seeking expedited consideration; faxed by Lawrence Reichman. Hard copy rec'd 5/1/01.
- Date:** 4/26/2001 **Action:** OTHER FILING/PLEADING  
AT&T's Reply to Qwest's Motion to Compel; faxed by Mark P. Trinchero. Hard copy rec'd 4/27/01.

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

- Date:** 4/19/2001 **Action:** TESTIMONY & EXHIBITS  
AT&T's and WorldCom's prefiled Direct Testimony of Arleen M. Starr (AT&T/1); confidential version in locked envelope #96/32; (replaces 4/10/01 filing, which was filed on the wrong colored paper), filed by Mark P. Trincherro.
- Date:** 4/19/2001 **Action:** MOTION  
Qwest Corporation's Motion to Compel AT&T to Respond to Data Requests or, Alternatively, to Strike AT&T's Testimony (Expedited Consideration Requested); faxed by Jay P. Nusbaum. Hard copy rec'd 4/20/01
- Date:** 4/13/2001 **Action:** TESTIMONY & EXHIBITS  
Staff's nonconfidential exhibit (Staff /14) inadvertently omitted from its testimony of 4/10/02; filed by David Booth.
- Date:** 4/11/2001 **Action:** TESTIMONY & EXHIBITS  
MCIWorldCom's late-filed prefiled Direct Testimony of Anthony J. Ditiirro, filed by John Connors (cover letter dated 4/10/01).
- Date:** 4/11/2001 **Action:** TESTIMONY & EXHIBITS  
Advanced TelCom Group, Inc.'s duplicate Testimony of Nina Cornell (originally filed of 4/10/01) with an amended service list, filed by David L. Rice.
- Date:** 4/11/2001 **Action:** TESTIMONY & EXHIBITS  
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)  
  
Filed by David L. Rice.
- Date:** 4/10/2001 **Action:** TESTIMONY & EXHIBITS  
Northwest Payphone Association's Direct Testimony of Don Wood (testimony was discarded because confidential information it was not filed properly; David L. Rice advised he was sending corrected version) and testimony of Nina Cornell; filed by David L. Rice.
- Date:** 4/10/2001 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Memorandum Reminding parties that all filings made electronically must also be filed in hard copy with the Commission.  
  
Copies faxed and served on 4/10/01.
- Date:** 4/10/2001 **Action:** TESTIMONY & EXHIBITS  
Advanced TelCom Group, Inc.'s prefiled Testimony (ATG/1) and Biography (ATG/2) of Nina W. Cornell, filed by David L. Rice.
- Date:** 4/10/2001 **Action:** TESTIMONY & EXHIBITS  
AT&T's and WorldCom's prefiled Direct Testimony (confidential version in locked cabinet envelope #96(30) of:  
Lee L. Selwyn (AT&T-WCOM/1  
Lee L. Selwyn (AT&T-WCOM/2  
Lee L. Selwyn (AT&T-WCOM/3  
Lee L. Selwyn (AT&T-WCOM/4 (Confidential)  
AT&T's prefiled Direct Testimony of Arleen M. Starr (AT&T/1) (proprietary version submitted on white paper, non-proprietary version submitted on yellow -- testimony discarded to be refiled properly). Filed by Mark P. Trincherro.
- Date:** 4/9/2001 **Action:** TESTIMONY & EXHIBITS  
AARP's Direct Testimony (AARP/1) and Exhibit (AARP/2) of Pamela J. Cameron, filed by Robert F. Manifold.

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 4/9/2001	<b>Action:</b> TESTIMONY & EXHIBITS
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)	
Filed by Mike Weirich.	
<b>Date:</b> 4/6/2001	<b>Action:</b> OTHER FILING/PLEADING
AT&T Signatory pages to Protective Order Order 96-045 for Sarah C. Bosley, Anne M. DePree, and Jilliam P. Jewett on behalf of AT&T; filed by Janet Browne.	
<b>Date:</b> 4/2/2001	<b>Action:</b> TESTIMONY & EXHIBITS
TRACER'S Testimony of Fred. H. Peterson, emailed by TRACER to Tom Harris in Utility around 1/15/00 (who provided AHD with a copy).	
<b>Date:</b> 3/30/2001	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Memorandum adding Michael E. Daughtry, UNICOM, and Dean Randall, Verizon, to service list.  Copies served 3/30/01.	
<b>Date:</b> 3/30/2001	<b>Action:</b> OTHER FILING/PLEADING
Signatory page related to protective order No. 96-045 executed by Bill Levis, Susan Travis, and John Connors, on behalf of WorldCom, Inc., filed by John Connors. (Cover letter also says Ann E. Hopfenbeck, but she did not sign this page; she signed one previously, however.)	
<b>Date:</b> 3/29/2001	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Memorandum/Ruling Granting Integra's Petition to Intervene and attaching a updated service list.  Copies served 3/29/01.	
<b>Date:</b> 3/27/2001	<b>Action:</b> OTHER FILING/PLEADING
The Northwest Payphone Association's request to have Brooks Harlow , Richard Busch, David Rice, and Chuck Truman on UT 125 Phase II service list, and Advanced TelCom, Inc.'s request to have Brooks Harlow , Richard Busch, David Rice, and Kath Thomas on service list for UT 125, Phase II, filed by David L. Rice. (Parties are limiting to placing two persons only on service lists.)	
<b>Date:</b> 3/27/2001	<b>Action:</b> OTHER FILING/PLEADING
Advanced TelCom Group, Inc.'s request to have Brooks Harlow and Kath Thomas on service list for UT 125, Phase II, filed by David L. Rice.	
<b>Date:</b> 3/26/2001	<b>Action:</b> OTHER FILING/PLEADING
AT&T's Request to include Rebecca DeCook and Laurene Wilson on UT 125, Phase II, service list, faxed by Janet Browne. Hard copy rec'd 3/30/01.	

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<b>Date:</b> 3/26/2001	<b>Action:</b> PETITION TO INTERVENE Integra's Petition to Intervene and signed signatory page to Protective Order 96-045, filed by Karen J. Johnson.
<b>Date:</b> 3/23/2001	<b>Action:</b> OTHER FILING/PLEADING AARP's Request to have Pamela Cameron, John Glascock, Robert F. Manifold, Coralette Marshall, and Lois Smith remain on UT 125 Service List, faxed by Robert F. Manifold. Hard copy rec'd 3/27/01.
<b>Date:</b> 3/23/2001	<b>Action:</b> OTHER FILING/PLEADING TRACER'S request to include Lisa Rackner on UT 125, Phase II, service list, filed by Lisa F. Rackner. Hard copy rec'd 3/27/01.
<b>Date:</b> 3/23/2001	<b>Action:</b> OTHER FILING/PLEADING WorldCom, Inc.'s request to have Ann E. Hopfenbeck and Lisa F. Rackner on UT 125, Phase II, service list, filed by Lisa F. Rackner.
<b>Date:</b> 3/23/2001	<b>Action:</b> OTHER FILING/PLEADING Rhythms Links Inc.'s request to have Douglas H. Hsiao and Lisa F. Rackner on UT 125, Phase II, service list, filed by Lisa F. Rackner.
<b>Date:</b> 3/21/2001	<b>Action:</b> OTHER FILING/PLEADING Worldcom Inc's Request for Ann E. Hopfenbeck to be included on UT 125 Phase II service list, filed by John Connors.
<b>Date:</b> 3/20/2001	<b>Action:</b> OTHER FILING/PLEADING AT&T's request to remain on Service List for Phase II, faxed by Mark Trincherro. Hard copy rec'd 3/21/01.
<b>Date:</b> 3/19/2001	<b>Action:</b> OTHER FILING/PLEADING QWEST CORPORATION's modified portion of Attachment B of Advice No. 1849, Confidential UT 125 Rate Design (Modified 3-16-01) stored in locked cabinet env. #96(28). Filed by Lawrence Reichman.
<b>Date:</b> 3/19/2001	<b>Action:</b> OTHER FILING/PLEADING Qwest's Request to be included on UT 125 Service List, filed by Lawrence Reichman.
<b>Date:</b> 3/14/2001	<b>Action:</b> OTHER FILING/PLEADING Staff Correspondence stating issues that were decided at 3/8&9/01 settlement conference for this phases of the docket, filed by Jason Jones.
<b>Date:</b> 3/14/2001	<b>Action:</b> OTHER FILING/PLEADING DOJ correspondence asking to include Michael Weirich and Jason Jones on service list, faxed by Neoma Lane. Hard copy rec'd 3/15/01.
<b>Date:</b> 3/13/2001	<b>Action:</b> LAW JUDGE RULING/MEMORANDA ALJ Crowley's Memorandum asking parties to respond no later than March 27, 2001, as to whether they wish to remain on the service list.  Copies served 3/13/01.
<b>Date:</b> 3/13/2001	<b>Action:</b> OTHER FILING/PLEADING Signatory page related to protective order No. 96-045 executed by Jeffrey Bissonnette, on behalf of Citizens' Utility Board of Oregon, filed by Lawrence Reichman..
<b>Date:</b> 3/13/2001	<b>Action:</b> OTHER FILING/PLEADING Davis Wright Tremaine's Notice of Withdrawal and Substitution of Counsel for Advanced Telecom, Inc. and Appearance (Mark Trincherro, R. Dale Dixon, Davis Wright Tremaine LLP withdraw; Brooks E. Harlow, Richard J. Busch, Miller Nash LLP substituted); faxed by Mark P. Trincherro and R. Dale Dixon. Hard copy rec'd 3/14/01.
<b>Date:</b> 3/13/2001	<b>Action:</b> OTHER FILING/PLEADING Signatory page related to protective order No. 96-045 executed by Nina W. Cornell, on behalf of Advanced Telecom, Inc.; faxed by Brooks E. Harlow (Faxed to Utilitiy; Hand-delivered to AHD). Hard copy rec'd 3/14/01.
<b>Date:</b> 3/9/2001	<b>Action:</b> OTHER FILING/PLEADING Signatory page related to protective order No. 96-045 executed by Pamela Cameron, Marvin H. Kahn, and Chase Kappel, on behalf of Exeter Associates, filed by Robert F. Manifold.

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

- Date:** 3/8/2001 **Action:** OTHER FILING/PLEADING  
Signatory page related to protective order No. 96-045 executed by Karen J. Johnson, on behalf of INTEGRA TELECOM OF OREGON INC. (Hand-delivered to AHD).
- Date:** 3/8/2001 **Action:** OTHER FILING/PLEADING  
Signatory page related to protective order No. 96-045 executed by Kathryn L. Thomas, on behalf of Advanced TelCom Group, Inc., faxed by Mark P. Trincherro. Hard copy rec'd 3/9/01.
- Date:** 3/6/2001 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Ruling revising schedule; settlement conference has been rescheduled for March 8 and 9.
- Date:** 3/5/2001 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Ruling Granting Advanced Telecom's Petition to Intervene.
- Date:** 3/5/2001 **Action:** OTHER FILING/PLEADING  
AT&T Signatory pages to Protective Order Order 96-045 for Laura Imeson, Rebecca D, DeCook, Arleen Starr, and Janet Browne on behalf of AT&T; faxed by Janet Browne.
- Date:** 3/5/2001 **Action:** MOTION  
Qwest's Motion to Revise Schedule, faxed by Lawrence Reichman. Hard copy rec'd 3/6/01.
- Date:** 3/1/2001 **Action:** OTHER FILING/PLEADING  
Advanced TelCom, Inc.'s Petition for Late Intervention, faxed by R. Dale Dixon, Jr. Hard copy rec'd 3/2/01.
- Date:** 3/1/2001 **Action:** OTHER FILING/PLEADING  
Letter to parties of UT 125 - phase II rate design regarding notice of settlement conference scheduled March 7-9, 2001, beginning at 9:00 a.m., Main Hearing Rm. - 1st flr, OPUC Bldg, w/supporting exhibit 1/Comparison of Rate Spread Between Qwest Communications and Staff by Major Service Category. Filed by Dave Booth.
- Date:** 2/26/2001 **Action:** OTHER FILING/PLEADING  
Northwest Payphone Association's Signatory Page To Protective Order 96-045 Executed By Don Wood, Faxed By David L. Rice. Hard copy rec'd 2/26/01.
- Date:** 2/23/2001 **Action:** OTHER FILING/PLEADING  
TRACER's Signatory Page To Protective Order 96-045 Executed By Fred H. Peterson, Faxed By Donna L. Locke. Hard copy rec'd 2/26/01.
- Date:** 2/21/2001 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Memorandum Denoting how testimony and exhibits should be number in this phase of the case.  
  
Copies served 2/21/01.
- Date:** 2/16/2001 **Action:** OTHER FILING/PLEADING  
Staff's settlement proposal for resolution of rate spread and rate design issues in UT 125 w/Exhibit Nos. 1/Summary Rate Spread, 2/Switched Access, 3/Private Line, 4/Toll Services, 5/Features and Other, and 6/Exchange Rate Design. [Confidential versions of Exhibit Nos. 1-6 located in locked cabinet env. # 96(27)]. Filed by Lance L. Ball.
- Date:** 2/12/2001 **Action:** OTHER FILING/PLEADING  
Signatory pages related to protective order No. 96-045 executed by Anthony J. DiTirro, on behalf of WORLDCOM, INC. Faxed by John Connors. Hard copy rec'd 2/14/01.
- Date:** 2/2/2001 01-150 **Action:** ORDER  
Order No. 01-150 signed by Commissioners Ron Eachus, Roger Hamilton, and Joan H. Smith: DISPOSITION: Disbursal of Residual Refund Stayed:  
  
IT IS ORDERED that the disbursal of the residual refund ordered in UT 125, Order No. 00-190, is stayed until resolution of the complaint filed in UC 570.
- Date:** 1/9/2001 **Action:** OTHER CORRESPONDENCE (ACKN, SVC, LTR)  
Request to have name removed from service list. Filed by Kristin Pintarich.

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

- Date:** 1/3/2001 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Ruling taking the following actions: (1) Granting TRACER's Motion for Stay of disbursal of the residual refund ordered by the Commission in Order No. 00-190; (2) Granting Staff Petition to Intervene, contingent on Staff's participation not burdening the record, unreasonably broadening the issues, or unreasonably delaying the procedure; and (3) stating that all filings relating to TRACER's complaint and to TRACER's Motion for Stay will be treated as part of UT 570 rather than as part of UT 125 and persons wishing to remain informed about the TRACER complaint should inform support staff that they are interested persons in UC 570.  
  
Copies served 1/3/01 on UC 570 and UT 125.
- Date:** 1/2/2001 **Action:** OTHER FILING/PLEADING  
Qwest Corporation's Motion for Extension of Time to Answer Complaint, Expedited Consideration Requested (See UC 570); faxed by Lawrence Reichman.  
  
Hard Copy received 1/3/01.
- Date:** 12/29/2000 **Action:** OTHER FILING/PLEADING  
Qwest Corporation's Response to Tracer's Motion to Stay Disbursement of Residual Refund (See UC 570), faxed by Lawrence H. Reichman.  
  
Hard copy rec'd 1/2/01.
- Date:** 12/29/2000 **Action:** OTHER CORRESPONDENCE (ACKN, SVC, LTR)  
Eleanor K. Barrow is requesting to be added to the service list as an interested person. filed by lbarron.
- Date:** 12/26/2000 **Action:** OTHER FILING/PLEADING  
Staff's Response to Tracer's Motion for Stay pending resolution of TRACER's Complaint against QWEST(See UC 570), filed by Michael T. Weirich, rec'd 12/26/00
- Date:** 12/15/2000 **Action:** MOTION  
Tracer's Motion to Stay Disbursement of Residual Refund pending resolution of TRACER's Complaint against QWEST (See UC 570), filed by Lisa F. Rackner.
- Date:** 11/29/2000 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Ruling Granting Qwest an extension of time within which to announce tariff changes pursuant to OAR 860-022-0017 from 11/30/00 to 12/30/00; Qwest represents that Commission Staff does not oppose its request.  
  
Copies served 11/29/00.
- Date:** 11/28/2000 **Action:** MOTION  
QWEST CORPORATION's Motion for Extension of Customer Notification (from 11/30/00 to 12/30/00). Faxed by Lawrence Reichman. Hard copy received 11/29/00.
- Date:** 11/16/2000 **Action:** BRIEF  
QWEST CORPORATION's Trial Brief with Exhibit A/figures based upon Commission Order Nos. 00-190, 00-191. Filed by Lawrence Reichman.

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC****Date:** 11/16/2000 **Action:** TESTIMONY & EXHIBITS

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/Basis Exchange Pricing Summary (Residence)/pg.1-2; Qwest/203/Basic Exchange Pricing Summary (Business)/pg.1-11; Qwest/204/Extended Area Service/pg1-2;  
 Qwest/205/Oregon UT 125 Pricing Adjustments Centrex Plus Services;  
 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;  
 Qwest/214/Switched Access Network Diagram/p.1;  
 Qwest/215/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 selectged Rate Design Proposals/pg1-84; Qwest/221/G. Nonrecurring Cost Summary (Prescribed)/pg8-14.)  
 Qwest/219/Summary of selectged Rate Design Proposals/pg1-84;

Filed by Lawrence H. Reichman and Jay P. Nusbaum.

THESE TESTIMONY AND EXHIBITS SUPERCEDE EXHIBITS U S WEST/201 - US WEST/224 FILED EARLIER IN THIS CASE.

**Date:** 11/16/2000 **Action:** WITHDRAWN UTILITY FILING

Filing withdrawn.

**Date:** 11/15/2000 **Action:** REPLACEMENT SHEETS, ADDITIONAL MATERIAL

Attachment A/List of Tariff Sheet Revisions - Advice No. 1849/1-11 (Accompanied by related tariff sheets);  
 Transmittal No. 2000-007-PL/1-2, Revisions to the Access Service Tariff, Private Line Transport Services Tariff,  
 and the Exchange and Network Service Tariff and Price List;

Attachment B/Advice No. 1849/UT 125 Rate Design 11-15-00 (Confidential documents stored in locked cabinet  
 env #96(23))

THIS FILING WITHDRAWS ADVICE NO. 1806 AND TRANSMITTAL NO. 99-014-PL AND THEIR SUPPLEMENTS IN THEIR ENTIRETY.

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

- Date:** 10/5/2000 **Action:** LAW JUDGE CONFERENCE REPORT  
ALJ CROWLEY issues Prehearing Conference Memorandum.  
On October 4, 2000, parties to this docket convened for a prehearing conference in Salem, Oregon. The purpose of the conference was to set a schedule for the remainder of the docket. Parties agreed to the following schedule, which is adopted:
- November 15, 2000=Last date to intervene  
November 15, 2000=Qwest files revised rates, supporting testimony  
February 16, 2001=Staff/intervenors file settlement proposals  
March 7-9, 2001=Settlement conference  
March 14, 2001=Staff files issues list  
April 10, 2001=Staff/intervenors file testimony\*  
May 3, 2001=All parties file rebuttal testimony\*  
May 10, 2001=Last date to issue interrogatories%  
May 29 (1 PM)-June 1, 2001 =Hearing  
June 29, 2001=Opening briefs filed  
July 16, 2001=Reply briefs filed  
September 14, 2001=Final order  
October 12, 2001=Compliance filing
- \*Parties to serve Q/A form testimony electronically; other testimony by overnight mail.  
%For interrogatories served after rebuttal testimony only, parties will have 7 business days to respond, as opposed to the usual 10 business days.
- Copies served to UT125 service list by mail 10/5/00.
- Date:** 9/22/2000 **Action:** REPLACEMENT SHEETS, ADDITIONAL MATERIAL  
QWEST CORPORATION's supplement no. 1 to advice no. 1840. filed by Sheila Harris.
- Date:** 9/14/2000 **Action:** OTHER FILING/PLEADING  
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. Filed by D. K. Mason.
- Date:** 9/5/2000 **Action:** OTHER FILING/PLEADING  
Signatory pages related to protective order no. 96-045 executed for Victoria Schlesinger and Edward Krachmer on behalf of Teligent, Inc. Filed by Donna L. Locke.
- Date:** 8/25/2000 **Action:** OTHER FILING/PLEADING  
Agenda for September 5 Workshop - Addressed to Parties of UT 148, UT 125, UT 138/UT 139, UM 874, UM 823, UM 962, UM 773, UM 731, and UM 974. Filed by Phil Nyegaard.
- Date:** 8/21/2000 **Action:** OTHER CORRESPONDENCE (ACKN, SVC, LTR)  
Letter request to include name in service list. Filed by Jason W. Jones, Assistant Attorney General.
- Date:** 8/15/2000 **Action:** CONFERENCE  
PREHEARING CONFERENCE scheduled 10/4/2000 9:30 AM  
City: SALEM OR  
Room: MAIN HEARING ROOM Building: PUC  
Address: 550 CAPITOL ST NE  
Reporter: NONE  
Law Judge: CROWLEY, RUTH
- Notice of Prehearing Conference mailed to UT 125 Service List on 8/16/00. (Dial-in #503-378-3313.)
- Date:** 8/8/2000 00-437 **Action:** ORDER  
Order No. 00-437 Signed by Ron Eachus, Chairman, and Joan H. Smith, Commissioner, Commissioner Hamilton was unavailable for signature. Disposition: Application for Reconsideration Denied. IT IS ORDERED that the application by ADVANCED TELCOM GROUP, INC., and SHARED COMMUNICATIONS SERVICES, INC., for reconsideration of Order No. 00-190 is denied. Copies served 8/8/00.



**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 7/27/2000	<b>Action:</b> OTHER FILING/PLEADING
Signatory page to protective orders no. 96-045 and 00-180--signed by Arthur A. Butler, Aimee Meacham and Gretchen E. Eoff. Filed by Donna L. Locke, paralegal.	
<b>Date:</b> 7/24/2000	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Notice to remove name from the service list. Filed by Pam Ballard.	
<b>Date:</b> 7/13/2000	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Ruling Granting Staff's Motion to hold this docket in abeyance until the parties have had time to review the UT 148 order due 8/31/00 and UM 731 filing due by 9/1/00; ALJ will schedule a prehearing conference to discuss rescheduling of UT 125 toward the end of September 2000. Copies served 7/13/00.	
<b>Date:</b> 7/12/2000	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Signatory page to protective order no. 96-045, executed by Dean Randall on behalf of GTE. Filed by Fred Logan.	
<b>Date:</b> 7/11/2000	00-359 <b>Action:</b> ORDER
Order No. 00-359 signed by Commissioners Ron Eachus, Roger Hamilton, and Joan Smith: Disposition: Application for Reconsideration Denied:  Copies served 7/12/00.	
<b>Date:</b> 7/7/2000	<b>Action:</b> MOTION
Staff's Motion to Hold Schedule in Abeyance.  Filed by Michael T. Weirich.	
<b>Date:</b> 7/7/2000	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Signatory Page to the Protective Order No. 96-045, executed by Susan M. Baldwin, Douglas S. Williams and Alycia L. Howe on behalf of AT & T. Filed by Janet Browne.	
<b>Date:</b> 6/30/2000	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Request change in service list: Add: Rebecca B. DeCook & Removed: Randy Deutsch. Filed by: Janet Browne	
<b>Date:</b> 6/27/2000	00-335 <b>Action:</b> ORDER
Order No. 00-335 signed by Commissioners Ron Eachus, Roger Hamilton, and Joan Smith; Disposition: Extension of Tariff Filings Approved:  IT IS ORDERED that USWC's request for an extension of the effective dates to January 31, 2001, for Advice No. 1806 and Transmittal No. 99-014 and Supplements No. 1 and 2 to that Advice and Transmittal, is approved. Copies served 6/27/00.	
<b>Date:</b> 6/26/2000	<b>Action:</b> OTHER FILING/PLEADING
U S WEST's Response in Opposition to the Request for Reconsideration. Faxed by Lawrence Reichman.	
<b>Date:</b> 6/26/2000	<b>Action:</b> OTHER FILING/PLEADING
STAFF's reply in Opposition to Application for Reconsideration. Filed by Mike Weirich.	
<b>Date:</b> 6/23/2000	<b>Action:</b> OTHER FILING/PLEADING
AT&T signatory page from Protective Order 96-045 executed by Scott C. Lundquist. Filed by Janet Browne.	
<b>Date:</b> 6/23/2000	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Ruling Granting AARP's request to admit Robert Manifold pro hac vice. Copies served 6/23/00.	
<b>Date:</b> 6/21/2000	<b>Action:</b> OTHER FILING/PLEADING
NPA settlement proposal (confidential version) of Northwest Paypphone Association. Filed by Brooks Harlow.  Confidential in locked cabinet envelop # 96(21)	
<b>Date:</b> 6/12/2000	<b>Action:</b> OTHER FILING/PLEADING
The company requested extension of effective date to 1/31/01 in Advice 1806 and Transmittal 99-014-PL, Supplements 1 and 2.	
<b>Date:</b> 6/12/2000	<b>Action:</b> OTHER FILING/PLEADING
NPA signatory page from Protective Order 96-045 executed by David Rice filed by Brooks Harlow.	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 6/12/2000	<b>Action:</b> REPLACEMENT SHEETS, EXTENSION
The company requested extension of effective date to 1/31/01 in Advice 1806 and Transmittal 99-014-PL, Supplements 1 and 2.	
<b>Date:</b> 6/9/2000	<b>Action:</b> REPLACEMENT SHEETS, EXTENSION
The company requested an extension of the effective date to 1/31/01. Letter filed by Sheila Harris.	
<b>Date:</b> 6/9/2000	<b>Action:</b> RECONSIDERATION
Advanced TelCom Group, Inc., and Shared Communications Services, Inc., Application for Reconsideration of Order No. 00-190, FAXED by R. Dale Dixon.	
Response due 6/26/00 Order due 8/8/00	
Hard copies rec'd 6/12/00.	
<b>Date:</b> 6/9/2000	<b>Action:</b> OTHER FILING/PLEADING
Response of WSCTC and NPA to Oppositions to Application for Reconsideration, FAXED by Mark Trinchero.	
Hard copy rec'd 6/12/00.	
<b>Date:</b> 6/7/2000	<b>Action:</b> OTHER FILING/PLEADING
AARP Notice of Appearance by counsel Robert Manifold and request to also include Lois Smith on service list filed by Robert Manifold. Hard copy rec'd 6/7/00.	
<b>Date:</b> 6/5/2000	<b>Action:</b> MOTION
AARP Motion to Admit Counsel Pro Hac Vice (Robert Manifold) filed by Daniel W Meek.	
<b>Date:</b> 6/5/2000	<b>Action:</b> OTHER FILING/PLEADING
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST INC Signatory Page from Protective Order 96-045 executed by Lee Selwyn and Helen E Golding filed by Janet Browne.	
<b>Date:</b> 6/5/2000	<b>Action:</b> OTHER FILING/PLEADING
AARP Protective Order Signatory page executed and filed by Robert F Manifold.	
<b>Date:</b> 6/2/2000	<b>Action:</b> OTHER FILING/PLEADING
STAFF's reply to WSCTC & NPA Application for reconsideration filed by Michael Weirich.	
<b>Date:</b> 6/1/2000	<b>Action:</b> OTHER FILING/PLEADING
U S WEST COMMUNICATIONS Response in Opposition to Application for Reconsideration of WSCTC and Northwest Payphone FAXED by Lawrence Reichman. Hard copy rec'd 6/2/00	
<b>Date:</b> 5/23/2000	<b>Action:</b> CANCELLATION/CHANGE
Notice of Cancellation mailed to UT 125/UT 80 Service Lists on 5/23/00.	
<b>Date:</b> 5/17/2000	<b>Action:</b> RECONSIDERATION
Application For Reconsideration and/or Clarification of the Western States Competitive Telecommunications Coalition and Northwest Payphone Association ("Coalition"); FAXED by R. Dale Dixon, Jr. Hard copy rec'd. 5/18/00.	
Response due: 6/1/00. Order due: 7/17/00.	
<b>Date:</b> 5/10/2000	<b>Action:</b> OTHER FILING/PLEADING
RHYTHMS LINKS, INC. Signatory Page from Protective Order 96-045 executed by Douglas Hsiao filed by Donna Locke.	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

**Date:** 5/1/2000 **Action:** COMMISSION RULING/MEMORANDA  
 ALJ Crowley's ruling granting Rhythms Links Petition to Intervene and correcting schedule:  
 Settlement proposals due 6/5/00  
 Settlement conference on 6/28 & 29 /00  
 Staff/Intervenor testimony due 7/24/00  
 All parties Rebuttal testimony due 8/24/00  
 Hearing 9/18-21 and 9/25-26/00  
 Opening Briefs due 10/27/00  
 Reply Briefs due 11/13/00  
 Final Order due 01/12/01  
 Compliance filing due 2/12/01.

Copies served 5/1/00.

**Date:** 4/28/2000 **Action:** LAW JUDGE RULING/MEMORANDA  
 ALJ Ruling granting Staff's motion to revise schedule. New schedule:

Settlement proposals due 6/5/00  
 Settlement conference on 6/28 & 29 /00  
 Staff/Intervenor testimony due 7/24/00  
 All parties Rebuttal testimony due 8/24/00  
 Hearing 9/18-21 and 9/25-26/00  
 Opening Briefs due 10/27/00  
 Reply Briefs due 11/10/00  
 Final Order due 01/12/01  
 Compliance filing due 2/12/01.

Copies served 4/28/00.

**Date:** 4/26/2000 **Action:** MOTION  
 STAFF Motion to Revise Procedural Schedule for rate design phase and stating USWC does not object.  
 Proposed new schedule:  
 Settlement proposals due 6/5/00  
 Settlement conference on 6/28 & 29 /00  
 Staff/Intervenor testimony due 7/24/00  
 All parties Rebuttal testimony due 8/24/00  
 Hearing 9/18-21 and 9/25-26/00  
 Opening Briefs due 10/27/00  
 Reply Briefs due 11/10/00  
 Final Order due 01/12/01  
 Compliance filing due 2/12/01.

Motion filed by W. Benny Won.

**Date:** 4/14/2000 00-190 **Action:** ORDER  
 Order No. 00-190 signed by Ron Eachus, Roger Hamilton and Joan H. Smith adopted Stipulation executed 9/9/99, modified Order No. 96-107; Rescinded Order Nos. 96-183, 96-286 and 97-171. Copies served 4/14/00.

**Date:** 4/14/2000 00-191 **Action:** ORDER  
 Order No. 00-191 signed by Ron Eachus, Roger Hamilton and Joan H. Smith readopts portions of Order Nos. 96-183 and 97-171. Copies served 04/14/00.

**Date:** 4/14/2000 **Action:** TESTIMONY & EXHIBITS  
 U S WEST COMMUNICATIONS Supplemental Direct Testimony of David teitzel, Scott McIntyre, and Robert Brigham in support of USWC's Advice No. 1806, Supplement No. 2, (Rate design) filed by Kay Barley. Contains Confidential information, to locked cabinet in # 96(19).

**Date:** 4/14/2000 **Action:** REPLACEMENT SHEETS, ADDITIONAL MATERIAL  
 The company filed replacement sheets and testimony.

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 4/6/2000	<b>Action:</b> OTHER FILING/PLEADING
Copy of U S WEST COMMUNICATIONS Letter to Staff Phil Nyegaard agreeing to an additional extension to 4/14/00 for the issuance of the Commission's order filed by D K Mason.	
<b>Date:</b> 4/5/2000	<b>Action:</b> OTHER FILING/PLEADING
Copy of Staff letter to USWC's Don Mason requesting extension to April 14, 2000 to issue order filed by Phil Nyegaard.	
<b>Date:</b> 3/31/2000	<b>Action:</b> OTHER FILING/PLEADING
AARP Signatory Page from Protective Order 96-045 executed by Coralette Marshall filed by Ann Fisher.	
<b>Date:</b> 3/29/2000	<b>Action:</b> PETITION TO INTERVENE
RHYTHMS LINKS INC.'s Petition to Intervene; FILED by Lisa Rackner.	
<b>Date:</b> 3/27/2000	<b>Action:</b> MOTION
AARP request for reset of settlement conference filed by Ann Fisher.	
<b>Date:</b> 3/27/2000	<b>Action:</b> OTHER FILING/PLEADING
AARP Notice of additional counsel, Ann Fisher, and signatory pages from protective order 96-045 executed by Lois M Smith, Ann L Fisher, Pamela Cameron, and Marvin Kahn filed by Ann Fisher.	
<b>Date:</b> 3/24/2000	<b>Action:</b> OTHER FILING/PLEADING
U S WEST COMMUNICATIONS Letter confirming that USWC has an additional 7 days to comply with the requirements of the rule re the processes used by a utility to notify the public of general rate revisions, USWC plans to run its formal notice by 4/1/00 FAXED by Peter Butler. Hard copy rec'd 3/27/00.	
<b>Date:</b> 3/22/2000	<b>Action:</b> COMMISSION RULING/MEMORANDA
ALJ Crowley's ruling granting USWC's request for revision of schedule for rate design portion of proceeding as follows:	
3/10/00 - USWC filed revised rate schedules	
5/5/00 - Staff/Intervenor settlement proposals filed	
5/25-26/00 - Settlement conference	
6/23/00 - Staff/Intervenor testimony filed	
7/24/00 - All parties rebuttal testimony filed	
8/16-18 & 21-24/00 - Hearing	
9/22/00 - Opening briefs	
10/6/00 - Reply briefs	
11/29/00 - Final order	
12/29/00 - Compliance filing.	
Copies served 3/22/00.	
<b>Date:</b> 3/22/2000	<b>Action:</b> OTHER FILING/PLEADING
Copy of Phil Nyegaard's letter to USWC's Don Mason asking for an extension of time to April 10 to issue order.	
<b>Date:</b> 3/17/2000	<b>Action:</b> REPLACEMENT SHEETS, ADDITIONAL MATERIAL
The company filed confidential workpapers.	
<b>Date:</b> 3/16/2000	<b>Action:</b> PROTEST/EXCEPTION/OBJECTION
TELAD INTERNATIONAL, INC.'s objection to any further delay in implementing refund to ratepayers filed by Charles Jones.	
<b>Date:</b> 3/16/2000	00-154 <b>Action:</b> ORDER
ORDER NO. 00-154 signed by Ron Eachus, Roger Hamilton and Joan H Smith adopted the stipulation filed 3/2/00 between CUB and USWC. Copies served 3/17/00.	
<b>Date:</b> 3/10/2000	<b>Action:</b> REPLACEMENT SHEETS, ADDITIONAL MATERIAL
The company filed replacement sheets, additional sheets, and withdrew some sheets. The company also filed confidential papers to locked cabinet, #96 (18).	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

- Date:** 3/10/2000 **Action:** OTHER FILING/PLEADING  
U S WEST COMMUNICATIONS Letter to Phil Nyegaard agreeing to a two-week extension to March 27, 2000, for the issuance of the Commission 's order relative to the stipulation concerning revenue requirement and refund issues FAXED by D K Mason.  
hard copy also rec'd 3/10/00 and 3/20/00.
- Date:** 3/9/2000 **Action:** OTHER FILING/PLEADING  
Staff letter stating it does not oppose USWC's motion to revise the procedural schedule for rate design portion based on USWC's statements that its revised rate design proposals will be essentially the same as the original proposals plus EAS and retail rate deaveraging proposals; and that if the revised proposals contain other significant changes, Staff reserves the right to request other revisions to procedural schedule as necessary filed by Benny Won.
- Date:** 3/8/2000 **Action:** OTHER FILING/PLEADING  
Staff Letter to USWC requesting a short extension of deadline for issuance of Commission's order concerning the stipulation to 3/27/00 filed by Phil Nyegaard.
- Date:** 3/3/2000 **Action:** MOTION  
U S WEST COMMUNICATIONS Motion to Revise Rate Design Schedule by up to two months to consider USWC's retail rate deaveraging proposal which it intends to submit by 3/10/00; proposed new schedule:  
  
3/10/00-USWC files revised rate schedules  
5/5/00 - Staff/Intervenor Settlement proposals  
5/25-26/00 - Settlement conference  
6/23/00 - Staff/intervenor testimony due  
7/24/00 - All parties rebuttal due  
8/16-18 & 21-24/00 Hearing  
9/22/00 - Opening briefs  
10/6/00 reply briefs  
11/29/00 final order  
12/29/00 compliance filing  
  
FAXED by Lawrence Reichman.  
Hard copy rec'd 3/6/00.
- Date:** 3/2/2000 **Action:** OTHER FILING/PLEADING  
TELIGENT Signatory Pages from Protective Order 96-045 executed by Aimee Meacham, Gretchen Elizabeth Eoff, Edward Krachmer and Victoria Schlesinger filed by Ms. Eoff. Cover letter states that Eoff and Meachan signed on behalf of Rhythms Links and TRACER but sig. pages only say Teligent.
- Date:** 3/1/2000 **Action:** PUBLIC COMMENT  
Central Telephone comments FAXED by Richard Stevens.
- Date:** 2/25/2000 **Action:** PUBLIC COMMENT  
Via consumer services public comment letter from William Knight Jr.
- Date:** 2/14/2000 **Action:** OTHER FILING/PLEADING  
CUB's Affidavit of Robert Jenks regarding proposed stipulation filed by Robert Jenks.
- Date:** 2/14/2000 **Action:** BRIEF  
CUB's Brief filed by Jason Eisdorfer.
- Date:** 2/14/2000 **Action:** BRIEF  
STAFF's opening brief filed by W Benny Won.
- Date:** 2/14/2000 **Action:** OTHER FILING/PLEADING  
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST INC Signatory page from protective order 96-045 executed by Laurene Wilson filed by Janet Browne.
- Date:** 2/11/2000 **Action:** BRIEF  
WESTERN STATES TELECOMMUNICATIONS COALITION's Opening Brief FAXED by R Dale Dixon.  
Hard copy rec'd 02/14/00. Confidential version to locked cabinet #96(17).

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 2/11/2000	<b>Action:</b> BRIEF
NORTHWEST PAYPHONE ASSOCIATION's Initial Brief filed by Brook E Harlow.	
<b>Date:</b> 2/11/2000	<b>Action:</b> BRIEF
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST INC Initial Brief FAXED by Rebecca DeCook. Hard copy rec'd 2/14/00.	
<b>Date:</b> 2/11/2000	<b>Action:</b> BRIEF
TRACER Initial Brief filed by Kirk Gibson.	
<b>Date:</b> 2/11/2000	<b>Action:</b> BRIEF
TELIGENT's Initial Brief filed by Arthur Butler. Confidential attachments to locked cabinet #96(16).	
<b>Date:</b> 2/11/2000	<b>Action:</b> BRIEF
U S WEST COMMUNICATIONS Initial brief filed by Lawrence Reichman.	
<b>Date:</b> 2/9/2000	<b>Action:</b> OTHER FILING/PLEADING
Stipulation to Admit Evidence filed by Lawrence Reichman. Stipulation executed by Lawrence Reichman, Benny Won, Mark Trincherro, Rebecca DeCook, Fred ? for TRACER, Jason Eisorder, and ART Butler.	
<b>Date:</b> 2/1/2000	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Ruling Granting Petitions to Intervene of GST, Teligent and ICG. Motions to admit counsel pro hac vice are also granted. Copies served 2/1/00.	
<b>Date:</b> 1/27/2000	<b>Action:</b> CANCELLATION/CHANGE
Notice of Cancellation of Hearing of 1/28-29/00 mailed and faxed to UT 125/UT 80 on 1/27/00.	
<b>Date:</b> 1/27/2000	<b>Action:</b> OTHER FILING/PLEADING
MCI TELECOM / MCI METRO letter stating it does not intend to cross examine any witnesses FAXED by Lisa Rackner.	
<b>Date:</b> 1/26/2000	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Memorandum inquiring if any party intends to cross examine witnesses at hearing scheduled for 01/28/00 and if so for that party to respond by 01/27/00, 2 pm PST. If no party desires cross, the hearing will be cancelled. Copies faxed and mailed 01/26/00.	
<b>Date:</b> 1/25/2000	<b>Action:</b> TESTIMONY & EXHIBITS
U S WEST COMMUNICATIONS Rebuttal Testimony in Support of Stipulation (Inouye) filed by Lawrence Reichman.	
U S WEST/176 - Rebuttal Testimony of Carl Inouye	
U S WEST/177 - December 3, 1998 OPUC Letter to Parties	
U S WEST/178 - CUB Answers to USWC's Data Requests	
U S WEST/179 - OREGON Adjustments Made to 1995 UT-125	
U S WEST/180 - TRACER OREGON's Responses to USWC's First set of Data Requests	
U S WEST/181 - WSCTC Response to USWC DR 01-009, 010, 012	
<b>Date:</b> 1/25/2000	<b>Action:</b> TESTIMONY & EXHIBITS
STAFF's Rebuttal Testimony of Terry J Lambeth, Tom Harris, Phil Nyegaard, Y. Sherry Sheng filed by Paul Graham.	
Staff/114 - Rebuttal Testimony of Terry J. Lambeth	
Staff/115 - Rebuttal Testimony of Tom Harris	
Staff/116 - Rebuttal Testimony of Phil Nyegaard	
Staff/117 - USWC's Settlement Document	
Staff/118 - Rebuttal Testimony of Y Sherry Sheng	
<b>Date:</b> 1/24/2000	<b>Action:</b> OTHER FILING/PLEADING
U S WEST COMMUNICATIONS Signatory page from Protective Order 96-045 executed by Don Mason and Sheila Harris filed by Eliz. Weber.	
<b>Date:</b> 1/24/2000	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
ALJ Crowley's Ruling denying by default USWC's request for expedited response to data requests. Copies faxed to parties and served to UT 125 and UT 80 service lists on 01/24/00.	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

- Date:** 1/21/2000 **Action:** OTHER FILING/PLEADING  
Change of counsel for CUB and AARP in dockets UT 80/UT 125. Michael Sheehan replaced by Coralette Marshall. Service lists changed.
- Date:** 1/18/2000 **Action:** MOTION  
WSCTC Motion to Admit Counsel Pro Hac Vice (R. Dale Dixon) FAXED by Mark Trincherro.  
Hard copy rec'd 01/19/00.
- Date:** 1/14/2000 **Action:** PROTEST/EXCEPTION/OBJECTION  
WSCTC's Objections to USWC's Motion to Shorten Time to Respond FAXED by Mark Trincherro.  
HARD COPY rec'd 01/18/00
- Date:** 1/13/2000 **Action:** TESTIMONY & EXHIBITS  
CUB's Testimony of Bob Jenks filed by Jason Eisdorfer.
- CUB/100 - Testimony of Bob Jenks  
CUB/101 - Witness Qualification Statement  
CUB/102 - Copy of USWC Ad - A CHOICE FOR OREGON  
CUB/103 - Copy of 4/20/99 Memo to House of Representative  
CUB/104 - Copy of Staff Response CUB's Request No. 4  
CUB/105 - Copy of Bill Wyatt's 6/2/99 Letter to Jim Hill  
CUB/106 - Copy of Commissioners 7/1/99 Letter to Bill Wyatt  
CUB/107 - USWC Investment Categories  
CUB/108 - Copy of Staff Response to CUB's Request No. 10  
CUB/109 - Copy of Staff Report of Jim Stannage for 12/14/99 PM  
CUB/110 - Copy of Staff Response to CUB's Request No. 12  
CUB/111 - Copy of USWC Response to CUB's Request No. 5  
CUB/112 - Copy of 01/07/99 Newspaper Editorial
- Date:** 1/12/2000 **Action:** MOTION  
U S WEST COMMUNICATIONS Motion to Shorten Time to Respond to Data Requests FAXED by Lawrence Reichman.  
Hard copy rec'd 01/13/00.
- Date:** 1/12/2000 **Action:** TESTIMONY & EXHIBITS  
WESTERN STATES COMPETITIVE TELECOMMUNICATIONS COALITION Responsive Testimony of Thomas Zepp filed by Mark Trincherro. Confidential Version to Locked Cabinet #96(15)
- WSCTC/1- Rebuttal Testimony of Thomas M Zepp  
WSCTC/2 - Zepp Resume  
WSCTC/3 - USWC Response to AT&T Data Request 01-002  
WSCTC/4 - Copy of WA Superior Court Order 96-2-09623-7 SEA  
WSCTC/5 - CONFIDENTIAL USWC DATA
- Date:** 1/10/2000 **Action:** TESTIMONY & EXHIBITS  
AT&T COMMUNICATIONS Testimony of Arleen M. Starr FAXED by Janet Browne.  
Hard copy rec'd 01/11/00.
- Date:** 1/6/2000 **Action:** OTHER FILING/PLEADING  
U S WEST COMMUNICATIONS Signatory Page from Protective order 96-045 executed by Keiko Barley, Robert Brigham, Philip Grate and Vernessie Reese filed by E. Weber for Peter Butler.
- Date:** 1/5/2000 **Action:** MOTION  
Teligent Services Inc's Motion to Admit Counsel Pro Hac Vice (ART BUTLER) filed by Kirk Gibson.
- Date:** 1/5/2000 **Action:** OTHER FILING/PLEADING  
On behalf of ELI, ATG, GST, Frontier & Frontier Local, Signatory Page from Protective Order 96-045
- Date:** 12/27/1999 **Action:** OTHER FILING/PLEADING  
TELIGENT's Signatory page from Protective Order 96-045 Executed by Kirk Gibson and Art Butler filed by Cassandra Pfister.

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 12/23/1999	<b>Action:</b> OTHER FILING/PLEADING
MCI TELECOM / MCI METRO Signatory page from 96-045 executed by Ann Hopfenbeck, Timothy Gates, and Lisa Rackner filed by Lisa Rackner.	
<b>Date:</b> 12/21/1999	<b>Action:</b> PETITION TO INTERVENE
ICG Communications, Inc., (ICG) Petition to Intervene filed by Sara Siegler.	
<b>Date:</b> 12/21/1999	<b>Action:</b> OTHER FILING/PLEADING
Signatory Page from Protective Order 99-045 (new version) executed on behalf of ELI, Advanced Telecom Group Inc., GST, Frontier Telemanagement and Frontier Local Services by Mark Trincherro and Dale Dixon filed by Mark Trincherro.	
<b>Date:</b> 12/20/1999	<b>Action:</b> OTHER FILING/PLEADING
NORTHWEST PAYPHONE ASSOCIATION New Signatory Page from Protective Order 96-045 executed and filed by Brooks E Harlow.	
<b>Date:</b> 12/20/1999	<b>Action:</b> OTHER FILING/PLEADING
U S WEST COMMUNICATIONS Signatory Pages (new) from Protective Order 96-045 executed by Peter Butler, W R Coutree, Linda Hemelstrand, Randall Kim, Mary Ann Neill, HE Ruprecht, Elizabeth Weber, Carol McGuane, Carl Inouye, Diane McDougall, Lawrence Reichman, and David Teitzel filed by Eliz. Weber for Peter Butler.	
<b>Date:</b> 12/17/1999	<b>Action:</b> OTHER FILING/PLEADING
AT&T COMMUNICATIONS New Signatory Page from Protective Order 96-045 executed by Cory Skluzak filed by Janet Browne.	
<b>Date:</b> 12/17/1999	<b>Action:</b> ORDER
99-767	
ORDER NO. 99-767 signed by Vikie Bailey-Goggins suspended for a period of time not to exceed six months from 12/29/99 U S WEST COMMUNICATIONS's Advice No. 1806. Copies served 12/20/99.	
<b>Date:</b> 12/15/1999	<b>Action:</b> PETITION TO INTERVENE
Teligent Services Inc's Petition to Intervene filed by Kirk Gibson. Also include Art Butler on service list.	
<b>Date:</b> 12/14/1999	<b>Action:</b> OTHER FILING/PLEADING
Staff report for the 12/14/99 public meeting recommending that the Commission suspend for six months and investigate USWC's Advice No. 1806 and Transmittal No.99-014-PL (USWC's rate design and tariff proposal) filed by Jim Stanage.	
<b>Date:</b> 12/14/1999	<b>Action:</b> SUSPENSION UTILITY FILING
Filing suspended.	
<b>Date:</b> 12/14/1999	<b>Action:</b> OTHER FILING/PLEADING
UNITED TELEPHONE COMPANY OF THE NW Letter enclosing newly executed signatory page from Protective Order 96-045 executed by Barbara Young and Nancy Judy. Letter also states Ms. Young would like to be on the list to receive electronic versions of testimonies filed by Nancy Judy.	
<b>Date:</b> 12/10/1999	<b>Action:</b> OTHER FILING/PLEADING
AARP's new signatory page from Protective Order 96-045 executed by Michael Sheehan for CUB and AARP and by John Glasscock for AARP filed by Michael Sheehan.	
<b>Date:</b> 12/9/1999	<b>Action:</b> OTHER FILING/PLEADING
AT&T COMMUNICATIONS New Signatory Page from Protective Order 96-045 executed by Laura Imeson, Rebecca DeCook, Arleen Starr, and Janet Browne filed by Janet Browne.	
<b>Date:</b> 12/9/1999	<b>Action:</b> PETITION TO INTERVENE
GST Telecom Oregon, Inc.'s Petition to Intervene; filed by Mark Trincherro.	
(Please include Gary Yaquinto on service list.)	
<b>Date:</b> 12/7/1999	<b>Action:</b> MOTION
CUB's complaint regarding U S WEST's announcement of tariff changes filed by Jason Eisdorfer.	
DOCKETED AS UC 509 on 01/31/00 per Judge Crowley.	
<b>Date:</b> 12/6/1999	<b>Action:</b> OTHER FILING/PLEADING
AARP's Statement of Position filed by Michael Sheehan.	



**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 12/3/1999	<b>Action:</b> HEARING
HEARING scheduled 1/28/2000 8:30 AM City: SALEM OR Room: MAIN HEARING ROOM Building: PUC Address: 550 CAPITOL ST NE Reporter: HAUGE Law Judge: CROWLEY, RUTH  Notice of Hearing mailed 12/6/99.	
<b>Date:</b> 12/2/1999	<b>Action:</b> 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. Copies served 12/2/99.	
<b>Date:</b> 12/2/1999	<b>Action:</b> OTHER FILING/PLEADING
11/30/99 version of Signatory Page from Protective Order No. 96-045 executed by Jason Eisdorfer and Robert Jenks.	
<b>Date:</b> 11/30/1999	<b>Action:</b> LAW JUDGE CONFERENCE REPORT
ALJ Crowley's PHC report from 11/29/99 PHC:  Revenue Requirement Phase Schedule: 12/10/99 - Deadline for 1st Round of Data Requests 12/20/99 - Deadline for 2nd Round of Data Requests 12/30/99 - Deadline for Responses to Data Requests 1/10/00 - Intervenor Testimony due (electronic) 1/12/00 - Hard copy of Intervenor Testimony due 1/25/00 - USWC/Staff Rebuttal Testimony due 1/28/00 - Hearing 2/11/00 - Simultaneous Briefs Due 3/13/00 - Order issued  RATE DESIGN PHASE Schedule: 12/14/99 - Proposed Tariffs Suspended 3/13/00 - Staff/Intervenor Settlement Proposal Due 3/30-31/00- Settlement Conference 5/1/00 - Staff/Intervenor Testimony Due 5/30/00 = All Parties Rebuttal Testimony Due 6/13-16; 6/21-21 - Hearing 7/14/00 - Opening Briefs Due 7/28/00 - Reply Briefs Due 9/29/00 - Order 10/30/00 - Compliance Filing Due  Parties asked to resubmit signed page of Protective Order and update service list information.  Copies served 11/30/99.	
<b>Date:</b> 11/16/1999	<b>Action:</b> CONFERENCE
Amended Notice of Prehearing Conference mailed on 11/16/99. (only amending purpose of prehearing).	
<b>Date:</b> 11/15/1999	<b>Action:</b> SUPPLEMENTAL APPLICATION
U S WEST COMMUNICATIONS (Rate Design Proposal) Advice No. 1806 and supporting trial brief (and testimony which is docketed separately) filed by Lawrence Reichman. Proposed tariff available on USW website at: <a href="http://tariffs.uswest.com/ppnb.nst/jobnum?openview &amp; start=1&amp;count=50&amp;expand=12#12">http://tariffs.uswest.com/ppnb.nst/jobnum?openview &amp; start=1&amp;count=50&amp;expand=12#12</a>	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 11/15/1999	<b>Action:</b> TESTIMONY & EXHIBITS
U S WEST COMMUNICATIONS Prefiled Direct Testimony in Support of Rate Design Proposal filed by Lawrence Reichman:	
U S WEST/201 - Direct Testimony of David L Teitzel	
U S WEST/202 - Teitzel Exhibit-Basic Exchange and Related Services	
U S WEST/203 - Teitzel Exhibit-Centrex Plus Services	
U S WEST/204 - Teitzel Exhibit-Vertical Features and Services	
U S WEST/205 - Teitzel Exhibit-IntraLATA Long Distance Services	
U S WEST/206 - Direct Testimony of Scott A McIntyre	
U S WEST/207 - McIntyre Exhibit-Private Line Diagram	
U S WEST/208 - McIntyre Exhibit-Analog Private Line Price Proposals	
U S WEST/209 - McIntyre Exhibit-Digital Data Service Price Proposals	
U S WEST/210 - McIntyre Exhibit-DS1 Service Price Proposals	
U S WEST/211 - McIntyre Exhibit-Switched Access Network Diagram	
U S WEST/212 - McIntyre Exhibit-Current Switched Access Price Structure	
U S WEST/213 - McIntyre Exhibit-Proposed Switched Access Price Structure	
U S WEST/214 - McIntyre Exhibit-Switched Access Proposed Prices	
U S WEST/215 - Direct Testimony of Robert H Brigham	
U S WEST/216 - Brigham Exhibit-CONFIDENTIAL Summary of Selected Rate Design Proposals	
U S WEST/217 - Brigham Exhibit-Cost Study Summary OREGON RESIDENCE ACCESS LINE, pp8-14 CONFIDENTIAL.	
U S WEST/218 - Brigham Exhibit-CONFIDENTIAL Residence Basic Exchange Imputed Price Floors Statewide Average and De-Averaged NAC	
CONFIDENTIAL materials to locked Cabinet #96(14).	
<b>Date:</b> 11/15/1999	<b>Action:</b> INITIAL UTILITY FILING
This filing represents U S WEST's rate design proposal to reduce overall revenues by \$64.2 million.	
<b>Date:</b> 11/12/1999	<b>Action:</b> CONFERENCE
PREHEARING CONFERENCE scheduled 11/29/1999 9:30 AM	
City: SALEM, OR 97301-2551	
Room: MAIN HEARING ROOM Building: PUC	
Address: 550 CAPITOL ST NE - STE 215	
Reporter: NONE	
Law Judge: CROWLEY, RUTH	
Notice of prehearing conference mailed on 11/12/99.	
<b>Date:</b> 11/12/1999	<b>Action:</b> TESTIMONY & EXHIBITS
U S WEST COMMUNICATIONS Testimony of Carl Inouye (U S WEST/175) in support of stipulation filed by Lawrence Reichman.	
<b>Date:</b> 11/10/1999	<b>Action:</b> MOTION
U S WEST COMMUNICATIONS Request for a prehearing conference to establish schedule for UT 125 rate design phase FAXED by Lawrence Reichman.	
Hard copy rec'd 11/12/99.	
<b>Date:</b> 11/8/1999	<b>Action:</b> RECONSIDERATION
DOJ Letter stating that on 11/4/99, the Oregon Court of Appeals entered orders holding in abeyance the appeals of UT 80 and UT 125 and in UT 125 lifted a stay to allow the Commission to hold further proceedings. These actions are taken to allow PUC to consider whether it should approve a settlement stipulation between staff and USWC and rescind or amend the orders previously issued in UT 80 and UT 125 filed with testimony (docketed separately) by Joseph McNaught.	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 11/8/1999	<b>Action:</b> TESTIMONY & EXHIBITS
Staff Testimony of Phil Nyegaard (Staff/109-110) and Terry Lambeth (Staff/111-113) filed by Joseph McNaught.	
<b>Date:</b> 12/3/1998	<b>Action:</b> OTHER FILING/PLEADING
Staff Letter To Parties Regarding 11/4 Settlement Conference, Staff's New Offer--uswc To Reduce Annual Revenue Requirement By \$70 Million, And Responding To Lawrence Reichman's October 1998 Letter Regarding Issues Before The Court Of Appeals. Uswc To Respond To Staff's Offer By 12/18/98. Filed By Phil Nyegaard. Dd	
<b>Date:</b> 11/2/1998	<b>Action:</b> OTHER FILING/PLEADING
Eli's Signatory Page From Protective Order 96-045 Executed By Penny Bewick And Filed By Avis Grudis. Dd	
<b>Date:</b> 10/29/1998	<b>Action:</b> OTHER FILING/PLEADING
Eli's Signatory Page To Nondisclosure Agreement Executed By Penny Bewick, Faxed By Avis Grudi. Dd Hard Copy Rec'd 10/30/98. Dd	
<b>Date:</b> 10/28/1998	<b>Action:</b> OTHER FILING/PLEADING
Uswc Letter Regarding Nov 4 Settlement Conf Faxed By Lawrence Reichman. Dd	
<b>Date:</b> 10/23/1998	<b>Action:</b> OTHER FILING/PLEADING
At&t's Signature Page To The Nondisclosure Agreement Executed By Janet Browne, Donald R. Finch, Laura Imeson, Susan Proctor, Arleen M. Staff, And Laurene Wilson Filed By Janet Browne. Dd	
<b>Date:</b> 10/16/1998	<b>Action:</b> OTHER FILING/PLEADING
Cub's Signatory Page To Protective Order 96-045 Executed By Robert Jenks And Filed By Bob Jenks. Dd	
<b>Date:</b> 10/16/1998	<b>Action:</b> OTHER FILING/PLEADING
Nondisclosure Agreement Executed By Michael Daughtry Filed By Him For Unicom. Dd	
<b>Date:</b> 10/8/1998	<b>Action:</b> OTHER FILING/PLEADING
Staff Letter To Parties Regarding Settlement Discussions To Be Held November 4-6, 1998, At Puc Filed By Phil Nyegaard. Confidential Attachments To Locked Cabinet, #96 (13). Dd	
<b>Date:</b> 9/29/1998	<b>Action:</b> APPEAL
Second Supplement Cert. Of Proceeding Enclosing Deposition Transcripts Dated 9/12/96 Of Thomas Riordan, Evan White And Jack Breen Sent To Benny Won To Supply To Appellate Court. Dd	
<b>Date:</b> 8/6/1998	<b>Action:</b> OTHER FILING/PLEADING
Staff Letter To Usw Don Mason About Allocation Of Spaceat The 1201 Farnham Building Filed By E. Michael Myers. Dd	
<b>Date:</b> 3/18/1998	<b>Action:</b> CONFERENCE
Hearing Scheduled Begin: 04/09/1998 End: 04/09/1998 City: Salem Room: Main Hearing Rm Time: 9:30 Am Bldg: Puc Addr: 550 Capitol St Ne	
<b>Date:</b> 3/9/1998	98-079 <b>Action:</b> ORDER
Order No. 98-079 Signed By Joan Smith And Ron Eachus Denied Petition For Reconsideration Of 97-441(lidb Charge) And Granted Peitition For Reconsideration Of Chip-in Charge. Copies Served 03/10/98. Dd	
<b>Date:</b> 2/19/1998	<b>Action:</b> SUPPLEMENTAL APPLICATION
In The Matter Of The Petition Of U S West Communications, Inc., For A Ruling Clarifying Effect Of Rate Reductions On Refund Obligation Filed By Lawrence Reichman. Requests Expedited Handling And A Phc To Establish Procedural Schedule. Dd	
<b>Date:</b> 2/17/1998	<b>Action:</b> OTHER FILING/PLEADING
Reply Of Frontier To Staff's Response To Petitions For Reconsideration Of Order Nos. 97-441 And 97-480 Faxed By Keith Kutler. Dd Hard Copy Rec'd 02/18/98. Dd	
<b>Date:</b> 2/3/1998	<b>Action:</b> OTHER FILING/PLEADING
Copy Of Scs Letter To Uswc Requesting Copies Of Responses To Staff Data Requests 108 And 113 Filed By Beth Kaye. Dd	
<b>Date:</b> 2/2/1998	<b>Action:</b> OTHER FILING/PLEADING
Staff Response To Petitions For Reconsideration Filed By Frontier And Others Asking For A Separate Procedural Schedule To Investigate Lidb And Chip In Filed By Benny Won. Dd	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 1/29/1998	<b>Action:</b> OTHER FILING/PLEADING
Tracer's Signatory Page To Protective Order No. 96-045 Executed By Kirk H Gibson And Filed By Cassandra Pfister. Dd	
<b>Date:</b> 1/27/1998	<b>Action:</b> OTHER FILING/PLEADING
Staff Reply To Joint Petition For Reconsideration Of Order No. 97-480 Filed By Benny Won. Dd	
<b>Date:</b> 1/26/1998	<b>Action:</b> OTHER FILING/PLEADING
Northwest Payphone Association's Signatory Page To Protective Order No. 96-045 Executed And Filed By Brooks E Harlow. Dd	
<b>Date:</b> 1/20/1998	<b>Action:</b> OTHER FILING/PLEADING
Frontier Telemanagement Inc.'s, Shared Communications Service, Inc.'s, And American Telephone Technology, Inc.'s Signatory Page To Protective Order No. 96-045, Executed By Thomas Zepp, Filed By Ketih Kutler. Ph	
<b>Date:</b> 1/20/1998	<b>Action:</b> RECONSIDERATION
Joint Petition For Reconsideration Of Frontier Telemanagement Inc., American Telephone Technology, Inc. And Shared Communications Services, Inc. Of Order No. 97-441, Filed By Keith Kutler. Ph Cover Letter Indicates Faxed On 01/16/98. Puc Had Fax Probs 1/16	
<b>Date:</b> 1/20/1998	<b>Action:</b> PUBLIC COMMENT
Customer Comments About Uswc Service Filed By Mel Stewart. Dd	
<b>Date:</b> 1/16/1998	<b>Action:</b> OTHER FILING/PLEADING
Joint Supplemental Petition For Reconsideration Of Order No. 97-480 By Frontier, Atti & Scs Faxed By Keith Kutler. Dd Hard Copy Rec'd 01/20/98. Dd	
<b>Date:</b> 1/16/1998	<b>Action:</b> OTHER FILING/PLEADING
At&t's Signatory Page To Protective Order No. 96-045 Executed By Patricia Parker Filed By Susan Proctor. Dd	
<b>Date:</b> 1/16/1998	<b>Action:</b> OTHER FILING/PLEADING
Copy Of At&t Data Request To Uswc Filed By Susan Proctor. Dd	
<b>Date:</b> 1/15/1998	<b>Action:</b> OTHER FILING/PLEADING
Scs Letter Notifying Of Change In Service List From Phil Barcellona To Pam Ballard. Dd	
<b>Date:</b> 1/13/1998	<b>Action:</b> OTHER FILING/PLEADING
Staff Letter Faxed To Parties Alerting Them That The Settlement Conference Scheduled For 01/14/98-01/16/98 Is Cancelled Due To Marion County Decision In Appeal Filed By Lance Ball. Dd	
<b>Date:</b> 1/13/1998	<b>Action:</b> OTHER FILING/PLEADING
Uswc Letter Requesting To Withdraw Advice No. 1684/transmittal No. 97-029-pl Based Upon The Recent Marion County Circuit Court Decision And Discussions With Staff Faxed By Don Mason. Dd	
<b>Date:</b> 1/9/1998	<b>Action:</b> RECONSIDERATION
Joint Petition Of Frontier And Atti For Reconsideration Of Order No. 97-480 Faxed By Keith Kutler And Beth Karan Kaye. Dd Hard Copy Rec'd 01/12/98. Dd	
<b>Date:</b> 1/8/1998	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Crowley's Ruling Granting Petitions To Intervene Of Fti And Atti. Fti And Atti Are Bound By Decisions On Scheduling And Issues Already Made In This Docket. Copies Served 01/08/98. Dd	
<b>Date:</b> 1/7/1998	<b>Action:</b> OTHER FILING/PLEADING
Puc Staff Letter To Parties Setting Time And Place For Settlement Conference: 1/14-16/98, 9-5, Mhr, Puc Filed By Lance Ball. Agenda For Conferences Attached To Letter. Dd	
<b>Date:</b> 1/6/1998	<b>Action:</b> OTHER FILING/PLEADING
Copy Of Fifth Data Request From Mcim To Uswc Filed By Shanti Breznau. Dd	
<b>Date:</b> 1/6/1998	<b>Action:</b> OTHER FILING/PLEADING
Advanced Telecommunications Inc's Signatory Page To Protective Order No. 96-045 Executed By David A Patterson Filed By Keith Kutler. Dd	
<b>Date:</b> 1/6/1998	<b>Action:</b> OTHER FILING/PLEADING
Frontier Telemanagement Inc's Signatory Page To Protective Order No. 96-045 Executed By Gena M Doyscher Filed By Keith Kutler. Dd	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 1/6/1998	<b>Action:</b> OTHER FILING/PLEADING
Citizen Comment About Cost Of Isdn Filed Thru Consumer Services By Richard Pruitt. Dd	
<b>Date:</b> 12/22/1997	<b>Action:</b> APPEAL
Copy Of Uswc's Letter To Judge Norblad Responding To Puc's Response To Court's Questions Filed By Sherilyn Peterson. Dd	
<b>Date:</b> 12/22/1997	<b>Action:</b> OTHER FILING/PLEADING
Copy Of Mcim's Fourth Request For Info To Uswc Filed By Shanti Breznau. Dd	
<b>Date:</b> 12/19/1997	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Letter To Parties To Correct Service List To Add Michael Sheehan Counsel For Aarp Sent By Diane Davis. Dd	
<b>Date:</b> 12/18/1997	<b>Action:</b> OTHER FILING/PLEADING
Aarp's Signatory Page To Protective Order No. 96-045 Executed And Filed By Michael Sheehan. Dd	
<b>Date:</b> 12/17/1997	<b>Action:</b> OTHER FILING/PLEADING
Mci's Comments And Settlement Proposal Faxed By Lisa Rackner. Dd Hard Copy Rec'd 12/18/97. Dd	
<b>Date:</b> 12/16/1997	97-480 <b>Action:</b> ORDER
Order No. 97-480, Signed By Commissioners Ron Eahcus, Roger Hamilton, (Joan Smith Unavailable For Signature): The Chip-in Charge Will Be An Issue In The Rate Design Phase Of Ut 125. Copies Served 12/18/1997. Ph	
<b>Date:</b> 12/16/1997	<b>Action:</b> OTHER FILING/PLEADING
At&t's Comments And Rate Design Proposal Faxed By Susan Proctor. Dd Contains Confidential Information. Envelope #96 (11). Dd Hard Copy Rec'd 12/18/97. Dd	
<b>Date:</b> 12/16/1997	<b>Action:</b> OTHER FILING/PLEADING
Staff's Settlement Proposal For Resolution Of Rate Spread And Rate Design Filed By Lance Ball. All Confidential, Locked In Envelope 96(12). Dd	
<b>Date:</b> 12/12/1997	<b>Action:</b> OTHER FILING/PLEADING
Copy Of Mcim's Third Request For Information To Uswc Filed By Shanti Breznau. Dd	
<b>Date:</b> 12/11/1997	<b>Action:</b> PETITION TO INTERVENE
American Telephone Technology, Inc's (att) Petition To Intervene Out Of Time Faxed By Keith Kutler. Dd Hard Copy Rec'd 12/12/97. Dd	
<b>Date:</b> 12/10/1997	<b>Action:</b> OTHER FILING/PLEADING
Frontier Telemanagement Inc. & Enhanced Telemanagement Inc's (fte) Petition To Intervene Out Of Time Faxed By Keith Kutler. Dd Hard Copy Rec'd 12/11/97. Dd	
<b>Date:</b> 12/5/1997	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Crowley's Memorandum Notifying Parties Of Inclusion Of "chip In" Charge To The Rate Design Phase Of This Docket. Copies Served 12/5/97. Dd	
<b>Date:</b> 12/5/1997	<b>Action:</b> OTHER FILING/PLEADING
Copy Of Frontier's First Data Request To Uswc Filed By Keith Kutler. Dd	
<b>Date:</b> 11/25/1997	<b>Action:</b> OTHER FILING/PLEADING
At&t's Signatory Page Of Protective Order No. 96-045, Executed By Janet Browne, Arleen Starr, Warren R. Fisher, And Catherine A. Robertus, Filed By Susan Proctor. Ph	
<b>Date:</b> 11/24/1997	<b>Action:</b> OTHER FILING/PLEADING
Staff Report For 12/2/97 Public Meeting Recommending That Transmittal No. 97-37-pl "chip In Charge" Be Allowed To Go Into Effect Subject To Investigation And Refund Filed By Jim Stanagan. Dd	
<b>Date:</b> 11/17/1997	97-441 <b>Action:</b> ORDER
Order No. 97-441 Signed By Ron Eachus, Roger Hamilton And Joan Smith Ordered That The Chip In Charge & Lidb From 97-037-pl Will Be Treated Separately; Lidb Rate From 97-037-pl Supplemental Goes Into Effect, Effective 12/5/97, Subject To Refund; Statutory Notice Waived; Proposed Lidb Rate Part Of This Case. Served 11/18	
<b>Date:</b> 11/4/1997	<b>Action:</b> OTHER FILING/PLEADING
From 11/04/97 Public Meeting, Item 4, Advice No. PI-037-pl Filed. Dd	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

**Date:** 10/28/1997 **Action:** OTHER FILING/PLEADING  
Copy Of Mcimetro's Second Request For Information To Uswc Filed By Shanti Breznau. Dd

**Date:** 10/1/1997 97-384 **Action:** ORDER  
Order No. 97-384 Signed By Vikie Bailey Goggins Ordered That Advice No. 1684/transmittal No. 97-029-pl Filed By Uswc On 08/22/97 Is Suspended For A Period Of Time Not To Exceed 6 Mos. From 10/01/97. Copies Served 10/02/97. Dd

**Date:** 9/25/1997 **Action:** MOTION  
Uswc's Motion To Admit Counsel Pro Hac Vice (norton Cutler) Filed By Lawrence Reichman. Dd

**Date:** 9/25/1997 **Action:** OTHER FILING/PLEADING  
Staff Report For The September 30, 1997, Public Meeting Recommending Suspension For Advice No. 1684 And Transmittal No. 97-029-pl For An Initial Period Of 6 Months Filed By Lance Ball. Dd

**Date:** 9/19/1997 **Action:** LAW JUDGE RULING/MEMORANDA  
Alj Crowley's Phc Memo Setting Schedule For Phase Ii And Stating That All Parties In Phase 1 Are Parties In Phase Ii. 10/1/97- Tariffs Suspended For 6 Mos; 12/16-st &ins Settlement Proposals; 1/14-1/16/98-settlement Conf; 2/2-staff Files Issues List; 3/6- Staff & Intervenors File Direct Testimony; Continued

**Date:** 9/19/1997 **Action:** LAW JUDGE RULING/MEMORANDA  
Continued: 3/31-2nd Suspension Of Tariffs; 4/1-all Parties Rebuttal Testimony; 4/20-hearing Begins; 6/30-2nd Suspension Ends. Copies Served 09/19/97. Dd

**Date:** 9/17/1997 **Action:** MOTION  
At&t Motion To Admit Counsel Pro Hac Vice, Susan Proctor, Filed By Keith Kutler. Dd Hard Copy Rec'd 09/18/97. Dd

**Date:** 8/26/1997 **Action:** CONFERENCE  
Status Conference Rescheduled - Notice Mailed 8/26/1997. Kjh Begin: 09/18/1997 End: 09/18/1997 City: Salem Room: Main Hearing Room Time: 9:30 Am Bldg: Puc Addr: 550 Capitol Street Ne Court Reporter:

**Date:** 8/22/1997 **Action:** OTHER FILING/PLEADING  
Revisions To The The Access Service Tariff; Exchange And Network Services Tariff And Price List; And The Private Line Transport Services Price List. Proposed Effective Date Of October 1, 1997. Filed By Us West. (no Signature On Cover Letter)

**Date:** 8/22/1997 **Action:** BRIEF  
Trial Brief Of Us West Submitted With The Rate Design Filing, And Includes Exhibit A Setting Forthe The Information Required By Oar 860-013-0075(1)(c). Filed By Reichman. Kjh

**Date:** 8/22/1997 **Action:** TESTIMONY & EXHIBITS  
Direct Testimony Of Mary S. Owen For Us West, And Exhibits 1012 Thru 1024. Kjh

**Date:** 8/22/1997 **Action:** TESTIMONY & EXHIBITS  
Direct Testimony Of Barbara M. Wilcox For Us West, And Exhibits 1026 Thru 1040. Kjh

**Date:** 8/22/1997 **Action:** TESTIMONY & EXHIBITS  
Direct Testimony Of Karen A. Baird For Us West. Kjh

**Date:** 8/22/1997 **Action:** TESTIMONY & EXHIBITS  
Direct Testimony Of Rober H. Brigham For Us West. Confidential Documents 1003/pages 1-60. 1004/pages 1-4, 1005a, 1005b, 1006a, 1006b, 1007a, 1007b, 1008a, 1008b, 1009a, 1009b, 10010a, 10010a Filed In Locked Cabinet In Envelope 96(9). Kjh

**Date:** 8/21/1997 **Action:** APPEAL  
Copy Of Letter From Court Stating Denying Uswc Request To Include Comments Of Commissioner Hamilton Made On Opb And Allowing Add'l Evidence Offered Of Actual Income And Expenses. Dd

**Date:** 8/18/1997 **Action:** OTHER FILING/PLEADING  
At&t Signatory Page To Protective Order No. 96-045 Executed By Craig P Secrest Filed By Debbie Reed. Dd

**Date:** 8/4/1997 **Action:** CONFERENCE  
Notice Of Reassignment Of Status Conference - Mailed 8/4/1997 Ph Begin Date: 09/18/1997 Ending Date: 09/18/1997 Main Hearing Room, 9:30 A.m. Court Reporter Needed (gregor Ralston Called) Ph

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 8/4/1997	<b>Action:</b> APPEAL
Copy Of Puc's Reply To Plaintiff's Motions To Present Additional Evidence Filed By W Benny Won. Dd	
<b>Date:</b> 7/31/1997	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Crowley's Ruling Granting Uswc's Motion For An Extension Of Time Until 08/22/97 To File Rate Design Portion Of Case. Copies Faxed To Parties On 07/31/97 And Mailed 07/31/97. Dd	
<b>Date:</b> 7/30/1997	<b>Action:</b> MOTION
Uswc Motion For Extension Of Time Through 08/12/97 To Make Rate Design Filing Faxed By Lawrence Reichman. Dd Hard Copy Rec'd 07/31/97. Dd	
<b>Date:</b> 7/28/1997	<b>Action:</b> OTHER FILING/PLEADING
Mci's Signatory Page To Protective Order No. 96-045 Executed By Matthew I. Kahal Filed By Abby Miles, Assistant To Lisa Rackner. Dd	
<b>Date:</b> 7/24/1997	<b>Action:</b> CONFERENCE
Status Conference - Notice Mailed 7/25/1997. Ph Begin: 09/04/1997 End: 09/04/1997 City: Salem Room: Main Hearing Room Time: 9:30 Am Bldg: Puc Addr: 550 Capitol Street Ne Court Reporter:	
<b>Date:</b> 7/24/1997	<b>Action:</b> APPEAL
Copy Of Uswc Letter To Doj Including Uswc Motion To Present Additional Evidence Presently Scheduled For 08/13/97, Reply Due Within 10 Days Filed By Lawrence Reichman. Dd	
<b>Date:</b> 7/24/1997	<b>Action:</b> APPEAL
Copy Of Case Record To Judge Norblad, Marion County Court. Dd	
<b>Date:</b> 7/17/1997	<b>Action:</b> APPEAL
Copy Of Doj Letter To Judge Norblad Outlining Puc's Two Objections To Uswc Proposed Form Of Order Staying Puc Order No. 97-171 Filed By W Benny Won. Dd	
<b>Date:</b> 7/17/1997	<b>Action:</b> OTHER FILING/PLEADING
Mci's Signatory Page To Protective Order 96-045 Executed By Robert A Mercer, Nina W. Cornell, & Eileen Siemek Filed By Abby Miles, Assistant To Lisa Rackner. Dd	
<b>Date:</b> 7/11/1997	<b>Action:</b> APPEAL
Copy Of Doj Letter To Uswc Lawrence Reichman Agreeing With Keith Kutler's Comments About Scope Of Stay And Agreeing That All References To Order Nos. 96-183 & 96-286 Should Be Deleted Filed By Benny Won. Dd	
<b>Date:</b> 7/2/1997	<b>Action:</b> APPEAL
Copy Of Judge Norblad's Letter To Parties Stating Court Will Grant The Stay Of Order No. 97-171; Will Not Require A Bond; And Will Allow Time For Uswc/parties To Brief On Issue Of Rate Of Interest Faxed By Benny Won. Dd	
<b>Date:</b> 7/1/1997	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Crowley's Ruling Granting Uswc Motion For An Extension Until August 1, 1997. Copies Served 07/1/97. Dd	
<b>Date:</b> 6/27/1997	<b>Action:</b> APPEAL
Copy Of Uswc Fax To Judge Norblad Stating That Uswc Will Consent To 11.2% Interest On Any Refund It Ultimately Makes Should The Court Grant A Stay Faxed By Lawrence Reichman. Dd	
<b>Date:</b> 6/24/1997	<b>Action:</b> APPEAL
Uswc's Reply Memorandum In Support Of Its Motion For Stay Faxed By Lawrence Reichman. Dd	
<b>Date:</b> 6/23/1997	<b>Action:</b> APPEAL
Copy Of Puc's Reply To Uswc Motion For Stay, Orcp 21 Motions To Strike And Make More Definite & Certain, Oral Argument Requested & Memorandum In Support Of Orcp 21 Motions Filed By Michael Weirich. Dd	
<b>Date:</b> 6/20/1997	<b>Action:</b> APPEAL
Copy Of Uswc's Motion For Admission Pro Hac Vice Of Sherilyn Peterson Filed By Lawrence Reichman. Dd	
<b>Date:</b> 6/19/1997	<b>Action:</b> MOTION
Staff's Response To Uswc's Motion For Extension Of Time, Not Opposing Motion Provided Uswc Files Its Rate Design No Later Than August 1, 1997 Filed By Benny Won. Dd	
<b>Date:</b> 6/12/1997	<b>Action:</b> MOTION
Uswc's Motion For Extension Of Time In Which To File Rate Design Portion Of Docket Filed By Molly Hastings. Dd	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 6/10/1997	<b>Action:</b> APPEAL
Copy Of Uswc Motion To Stay The Operation Of Order No. 97-171 & Supporting Affidavits Filed With Marion County Court Filed By Chin See Ming. Dd	
<b>Date:</b> 6/6/1997	<b>Action:</b> APPEAL
Summons Received , Marion County Court, No. 97c12010, Attorney For Uswc Is Chin See Ming Of Perkins Coie. Dd	
<b>Date:</b> 6/5/1997	<b>Action:</b> OTHER FILING/PLEADING
Mci's Signatory Pages To Protective Order 96-045 Executed By Chandan Choudhary, Robert W. Nichols, Charles B Hecht, Joseph P Benkert And Sandra K Numedahl Filed By Abby Miles. Dd	
<b>Date:</b> 5/19/1997	<b>Action:</b> ORDER
97-171 Order No. 97-171 Signed By Roger Hamilton, Ron Eachus & Joan Smith Ordered A Reduction In Revenue Requirement, A Refund To Ratepayers And A 10.2% Rate Of Return; Ending This Phase Of Case. Rate Design Phase Will Follow. Copies Served 05/20/97. Dd	
<b>Date:</b> 5/5/1997	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Crowley's Ruling Denying Uswc's January 27th Motion To Strike Copies Served 05/05/97. Dd	
<b>Date:</b> 4/9/1997	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Crowley's Ruling Granting Uswc's Request For An Extension Until 7/1/97 To File Rate Design Portion Of Case. Copies Served 04/10/97. Dd	
<b>Date:</b> 4/9/1997	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Crowley's Ruling Granting Tcg Oregon (tcg) Petition To Intervene. Dd	
<b>Date:</b> 4/7/1997	<b>Action:</b> OTHER FILING/PLEADING
Staff Letter Of No Objection To Uswc Petion For Delay In Filing Filed By Michael Weirich. Dd	
<b>Date:</b> 4/2/1997	<b>Action:</b> OTHER FILING/PLEADING
Uswc's Petition For Delay Filed By Molly Hastings. Dd	
<b>Date:</b> 3/26/1997	<b>Action:</b> OTHER FILING/PLEADING
Mci's Signatory Page To Protective Order No 96-045 Executed By Michael Hydock Filed By Abby Miles For Lisa Rackner. Dd	
<b>Date:</b> 3/11/1997	<b>Action:</b> PETITION TO INTERVENE
Tcg's Petition To Intervene And Signatory Page To Protective Order 96-045 Executed By Karen Notsund, Michael Morris & Deborah Waldbaum Faxed By Keith Kutler. Dd Hard Copy Filed 03/12/97. Dd	
<b>Date:</b> 2/20/1997	<b>Action:</b> BRIEF
Staff's Brief On Cash Flow & Enterprise Value Filed By Joseph T. Mcnaught. Dd	
<b>Date:</b> 2/19/1997	<b>Action:</b> BRIEF
Uswc's Brief Re Impact Of Staff's Proposed \$100 Million Rate Reduction On Uswc's Oregon Intrastate Operations Filed By Molly Hastings. Dd	
<b>Date:</b> 2/12/1997	<b>Action:</b> OTHER FILING/PLEADING
Staff's Appendix A To Cost Of Capital Brief Inadvertently Omitted From Filing Of 01/31/97 Filed By Joseph T Mcnaught. Dd	
<b>Date:</b> 2/10/1997	<b>Action:</b> MOTION
Staff's Reply To Uswc's Motion To Strike Filed By Michael Weirich. Dd	
<b>Date:</b> 2/5/1997	<b>Action:</b> TRANSCRIPT
Transcript Of January 29, 1996 Hearing & 2 Copies, (129 Pages) Filed By Martin Hauge. Dd	
<b>Date:</b> 1/31/1997	<b>Action:</b> BRIEF
Uswc's Cost Of Capital Issues Brief And Reply Brief Filed By Molly Hastings. Dd	
<b>Date:</b> 1/31/1997	<b>Action:</b> BRIEF
Staff's Cost Of Capital Brief Filed By Joseph Mcnaught. Dd	
<b>Date:</b> 1/31/1997	<b>Action:</b> BRIEF
Staff's Reply Brief Filed By W Benny Won, Michael Weirich, & Joseph Mcnaught. Dd	
<b>Date:</b> 1/30/1997	<b>Action:</b> BRIEF
At&t's Brief Faxed By Keith Kutler. Dd Hard Copy Rec'd 01/31/97. Dd	



**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 1/29/1997	<b>Action:</b> OTHER FILING/PLEADING Notice Of Appearance For Mfs Intelenet, Inc. That Sara Siegler- Miller Will Appear On Behald Of Mfs Intelenet Filed By Sara Siegler Miller. Dd
<b>Date:</b> 1/28/1997	<b>Action:</b> OTHER FILING/PLEADING Uswc's Letter To Judge Crowley Regarding Mr. Mcnaught's Letter Of 01/22/97 And Testimony To Be Given At 01/29/97 Hearing Faxed By Molly K Hastings. Dd
<b>Date:</b> 1/27/1997	<b>Action:</b> PETITION TO INTERVENE Octa's Withdrawal Of Intervention Filed By Sara Siegler Miller. Dd
<b>Date:</b> 1/27/1997	<b>Action:</b> MOTION Uswc's Motion To Strike Portions Of Staff's Opening Brief Filed By Molly K Hastings. Dd
<b>Date:</b> 1/23/1997	<b>Action:</b> LAW JUDGE RULING/MEMORANDA Alj's Memorandum Re: Cross Examination Schedule. Hearing On Jan. 29 Will Start At 9:30 A.m. Mailed 01/23/1997. Ph
<b>Date:</b> 1/22/1997	<b>Action:</b> OTHER FILING/PLEADING Uswc's Cross Examination Statement Filed By Molly Hastings. Dd
<b>Date:</b> 1/22/1997	<b>Action:</b> OTHER FILING/PLEADING Staff's Cross Exam Statement Filed By Joseph T Mcnaught. Dd
<b>Date:</b> 1/14/1997	<b>Action:</b> OTHER FILING/PLEADING Staff's Corrected Table Of Contents Filed By Benny Won. Dd
<b>Date:</b> 1/14/1997	<b>Action:</b> LAW JUDGE RULING/MEMORANDA Alj's Memorandum Re: Schedule Of Witnesses Subject To Cross Examination On 1/29 And 30/1997. Also, Requesting Cross Examination Statements, Evidentiary Objections And Any Pre Filed Testimony Subject To, Be Filed By 1/22/97. Ph
<b>Date:</b> 1/10/1997	<b>Action:</b> BRIEF Uswc's Brief Filed By Molly Hastings. Dd
<b>Date:</b> 1/10/1997	<b>Action:</b> BRIEF Staff's Opening Brief Filed By Benny Won, Joseph Mcnaught, & Mike Weirich. Dd Disks Included. Confidential Portions In Locked Cabinet, 96(8).
<b>Date:</b> 1/7/1997	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR) Us West Letter Indicating Witnesses Baird & Cummings Can Confirm The Subject To Check References Directed To Them. Filed By Molly K Hastings. Pf
<b>Date:</b> 1/3/1997	<b>Action:</b> HEARING Hearing Scheduled Notice Mailed 01/06/1997 Ph Begin: 01/29/1997 End: 01/30/1997 City: Salem Room: Small Hearing Room Time: 9:00 Am Bldg: Puc Addr: 550 Capitol Street Ne
<b>Date:</b> 12/31/1996	<b>Action:</b> OTHER FILING/PLEADING Usw/162 Deposition Of Jack Breen On9/12/96 And Usw/163 Deposition Of Evan White On 9/12/96 Filed By Mike Weirich. Dd
<b>Date:</b> 12/26/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA Alj's Memorandum Re: Subject To Check Items As Mentioned In The 12/16/1996 Hearing Transcript; Have These Items Been Cleared? Ph Copies Served 12/26/1996. Ph
<b>Date:</b> 12/24/1996	<b>Action:</b> TRANSCRIPT Transcript Of Hearing Dated December 16, 1996 (187 Pages)+ Disk, Submitted By Gregor Ralston. Copy Sent To Benny Won 1/6/97. Ph Copies Distributed To Utility Staff. Ph Confidential Excerpts 14 Pages. To Locked Cabinet. Dd
<b>Date:</b> 12/17/1996	<b>Action:</b> TRANSCRIPT Staff's Corrections To Transcripts Of Hearings Held 11/4-14/96 Filed By Benny Won. Dd
<b>Date:</b> 12/13/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA Alj's Ruling: Mfs's Petition To Intervene Granted, Copies Served 12/13/1996. Ph

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 12/11/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Memorandum Re: Change In Witness Schedule: Cancelling 1/7/97 And Adding 1/29 & 30/97, Begin At 9am. Ph Copies Served 12/11/1996. Ph	
<b>Date:</b> 12/11/1996	<b>Action:</b> BRIEF
Second Stipulation Executed By Molly Hastings And Benny Won Filed By Benny Won. Dd	
<b>Date:</b> 12/9/1996	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Staff's Statement Of Planned Crossexamination Of Us West And At&t Filed By Joseph T Mcnaught. Pf	
<b>Date:</b> 12/9/1996	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Us West's Cross Examination Statement Filed By Molly Hastings. Pf (fax Received 12/6; Hard Copy 12/9)	
<b>Date:</b> 12/9/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Crowley's Memorandum Setting Out Order Of Witnesses For Hearing. Copies Served 12/10/97. Ph	
<b>Date:</b> 12/6/1996	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
At&t's Letter Estimating Cross Examination Of Uswc Witness Peter Cummings To Require 15 Min. Filed By Keith L. Kutler,davis Wright Tremaine. Pf	
<b>Date:</b> 12/3/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj's Memorandum Re: X Examination Statements, Hearing Schedule And Dec. 9, 1996 Is The Deadline For Evidentiary Objections To The Testimony Subject To X Examination; Dec. 12, 1996 Is Deadline For Parties Responding To Objections. Ph Copies Served 12/03/1996. Ph	
<b>Date:</b> 12/2/1996	<b>Action:</b> TESTIMONY & EXHIBITS
At&t's Surrebuttal Testimony Filed By Keith L Kutler. Dd Hard Copy Rec'd 12/3/96. Dd	
<b>Date:</b> 12/2/1996	<b>Action:</b> TESTIMONY & EXHIBITS
Staff's Surrebuttal Testimony Of John S Thornton Jr Filed By Joseph Mcnaught. Dd	
<b>Date:</b> 12/2/1996	<b>Action:</b> TRANSCRIPT
Six Volume Transcript And One Copy Of Hearings Held November 4-7 And November 14, 1996 (1166 Pages) Submitted By Martin Hauge And Gregor Ralston. Confidential Portion Of Volume 3 In Locked Cabinet Envelope 96 (6). Dd	
<b>Date:</b> 11/27/1996	<b>Action:</b> TESTIMONY & EXHIBITS
Staff Supplemental Testimony Of Terry J. Lambeth. Ph	
<b>Date:</b> 11/26/1996	<b>Action:</b> OTHER FILING/PLEADING
At&t's Signatory Page To Protective Order 96-045 Executed By George P Carter Iii Filed By Keith L Kutler. Dd	
<b>Date:</b> 11/22/1996	<b>Action:</b> PETITION TO INTERVENE
Mfs Communications Company's Petition To Intervene Filed By Richard Rindler. Dd	
<b>Date:</b> 11/8/1996	<b>Action:</b> MOTION
Uswc's Motion To Associate Counsel Pro Hac Vice Supported By Affidavit Of Sherilyn Peterson, Filed By James Van Nostrand. Ph	
<b>Date:</b> 11/8/1996	<b>Action:</b> MOTION
Uswc's Motion To Associate Counsel Pro Hac Vice Supported By The Affidavit Of Richard Coyle, Filed By James Van Nostrand. Ph	
<b>Date:</b> 11/8/1996	<b>Action:</b> MOTION
Uswc's Motion To Associate Counsel Pro Hac Vice Supported By The Affidavit Of Doug Owens, Filed By James Van Nostrand. Ph	
<b>Date:</b> 11/8/1996	<b>Action:</b> MOTION
Uswc's Motion To Associate Counsel Pro Hac Vice Supported By Affidavit Of Kimberly Jones, Filed By James Van Nostrand. Ph	
<b>Date:</b> 11/8/1996	<b>Action:</b> TESTIMONY & EXHIBITS
Staff Testimony Of Terry Lambeth, Evan White & Cynthia Van Landuyt. Confidential Information So In Locked Cabinet, Folder #96 (5). Dd	
<b>Date:</b> 11/8/1996	<b>Action:</b> TESTIMONY & EXHIBITS
Corrected Pages To Staff Testimony Of Turner Rec'd At Hearing. Dd	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 10/31/1996	<b>Action:</b> HEARING
Notice Of Hearing Dec. 16 & 17, 1996 Small Hearing Room Notices Mailed 10/31/1996. Ph Court Reporter Requested.	
<b>Date:</b> 10/31/1996	<b>Action:</b> HEARING
Hearing Scheduled Begin: 01/07/1997 End: 01/07/1997 City: Salem Room: Small Hearing Room Time: 9:30 Am Bldg: Puc Addr: 550 Capitol Street Ne	
<b>Date:</b> 10/31/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Letter To Molly Hastings, Uswc, And Benny Won, Staff Regarding Schedule Of Witnesses For Hearing Beginning 11/04/96 Filed By Ruth Crowley. Faxed To Molly & Benny On 10/31/96. Dd	
<b>Date:</b> 10/30/1996	<b>Action:</b> OTHER FILING/PLEADING
Uswc Fax Regarding Order Of Witnesses For Cross Exam Filed By Molly Hastings. Dd	
<b>Date:</b> 10/28/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Ruling By Ruth Crowley Granting Staff Motion To File Surrebut Tal Testimony And Stating Additional Hearing Dates May Be Set. Copies Faxed To Usw & Staff On 10/28/96 And Mailed To Service List On 10/29/96. Dd	
<b>Date:</b> 10/25/1996	<b>Action:</b> MOTION
Uswc's Opposition To Puc Staff's Motion To File Surrebuttal Testimony And Motion To Strike Uswc's Testimony, Filed By James Van Nostrand. Ph Hard Copy Rec'd 10/30/96. Dd	
<b>Date:</b> 10/25/1996	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Uswc's Letter Re Witness List, Signed By Molly Hastings. Ph	
<b>Date:</b> 10/22/1996	<b>Action:</b> OTHER FILING/PLEADING
Staff's Statement Of Planned Cross Examination Filed By Benny Won Dd Hard Copy Rec'd 10/22/96. Dd	
<b>Date:</b> 10/22/1996	<b>Action:</b> OTHER FILING/PLEADING
Copy Of Complaint From Consumer Services Section Of Puc Filed By Clackamas County And Request To Be Added To Service List. Dd	
<b>Date:</b> 10/21/1996	<b>Action:</b> OTHER FILING/PLEADING
Eli Letter Stating It Will Not Conduct Any Cross Examination In The Revenue Requirement Phase Of This Proceeding Filed By Rob Mcmillin. Dd Hard Copy Rec'd 10/22/96. Dd Hard Copy With Service List Attached Rec'd 10/23/96. Dd	
<b>Date:</b> 10/21/1996	<b>Action:</b> OTHER FILING/PLEADING
U S West's Errata Pages To Its Reply Testimony: Replacement Exhibit Usw 54 To Mr Lenard's Testimony, Replacment Exhibit Usw/64 To Mr Inouye's Testimony & Replacement Maher/7 To Usw/108 (lines 3-5) Filed By Penny Bewick For Molly Hastings. Dd	
<b>Date:</b> 10/21/1996	<b>Action:</b> OTHER FILING/PLEADING
Uswc's Cross Examination Statement Filed By Molly Hastings. Dd	
<b>Date:</b> 10/18/1996	<b>Action:</b> PUBLIC COMMENT
Customer Comments Against Increase Forwarded From Consumer Services Filed By Cathie Judd. D	
<b>Date:</b> 10/18/1996	<b>Action:</b> MOTION
Puc Staff's Motion To File Surrebuttal Testimony; Motion To Strike Uswc Testimony, Filed By W. Benny Won. Ph	
<b>Date:</b> 10/11/1996	<b>Action:</b> PUBLIC COMMENT
Comments From Tony Wagner As Relay By Marilyn In Consumer Srvcs That He Believes Requested Rates Too High. Wants To Be Added To Service List. Dd	
<b>Date:</b> 10/7/1996	<b>Action:</b> TESTIMONY & EXHIBITS
U S West's Reply Testimony Filed By Molly K Hastings. Dd Confidential Documents From Original In Locked Cabinet, Envelope 96(3). Testimony Of Lenard, Wilcox, Maher, Mulcahy, Cummings, Laube, Leal, Ciuba, Lopez Harris, Koehler-christensen, Inouye, Gobat, Jones, Markwell, Bystrzycki, Faurot, Solso & Passmore. Dd	
<b>Date:</b> 10/4/1996	<b>Action:</b> HEARING
Hearing Scheduled Begin: 11/04/1996 End: 11/15/1996 City: Salem Room: Main Hearing Rm Time: 9:30 Am Bldg: Puc Addr: 550 Capitol Street Ne Notices Sent 10/04/1996. Ph	
<b>Date:</b> 10/4/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Crowley's Memorandum Re: Nov. 4 Thru 15 Hearing. Served 10/04/1996. Ph	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

**Date:** 9/19/1996 **Action:** PETITION TO INTERVENE  
Mci's Petition To Intervene In Phase Ii Filed By Lisa Rackner. Dd Hard Copy Recd 09/20/96. Dd

**Date:** 9/13/1996 **Action:** PETITION TO INTERVENE  
Northwest Payphone Association's Petition To Intervene Filed By James F Dulcich. Dd

**Date:** 9/12/1996 **Action:** OTHER FILING/PLEADING  
Signatory Page Pursuant To Order No. 96-045 Executed By Martin Hauge, Court Reporter Filed By Martin Hauge. Dd

**Date:** 9/3/1996 **Action:** OTHER FILING/PLEADING  
Uswc Letter Notifying Puc Staff Witnesses Birko, Myers, Anderson, Breen, Riordan And White That They Will Be Deposed On 9/12/96 And Continuing To 9/13, If Nec, Filed By James Van Nostrand, Of Counsel. JI

**Date:** 9/3/1996 **Action:** OTHER FILING/PLEADING  
U S West Signatory Page From Order No. 96-045 Executed By Molly Hastings, Joann Ward, Dana Rasmussen, Lissa Anderl,penny Bewick, Sheila Harris, Kathleen Brady, Bruce Hall, D K Mason, Douglas Owens, Carl Inouye, Diane Mcdougall, Janice Franett, Philip Grate, Kevin Macwilliams, Ann Koehler-christensen, James Cont.

**Date:** 9/3/1996 **Action:** OTHER FILING/PLEADING  
Continued: Mcwhirter And Margaret Barrington, Filed By Penny Bewick. JI

**Date:** 9/3/1996 **Action:** TRANSCRIPT  
Original Transcript Of Prehearing Conference Held 08/28/96,14 Pages, Filed By Martin Hauge. JI

**Date:** 9/3/1996 **Action:** LAW JUDGE RULING/MEMORANDA  
Alj Prehearing Memorandum Adopting Uswc's Motion For An Extension And Adopting Schedule: Pets To Intervene 9/19/96; Status Conf 12/18/96; Uswc Files Rates & Test 5/1/97; Staff & Intervenors Pub Settlement Proposal 6/12/97; Settle Conf 65/23-26/97; Staff Files Issues List 7/10/97; Staff & Intervenors Publish Dir Cont

**Date:** 9/3/1996 **Action:** LAW JUDGE RULING/MEMORANDA  
Continued: Testimony 8/8/97; All Parties Publish Rebuttal Testimony 9/5/97; Hearing 9/15/97. Enclosed Updated Service List. Copes Served 09/03/96. JI

**Date:** 8/28/1996 **Action:** LAW JUDGE RULING/MEMORANDA  
Alj Ruling Granting Petitions To Intervene Of Tracer And Scs. Copies Served 08/29/96. JI

**Date:** 8/27/1996 **Action:** MOTION  
U S West's Motion For An Extension Of Time To Submit A General Rate Filing, Faxed By Penny Bewick For Molly Hastings. JI Hard Copy Received 08/27/1996. JI

**Date:** 8/8/1996 **Action:** TESTIMONY & EXHIBITS  
Staff Testimony Of Terry Lambeth, John Thornton, Woody Birko, Tom Turner, E R Dolan, Cynthia Van Landuyt, Tom Riordan, Evan White, Mike Myers, Marion Anderson, Jack Breen, Lance Ball, Sterling Sawyer, Ed Morrison And Tom Harris. Contains Confidential Material In Env #96(3). JI

**Date:** 8/8/1996 **Action:** OTHER FILING/PLEADING  
U S West's Signatory Page Of Order No. 96-045 Executed By Penny Bewick, Sheila M Harris, Kathleen Brady And Bruce Hall. JI

**Date:** 7/25/1996 **Action:** CONFERENCE  
Prehearing Scheduled Copies Served 07/25/96 Begin: 08/28/1996 End: 00/00/0000 City: Salem  
Room: Main Hearing Rm Time: 9:30 Am Bldg: Puc Addr:

**Date:** 7/5/1996 **Action:** LAW JUDGE RULING/MEMORANDA  
ALJ Crowley's Ruling Granting TRACER's and SCS's Petitions to Intervene.  
  
Copies served by Patricia M. Herzberg on 7/5/96.

**Date:** 7/1/1996 **Action:** MOTION  
Staff's Motion For Extension Of Time From July 3 To July 17 In Which To Submit A Consolidated Issues List For The Revenue Requirement Phase, Filed By Benny Won. JI

**Date:** 6/28/1996 **Action:** TESTIMONY & EXHIBITS  
Uswc's Supplemental Exhibit Usw/51. Portions Are Confidential And Will Be Filed Under Protective Order 96-945 Filed In Envelope #96(2). Ph

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 6/26/1996	<b>Action:</b> OTHER FILING/PLEADING
Octa's Signatory Page From Protective Order No. 96-045 Executed By Sara Siegler Miller. JI	
<b>Date:</b> 6/21/1996	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Mci's Letter Faxed By Lisa Rackner Re: Mci Unable To Attend The Settlement Conference Scheduled 6/24 Through 28. Ph Hard Copy Received 6/24/1996. Ph	
<b>Date:</b> 6/20/1996	<b>Action:</b> OTHER FILING/PLEADING
Octa's Signatory Page From Protector Order No. 96-045 Executed By Dr. Carl E Hunt, Filed By Sara Siegler Miller. JI	
<b>Date:</b> 6/13/1996	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Mci's Signatory Page To Protective Order 96-045 Signed By Nina Cornell, mci's Economist Expert. Filed By Shanti Breznau For Lisa Rackner. Pf	
<b>Date:</b> 6/13/1996	<b>Action:</b> PETITION TO INTERVENE
Shared Communications Services Inc's Petition To Intervene In Phase Ii Filed By Beth K Kaye. Pf	
<b>Date:</b> 6/7/1996	<b>Action:</b> PETITION TO INTERVENE
Telecommunication Ratepayers Assoc. For Cost Based And Equitable Rates (tracer) Petition To Intervene Filed By Kirk Gibson. Ph	
<b>Date:</b> 6/6/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Ruling By Ruth Crowley, Motion To Amend Scheduled Denied. Copies Served 6/6/96. Ph	
<b>Date:</b> 6/5/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Ruling By Ruth Crowley, Granting Motion, New Schedule Adopted. Copies Served 6/5/96. Ph	
<b>Date:</b> 6/4/1996	<b>Action:</b> OTHER FILING/PLEADING
Staff's Reply To Mci's Response To Uswc's Request To Further Revise Schedule. Filed By Joseph Mcnaught, Atty/doj. Ph	
<b>Date:</b> 6/4/1996	<b>Action:</b> OTHER FILING/PLEADING
Cub's Reply To Uswest's And The Staff's Response To Aarp's Motion To Amend The Schedule. Filed By Jason Eisdorfer. Ph	
<b>Date:</b> 6/3/1996	<b>Action:</b> MOTION
Us West's Motion To Associate Counsel For This Case And Accompany Ing Affidavit For Molly Hastings Filed By James M Van Nostrand Of Perkins Coie. Pf	
<b>Date:</b> 6/3/1996	<b>Action:</b> MOTION
Aarp's Reply Memorandum On Motion To Amend Schedule 5/30/96. Filed By Linda K. Williams. Ph Hard Copies Received 6/3/96. Ph	
<b>Date:</b> 6/3/1996	<b>Action:</b> OTHER FILING/PLEADING
Cub's Reply To Uswc's And The Staff's Response To Aarp's Motion To Amend The Schedule. Filed By Jason Eisdorfer. Ph	
<b>Date:</b> 5/31/1996	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Aarp's Request Through Linda K. Williams, Atty, To Not Issue Order Until They Have Had Opportunity To Reply. Ph	
<b>Date:</b> 5/29/1996	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Doj's Letter Asking If Prehearing Set For June 3, 1996 Will Be Rescheduled Due To Delay In Order On Um 351. Letter Written By Joseph Mcnaught. Ph Hard Copies Received. Ph	
<b>Date:</b> 5/29/1996	<b>Action:</b> OTHER CORRESPONDENCE (ACKN, SVC, LTR)
Aarp's Letter Of Intent To Reply By 5/31/1996 And Asks That Puc Not Issue An Order Until It Has Had Opportunity To Respond To Misconceptions. Letter Signed By Linda K. Williams, Attorney For Aarp. Ph	
<b>Date:</b> 5/29/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Clarification On Hearing Schedule Issued By Ruth Crowley, Alj. Copies Served 5/29/1996. Ph	
<b>Date:</b> 5/28/1996	<b>Action:</b> OTHER FILING/PLEADING
Mci's Response To Us West's Request To Further Revise Schedule, Filed By Lisa Rackner. Ph Hard Copies Received 5/31/1996. Ph	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 5/24/1996	<b>Action:</b> OTHER FILING/PLEADING
Staff's Response To Us West's Request To Further Revise Schedule Filed By Joseph T. Mcnaught, Doj. Ph	
<b>Date:</b> 5/23/1996	<b>Action:</b> OTHER FILING/PLEADING
Uswc's Response To The American Association Of Retired Person (aarp) Motion To Amend Schedule. Filed By Molly Hastings. Ph	
<b>Date:</b> 5/22/1996	<b>Action:</b> MOTION
Staff's Response In Opposition To Aarp's Motion To Amend Schedule For Additional Public Hearings. Filed By Michael Weirich, Doj. Ph	
<b>Date:</b> 5/15/1996	<b>Action:</b> MOTION
Reply Of Us West Communications Inc. To Staff's Motion To Revise Schedule Filed By Molly Hastings. Ph	
<b>Date:</b> 5/14/1996	<b>Action:</b> MOTION
Aarp Motion To Amend Schedule Filed By Linda K. Williams. Ph Hard Copy Received 05/14/1996. Ph	
<b>Date:</b> 5/8/1996	<b>Action:</b> OTHER FILING/PLEADING
Mci's Signatory Page From Protective Order 96-045 Signed By Lisa Rackner And Paul Cogrove, New Local Counsel For Oregon Regulatory Matters Filed By Cynthia Liles. Pf	
<b>Date:</b> 5/6/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Crowley Ruling Granting Electric Lightwave's Petition To Intervene. Served 5/7/96. Pf	
<b>Date:</b> 5/1/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Ruling Granting Staff Motion To Revise Schedule To: Staff/ Intervenors Settlement Proposals 6/11/96; Settle Conf 6/17-6/21; Consolidated Issues 1st On Rev Req 6/26/96; Staff/intervenors Direct Test 8/01/96; Rebuttal Test 9/30/96; Hearing 10/28/96. Copies Served 05/02/96. JI	
<b>Date:</b> 4/30/1996	<b>Action:</b> MOTION
Staff's Motion To Revise Schedule, Filed By Joseph Mcnaught. JI	
<b>Date:</b> 4/29/1996	<b>Action:</b> OTHER FILING/PLEADING
At&t's Signatory Page From Protective Order No. 96-045 Executed By Susan Proctor, Filed By Susan Proctor. JI	
<b>Date:</b> 4/26/1996	<b>Action:</b> OTHER FILING/PLEADING
Letter Withdrawing Preston Gates & Ellis From Its Representation Of Mci And Mic Metro; Please Lisa Rackner And Paul Cosgrove, Lindsey Hart Neiland Weigler As Counsel And Retains Roger Pena; Ms Kaye Remains Of Interest Personally, Filed By Beth Kaye. JI	
<b>Date:</b> 4/15/1996	<b>Action:</b> OTHER FILING/PLEADING
At&t's Signatory Page From Protective Order Executed By Mark P Trincherro, Patricia A Raskin, Filed By Patricia Raskin. JI	
<b>Date:</b> 4/15/1996	<b>Action:</b> PETITION TO INTERVENE
Eli's Petition To Intervene, Filed By Ellen Deutsch. JI	
<b>Date:</b> 4/15/1996	<b>Action:</b> OTHER FILING/PLEADING
Copy Of At&t Letter to Uswc Requesting Uswc Responses To Staff Data Requests 64 & 65 Filed By Susan Proctor. JI	
<b>Date:</b> 4/5/1996	96-094 <b>Action:</b> ORDER
Order No. 96-094 Signed By Ron Eachus, Joan Smith, Roger Hamilton Amending Order No. 91-1598 In Docket Ut 80 To Allow Us West To Submit The Rate Design Portionof Its General Rate Filing Under Ors 759.180 No Later Than 90 Days After The Service Date Of The Order In Um 351. Copies Served 04/10/96. JI	
<b>Date:</b> 4/2/1996	96-082 <b>Action:</b> ORDER
96-082 Entered 4/2/96 Signed By Commissioners Hamilton & Smith; Motion To Compel Granted, Motion For Additional Protective Order Denied; Motion To Strike Testimony Conditionally Granted. Pf	
<b>Date:</b> 3/28/1996	<b>Action:</b> OTHER FILING/PLEADING
Staff Notice That Discovery Disputes Will Likely Revise Schedule. Letter Filed By Joseph T Mcnaught, Asst. Ag. Pf	
<b>Date:</b> 3/27/1996	<b>Action:</b> MOTION
Staff's Response To Uswc's Motion For Protective Order; Staff's Reply To Uswc's "opposition" To Staff's Motion To Compel, Filed By Joseph Mcnaught. JI	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 3/27/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Ruling Granting Petitions To Intervene Of Mci, Mci Metro, ` At&t, Oct, Gte, United, Sprint/united, Cub And Oregon State Legislative Committee Of Aarp. Copies Served 03/27/96. JI	
<b>Date:</b> 3/18/1996	<b>Action:</b> OTHER FILING/PLEADING
At&t's Signatory Page Of Protective Order No. 96-045 Executed By Patrick Hickey, Natalie Baker, Darlene Hannon And Viki Seeger, Filed By Susan Proctor. JI	
<b>Date:</b> 3/18/1996	<b>Action:</b> TESTIMONY & EXHIBITS
U S West's Supplemental Testimony Of Lawrence D Mcdonald, Containing Confidential Material, Placed In Locked Cabinet In Envelope No.96 (1), Filed By Penny Bewick For Molly Hastings. JI	
<b>Date:</b> 3/18/1996	<b>Action:</b> OTHER FILING/PLEADING
At&t's Request Of U S West For Its Response To Staff Requests No 26, 28, 29, 31, 37-40, 53, Parts 36, 43 &44, And 57, Filed By Susan Proctor. JI	
<b>Date:</b> 3/12/1996	<b>Action:</b> MOTION
U S West's Motion And Memorandum In Opposition To Motion To Compel, Declaration Of Peter C Cummings And Affidavit Of Sam Torres, Filed By Cheryl Belozar, Asst To Chin See Ming, Of Counsel. JI	
<b>Date:</b> 3/11/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj's Ruling Granting Petitions To Intervene Of Gte, United, Sprint/united, And Cub. Copies Served 03/11/96. JI	
<b>Date:</b> 3/11/1996	<b>Action:</b> OTHER FILING/PLEADING
Unicom's Signatory Page Of Protective Order Executed By Michael Daughtry, Filed By Michael Daughtry. JI	
<b>Date:</b> 3/6/1996	<b>Action:</b> PETITION TO INTERVENE
Aarp's Petition To Intervene Filed By Linda K. Williams. Ph	
<b>Date:</b> 3/5/1996	<b>Action:</b> MOTION
U S West's Motion For An Extension Of Time To Submit A General Rate Filing, Filed By Molly K Hastings. JI	
<b>Date:</b> 3/5/1996	<b>Action:</b> PETITION TO INTERVENE
Mci's Petition To Intervene, Filed By Beth Kaye. JI	
<b>Date:</b> 3/5/1996	<b>Action:</b> OTHER FILING/PLEADING
Mci & Mcimetro's Signatory Page From Protective Order No. 96-045 Executed By Roger Pena, William Levis, And Beth Karan Kaye, Filed By Beth Kaye. JI	
<b>Date:</b> 2/26/1996	<b>Action:</b> MOTION
Staff Motion To Compel Discovery; Motion To Strike Testimony Of P Eter C Cummings Or Other Uswci Witnesses On The Issue Of Cost Of Capitol, Filed By Joseph T Mcnaught, Doj. Pf	
<b>Date:</b> 2/21/1996	<b>Action:</b> ORDER
96-045 Protective Order No. 96-045 Signed By Ruth Crowley, Administrativ Law Judge. Copies Served 02/22/96. JI	
<b>Date:</b> 2/14/1996	<b>Action:</b> PETITION TO INTERVENE
Sprint/united's Petition To Intervene, Filed By Seth Lubin. JI	
<b>Date:</b> 2/12/1996	<b>Action:</b> PETITION TO INTERVENE
Cub's Notice Of Intervention Filed By Jason Eisdorfer. JI	
<b>Date:</b> 2/5/1996	<b>Action:</b> TRANSCRIPT
15 Page Transcript Of Prehearing Conference Held 2/1/96 Along With One Copy Received From Martin Hauge. JI	
<b>Date:</b> 2/5/1996	<b>Action:</b> LAW JUDGE RULING/MEMORANDA
Alj Conference Report Granting Petitions To Intervene Of Mci, Mcimetro, At&t & Octa; Send Internet Addresses To Judy Legg; Send Testimony With Disks; Enclosed Discovery Guidelines And Set Schedule (see I:schedules). Copies Served 02/06/96. JI	
<b>Date:</b> 2/1/1996	<b>Action:</b> PETITION TO INTERVENE
Unicom's Petition For Leave To Intervene, Filed By Michael E. Daughtry. JI	
<b>Date:</b> 2/1/1996	<b>Action:</b> OTHER FILING/PLEADING
U S West Request That A Protective Order Be Issued In This Matter Filed By Molly K Hastings. JI	
<b>Date:</b> 1/31/1996	<b>Action:</b> PETITION TO INTERVENE
Gte's Petition To Intervene, Faxed By Richard Potter. JI Hard Copy Received 02/05/96. JI	

**Summary Report****UT 125 U S WEST COMMUNICATIONS INC**

<b>Date:</b> 1/17/1996	<b>Action:</b> TESTIMONY & EXHIBITS
Us West's Corrected Exhibit Usw/24. filed By Molly Hastings. Jh	
<b>Date:</b> 1/17/1996	<b>Action:</b> HEARING
Prehearing Scheduled Begin: 02/01/1996 End: 02/01/1996 City: Salem Room: Main Hearing Rm Time: 1:30 Pm Bldg: Puc Addr:	
<b>Date:</b> 12/18/1995	<b>Action:</b> INITIAL (APPLICATION, COMPLAINT, PETITION)
In The Matter of U.S. WEST COMMUNICATIONS, INC. Application for an Increase in Revenues, Filed By Penny Bewick For Molly Hastings. Direct Testimony Of Carl Inouye, Phil Grate, Peter C Cummings, Lawrence Mcdonald, & Ann Koehler-christensen. Cpm To Commission. JI	

**SERVICE LIST:**

INTEGRA TELECOM OF OREGON INC 6160 GOLDEN HILLS DR GOLDEN VALLEY MN 55416-1020	LON E BLAKE ADVANCED TELCOM INC 6160 GOLDEN HILLS DR GOLDEN VALLEY MN 55416
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RANDY LINDERMAN PACIFIC NORTHWEST PAYPHONE 1315 NW 185TH AVE STE 215 BEAVERTON OR 97006-1947	ROBERT MANIFOLD -- CONFIDENTIAL ATTORNEY AT LAW 6993 VIA VALVERDE LA JOLLA CA 92037
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**Summary Report**

**UT 125 U S WEST COMMUNICATIONS INC**

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## Summary Report

## DR 26 NORTHWEST PUBLIC COMMUNICATIONS COUNCIL

Category: Declaratory Rulings

Filed By: QWEST CORPORATION

DR 26/UC 600: THE NORTHWEST PUBLIC COMMUNICATIONS COUNCIL, on behalf of PSPs A to Z, and NPCC MEMBERS: Central Telephone, Inc.; Communication Management Services, LLC; Davel Communications, a/k/a Phonetel Technologies, Inc.; Interwest Tel, LLC;...

Filing Date: 5/14/2001

Order: 11-504 Signed: 5/14/2001

## ACTIONS:

- Date: 3/26/2012 Action: APPEAL  
DR 26/UC 600 -- Transmittal of Entire Record and Certificate of DR 26/UC 600 for Court of Appeals, Appellate Court No. CA A150775 routed via shuttle to Gwen Keil, Department of Justice, Appellate Division. PUC appeal #12-01.
- Date: 2/10/2012 Action: APPEAL  
DR 26/UC 600 -- Petition for Review of Agency Order 11-504; The Northwest Public Communications Council's, et. al. (NPCC's) Petition For Judicial Review of a State Agency Final Order and Interim Orders; together with Exhibits A-C; electronically filed by Frank G. Patrick.  
Hard copy rec'd. 2/13/12.
- Date: 12/15/2011 11-504 Action: ORDER  
DR 26/UC 600--Order No. 11-504, signed by Commissioners John Savage, Susan K. Ackerman, and Stephen M. Bloom. DISPOSITION: MOTION FOR SUMMARY JUDGMENT GRANTED; COMPLAINT DISMISSED; DOCKET CLOSED.  
  
Copies electronically served to dockets DR 26 and UC 600 on 12/15/11.
- Date: 11/5/2010 Action: OTHER FILING/PLEADING  
QWEST's filing of copy of Opinion and Order in U.S. District Court Case No. 09-1351-BR, granting Qwest's motion to dismiss; Filed electronically by Lawrence Reichman. Hard copy rec'd 11/8/10.
- Date: 8/27/2010 Action: COMMENTS/RESPONSE  
QWEST CORPORATION's Reply Memorandum in Support of Motion for Summary Judgment; Filed electronically by Lawrence H. Reichman; Hard copy rec'd 8/30/10.
- Date: 8/13/2010 Action: LAW JUDGE RULING/MEMORANDA  
DR 26/UC 600--ALJ Sarah K. Wallace Issues Ruling; DISPOSITION: MOTION FOR AN EXTENSION GRANTED.  
  
Copies served electronically 8/13/10 and via U.S. Mail 8/16/10.
- Date: 8/11/2010 Action: MOTION  
DR 26/UC 600 QWEST Corporation's Unopposed Motion for Extension of Time to File Reply Memorandum in Support of its Motion for Summary Judgment filed electronically by Lawrence Reichman; hard copy rec'd 8/12/10.
- Date: 7/29/2010 Action: COMMENTS/RESPONSE  
NPCC's Memorandum of Law in Opposition to Qwest's Motion for Summary Judgment and Declaration in Support of Response; together with Exhibits 4, 9, 11, 12, 14, 17, 20, and 22. (Exhibits not posted due to volume). Filed electronically by Frank G. Patrick; Hard copy with CD rec'd 7/30/10.
- Date: 7/13/2010 Action: LAW JUDGE CONFERENCE REPORT  
DR 26/UC 600--ALJ Sarah K. Wallace Issues Prehearing Conference Report; DISPOSITION: PROCEDURAL SCHEDULE ESTABLISHED. Copies served electronically 7/13/10 and via U.S. Mail on 7/14/10.
- Date: 7/8/2010 Action: APPEAL  
Court of Appeals - DR 26/UC 600 - Order Denying Motion to Stay Agency Proceedings; electronically filed by Lawrence Reichman. Hard copy rec'd 7/9/10.
- Date: 7/7/2010 Action: COMMENTS/RESPONSE  
QWEST's Response to Complainants' Motion for Enlargement of Time to file Summary Judgment Brief; Filed electronically by Lawrence Reichman and Mr. Reichman for Adam Sherr. Hard copy rec'd 7/9/10.

## Summary Report

## DR 26 NORTHWEST PUBLIC COMMUNICATIONS COUNCIL

- Date: 7/6/2010 Action: CONFERENCE  
NOTICE OF EXPEDITED TELEPHONE CONFERENCE; Copies served electronically and via U.S. Mail 7/7/10.
- TELEPHONE CONFERENCE scheduled 7/7/2010 4:00 PM (Pacific)  
Dial in for parties only 503-945-7174  
Room: VIA TELEPHONE-Cave Conf. Rm.  
Reporter: TAPE  
Law Judge: WALLACE, SARAH K
- Date: 7/6/2010 Action: APPEAL  
Court of Appeals - DR 26/UC 600 - NPCC's Petition For Judicial Review of a State Agency Order, Order No. 10-027; CA 145973; and Expedited Motion to Stay Agency Proceedings together with Declaration in Support of Motion; electronically filed by Frank G. Patrick. Hard copy rec'd. 7/6/10.
- Date: 7/6/2010 Action: APPEAL  
US District Court - DR 26/UC 600 - Summons and Complaint with Exhibits 1-4 Received, United States District Court for the District of Oregon, Portland Division, Case No. CV'10-685HA, Attorneys for THE NORTHWEST PUBLIC COMMUNICATIONS COUNCIL , Unidentified PSPs A to Z, and NPCC MEMBERS, et. al. = Frank G. Patrick. Appeal of Orders No. 09-155 and 10-027. Hard copy rec'd. 7/6/10.
- Date: 7/2/2010 Action: MOTION  
NPPC's Opposed Motion for Enlargement of Time to File Summary Judgment Brief; Filed electronically by Frank G. Patrick. Hard copy marked "Expedited Request" rec'd 7/6/10.
- Date: 7/2/2010 Action: OTHER FILING/PLEADING  
NPPC's Declaration (of Frank Patrick) in Support of Opposed Motion for Enlargement of Time to File Summary Judgment Brief; Filed electronically by Frank G. Patrick.
- Date: 6/30/2010 Action: SERVICE LIST CHANGE  
DR 26, UC 600-QWEST's Change to Service List, replacing Alex M. Duarte with Adam L. Sherr as counsel for Qwest, and retaining Lawrence Reichman as co-counsel. Electronically filed by Alex M. Duarte. Hard copy rec'd 7/6/10.
- Date: 6/8/2010 Action: LAW JUDGE CONFERENCE REPORT  
DR 26/UC 600--ALJ Sarah K. Wallace Issues Prehearing Conference Report; DISPOSITION: PROCEDURAL SCHEDULE ESTABLISHED. Copies served electronically 6/8/10 and via U.S. Mail on 6/9/10.
- Date: 5/19/2010 Action: CANCELLATION/CHANGE  
DR 26/UC 600--NOTICE RESCHEDULING TELEPHONE CONFERENCE; Copies served electronically and via U.S. Mail 5/19/10. (note error on notice--correct dial in is below).
- TELEPHONE CONFERENCE scheduled 6/4/2010 11:00 AM  
Dial In No. 503-945-7174  
Room: VIA TELEPHONE  
Reporter: TAPE  
Law Judge: WALLACE, SARAH K
- Date: 5/14/2010 Action: LAW JUDGE RULING/MEMORANDA  
DR 26/UC 600--ALJ Sarah K. Wallace Issue Ruling; SCHEDULE SUSPENDED.
- Copies served electronically 5/14/10 and via U.S. Mail 5/17/10.
- Date: 5/14/2010 Action: CONFERENCE  
DR 26/UC 600--NOTICE OF EXPEDITED TELEPHONE CONFERENCE; Copies served electronically only to parties 5/14/10. (Rescheduled 5/14/10)
- TELEPHONE CONFERENCE scheduled 5/17/2010 11:00 AM  
Room: VIA TELEPHONE  
Reporter: TAPE  
Law Judge: WALLACE, SARAH K

## Summary Report

## DR 26 NORTHWEST PUBLIC COMMUNICATIONS COUNCIL

Date: 5/14/2010	Action: CANCELLATION/CHANGE
DR 26/UC 600--NOTICE OF RESCHEDULED TELEPHONE CONFERENCE; Copies served electronically 5/14/10 and via U.S. mail 5/17/10.--THIS CONF. Rescheduled on 5/19/10.	
TELEPHONE CONFERENCE scheduled 5/24/2010 11:00 AM	
Room: VIA TELEPHONE	
Reporter: TAPE	
Law Judge: WALLACE, SARAH K	
Date: 5/5/2010	Action: LAW JUDGE RULING/MEMORANDA
DR 26/UC 600--ALJ Sarah K. Wallace Issues Ruling; DISPOSITION: MOTION DENIED.	
Copies served electronically and via U.S. Mail 5/5/10	
Date: 4/30/2010	Action: MOTION
DR 26/UC 600--QWEST's Motion for Summary Judgment; Filed electronically by Lawrence Reichman and Mr. Reichman on behalf of Alex M. Duarte; Hard copy rec'd 5/3/10.	
Date: 4/30/2010	Action: OTHER FILING/PLEADING
DR 26/UC 600--QWEST's Memorandum in Support of Motion for Summary Judgment; Filed electronically by Lawrence Reichman. Hard copy rec'd 5/3/10.	
Date: 4/30/2010	Action: OTHER FILING/PLEADING
DR 26/UC 600--QWEST's Declaration of Lawrence Reichman in Support of Qwest's Motion for Summary Judgment, together with Exhibits 1-8; Filed electronically by Lawrence Reichman. Hard copy rec'd 5/3/10.	
Date: 4/30/2010	Action: OTHER FILING/PLEADING
DR 26/UC 600--QWEST's Declaration of Alex M. Duarte in Support of Qwest's Motion for Summary Judgment, together with Exhibits 1-3; Filed electronically by Alex Duarte and Lawrence Reichman. Hard copy rec'd 5/3/10.	
Date: 4/27/2010	Action: MOTION
DR 26/UC 600--NPCC's Motion to Strike Current Briefing Schedule, to Enlarge time, and to Reply to Further Brief; filed together with Memorandum in Support and Declaration in Support; Electronically filed by Frank G. Patrick; Hard copy rec'd 4/29/10.	
Date: 4/19/2010	Action: COMMENTS/RESPONSE
DR 26/UC 600--QWEST's Response in Opposition to Complainants' Motions to Reconsider Order and to Stay; Filed electronically by Alex M. Duarte. Hard copy rec'd 4/20/10.	
Date: 4/6/2010	Action: OTHER FILING/PLEADING
DR 26/UC 600 NPCC's Amended Memorandum in Support of Consolidated Motion to Reconsider and to Stay. Electronically filed by Frank G. Patrick. Hard copy rec'd. 4/8/10. Exhibit numbering is explained and corrected. (See also 4/2/10 filings). (exhibits not posted due to volume).	
Date: 4/2/2010	Action: MOTION
DR 26/UC 600 - NPCC's Consolidated Motions to RECONSIDER and Vacate the Commission's Order No. 10-027 Denying the Complainants' Amended Complaints AND to Stay Proceedings Pending Direction From the United States District Court in Portland, Oregon. Electronically filed by Frank G. Patrick. Hard copy rec'd 4/5/10.(See also Memorandum and Declaration in support, docketed and posted separately). CD of filing rec'd 4/13/10.	
Date: 4/2/2010	Action: OTHER FILING/PLEADING
DR 26/UC 600--NPCC's Memorandum in Support of Consolidated Motions to Reconsider and Vacate Order No. 10-027 and to Stay; and Declaration of Counsel in Support of Consolidated Motions to Reconsider and Vacate and Stay, with Exhibits A through G, and I (Exhibits 1-25) supporting Frank Patrick's Declaration. Electronically filed by Frank G. Patrick. Hard copy rec'd. 4/5/10. (exhibits not posted due to volume--contact Admin Hearings for electronic version). CD of filing rec'd 4/13/10. (See also 4/2/10 Motion).	
Date: 4/2/2010	Action: RECONSIDERATION
NPCC's Motion for Reconsideration of Order No. 10-027--docketed as Motion--see previous action entry for electronic version.	

## Summary Report

## DR 26 NORTHWEST PUBLIC COMMUNICATIONS COUNCIL

- Date: 3/11/2010 Action: LAW JUDGE CONFERENCE REPORT  
DR 26/UC 600--ALJ Allan J. Arlow's Prehearing Conference Report and Ruling; DISPOSITION: MOTION FOR STAY OF PROCEEDINGS DENIED; PROCEDURAL SCHEDULE ESTABLISHED.
- Copies served to dockets DR 26 and UC 600 electronically on 3/11/10 and via U.S. Mail on 3/12/10.
- Date: 3/5/2010 Action: CONFERENCE  
DR 26/UC 600--NOTICE OF TELEPHONE PREHEARING CONFERENCE served electronically and via U.S. Mail on 3/5/10.
- TELEPHONE CONFERENCE scheduled 3/9/2010 10:00 AM  
Room: CAVE Building: PUC  
Address: VIA TELEPHONE  
Reporter: TAPE  
Law Judge: ARLOW, ALLAN
- Date: 3/4/2010 Action: COMMENTS/RESPONSE  
DR 26/UC 600--QWEST CORPORATION's Opposition to Complainants' Motion to Stay. Electronically filed by Lawrence H. Reichman; Hard copy rec'd 3/8/10.
- Date: 2/17/2010 Action: MOTION  
DR 26/UC 600 - NPCC's Request for Prehearing Conference, Motion for Staying Proceedings Pending the Filing of a Motion for Reconsideration, and Declaration Supporting Request and Motion. Electronically filed by Frank G. Patrick. Hard copy rec'd 2/18/10.
- Date: 2/16/2010 Action: LAW JUDGE RULING/MEMORANDA  
DR 26/UC 600--ALJ Allan J. Arlow's Ruling; DISPOSITION: MOTION GRANTED; TIME EXTENDED IN WHICH TO FILE THIRD AMENDED COMPLAINT.
- Copies served to dockets DR 26 and UC 600 electronically and via U.S. Mail on 2/16/10.
- Date: 2/12/2010 Action: MOTION  
DR 26/UC 600--NPCC's Stipulated Motion to Enlarge Time to File the Third Amended Complaint to allow opposing counsel to resolve language issues and Declaration in Support of Stipulation Motion. Electronically filed by Frank G. Patrick. Hard copy rec'd. 2/17/10.
- Date: 2/3/2010 Action: CONFERENCE  
DR 26, UC 600--NOTICE OF TELEPHONE PREHEARING CONFERENCE served electronically and via U.S. Mail on 2/3/10. (Dial-in #503-945-7174)
- TELEPHONE CONFERENCE scheduled 2/4/2010 3:00 PM  
City: SALEM, OR  
Room: VIA TELEPHONE--MOUNTAIN CONF RM Building: PUC  
Reporter: TAPE  
Law Judge: ARLOW, ALLAN
- Date: 2/1/2010 Action: COMMENTS/RESPONSE  
DR 26/UC 600 - NPCC et al.'s Reply to Qwest Letter Response to Consolidated Motions to Enforce Orders and to Bifurcate and Partially Abate Procedures. Electronically filed by Frank G. Patrick. Hard copy rec'd 2/3/10.
- Date: 2/1/2010 10-027 Action: ORDER  
DR 26/UC 600 -- 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.
- Copies served electronically and via U.S. Mail on 2/2/10.
- Date: 1/29/2010 Action: MOTION  
DR 26/UC 600 - Qwest's request that the Commission schedule a prehearing conference and that Qwest's time to respond to Motions be suspended until prehearing conference is held. Electronically filed by Lawrence H. Reichman. Hard copy rec'd. 2/1/10.

## Summary Report

## DR 26 NORTHWEST PUBLIC COMMUNICATIONS COUNCIL

- Date: 1/27/2010 Action: MOTION  
DR 26/UC 600 -- 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. Electronically filed by Frank G. Patrick. Hard copy rec'd. 1/29/10.
- Date: 1/27/2010 Action: OTHER FILING/PLEADING  
DR 26/UC 600 -- NPCC's Memorandum in Support of Consolidated Motions. Electronically filed by Frank G. Patrick. (See 1/27/10 Motion entry for electronic version.)
- Date: 12/22/2009 Action: COMMENTS/RESPONSE  
DR 26/UC 600 -- NPCC's Reply to Qwest Motion to Strike Complainants' First Amended Complaint and Second Amended Complaint; together with Memorandum in Support of Reply, and Declarations of Charles W. Jones and Frank G. Patrick. Filed by Mr. Patrick.
- Date: 12/16/2009 Action: LAW JUDGE RULING/MEMORANDA  
DR 26/UC 600 -- ALJ Allan J. Arlow's Ruling; DISPOSITION: MOTION GRANTED; TIME EXTENDED IN WHICH TO FILE REPLY.  
Copies served electronically on 12/15/09 and via U.S. Mail on 12/16/09.
- Date: 12/15/2009 Action: MOTION  
DR 26/UC 600 -- NPCC's Motion to Enlarge Time to file response to Qwest filing. Electronically filed. Hard copy rec'd. 12/16/09.
- Date: 12/8/2009 Action: MOTION  
DR 26/UC 600 -- Qwest Corporation's Motion to Strike First Amended Complaint. Electronically filed. Hard copy rec'd. 12/9/09.
- Date: 12/8/2009 Action: OTHER FILING/PLEADING  
DR 26/UC 600 -- Qwest's Declaration of Lawrence Reichman in Support of Qwest's Motion to Strike First Amended Complaint with Exhibit A. Electronically filed. Hard copy rec'd 12/9/09. (See also 12/8/09 Motion).
- Date: 12/8/2009 Action: MOTION  
DR 26/UC 600 -- Qwest Corporation's Motion to Strike Second Amended Complaint (and Response to Complainants' Precautionary Motion to Allow Second Amendment to the Complaint docketed separately). Electronically filed. Hard copy rec'd 12/9/09.
- Date: 12/8/2009 Action: COMMENTS/RESPONSE  
DR 26/UC 600 -- Qwest Corporation's Response to Complainants' Precautionary Motion to Allow Second Amendment to the Complaint. Electronically filed. (See 12/8/09 Motion to Strike Second Amended Complaint for electronic version of document.)
- Date: 11/20/2009 Action: LAW JUDGE CONFERENCE REPORT  
DR 26/UC 600 -- ALJ Allan J. Arlow's Prehearing Conference Report; DISPOSITION: SCHEDULE ADOPTED.  
  
Copies served electronically on 11/20/09.
- Date: 11/18/2009 Action: CONFERENCE  
DR 26/UC 600--NOTICE OF TELEPHONE PREHEARING CONFERENCE served electronically on 11/18/09 and via U.S. Mail on 11/19/09.  
  
TELEPHONE CONFERENCE scheduled 11/20/2009  
Room: VIA TELEPHONE--CAVE  
Reporter: TAPE  
Law Judge: ARLOW, ALLAN
- Date: 11/18/2009 Action: COMMENTS/RESPONSE  
DR 26/UC 600 -- Qwest's letter to Administrative Law Judge Allan Arlow. Electronically filed by Larry Reichman. Hard copy rec'd 11/19/09.
- Date: 11/16/2009 Action: AMENDED (APPLICATION, COMPLAINT, PETITION)  
DR 26/UC 600 -- NPCC's First Amended Complaint. Electronically filed by Frank G. Patrick. Hard copy rec'd 11/17/09.

## Summary Report

## DR 26 NORTHWEST PUBLIC COMMUNICATIONS COUNCIL

Date: 11/16/2009	Action: AMENDED (APPLICATION, COMPLAINT, PETITION)
DR 26/UC 600 -- NPCC's Second Amended Complaint and Precautionary Motion to allow Second Amendment to the Compliant. Electronically filed by Frank G. Patrick. Hard copy rec'd 11/17/09.	
Date: 10/27/2009	Action: LAW JUDGE RULING/MEMORANDA
DR 26/UC 600 -- ALJ Allan J. Arlow's Ruling; DISPOSITION: MOTION GRANTED; TIME EXTENDED IN WHICH TO FILE AMENDED COMPLAINT.	
Copies served electronically on 10/26/09 and via U.S. Mail on 10-27-09.	
Date: 10/19/2009	Action: MOTION
DR 26/UC 600 -- NPCC's Unopposed Motion for Enlargement of Time to File an Amended Complaint from 10-16-09 to 11-16-09 and Declaration in Support of Unopposed Motion for Enlargement of Time to File an Amended Complaint. Electronically filed by Frank G. Patrick. Hard copy rec'd 10/19/09.	
Date: 9/17/2009	Action: LAW JUDGE RULING/MEMORANDA
DR 26/UC 600 -- ALJ Allan J. Arlow's Ruling; DISPOSITION: MOTION GRANTED; TIME EXTENDED IN WHICH TO FILE AMENDED COMPLAINT.	
Copies served electronically and via U.S. Mail on 9-17-09.	
Date: 9/15/2009	Action: MOTION
DR 26/UC 600 -- NPCC's Unopposed Motion for Enlargement of Time to File an Amended Complaint with Declaration in Support of Motion for Enlargement of Time to File an Amended Complaint. Electronically filed by Frank G. Patrick. Hard copy rec'd 9/17/09.	
Date: 8/17/2009	Action: LAW JUDGE RULING/MEMORANDA
DR 26/UC 600 -- ALJ Allan Arlow's Ruling; DISPOSITION: MOTION GRANTED; TIME EXTENDED IN WHICH TO FILE AMENDED COMPLAINT.	
Copies served electronically and via U.S. Mail on 8-17-09.	
Date: 8/14/2009	Action: MOTION
DR 26/UC 600 -- NPCC's Unopposed Motion for Enlargement of Time to File an Amended Complaint with Declaration in Support of Motion for Enlargement of Time to File an Amended Complaint. Electronically filed by Frank G. Patrick. Hard copy rec'd 8/17/09.	
Date: 7/27/2009	Action: LAW JUDGE RULING/MEMORANDA
DR 26/UC 600 -- ALJ Arlow's Ruling; DISPOSITION: MOTION GRANTED; TIME EXTENDED IN WHICH TO FILE AMENDED COMPLAINT.	
Copies served electronically on 7/27/09 and mailed 7/28/09.	
Date: 7/24/2009	Action: MOTION
DR 26/UC 600 -- NPCC's Motion requesting a three-week extension of time to file Amended Complaint from 7/27/09 - 8-17-09. Electronically filed by Frank G. Patrick. Hard copy rec'd 7/27/09.	
Date: 7/22/2009	Action: OTHER FILING/PLEADING
DR 26/UC 600 -- Counsel of Record's Withdrawal & Substitution of Counsel for Northwest Public Communications Council. Electronically filed by Brooks E. Harlow and Frank G. Patrick. Hard copy rec'd 7/27/09.	
Date: 7/10/2009	Action: OTHER FILING/PLEADING
DR 26/UC 600 -- NPCC's letter stating that the amended complaint will be filed by July 27, 2009. Electronically filed by Brooks E. Harlow. Hard copy rec'd. 7/14/09.	

## Summary Report

## DR 26 NORTHWEST PUBLIC COMMUNICATIONS COUNCIL

- Date: 5/15/2009 Action: CONFERENCE  
DR 26, UC 600--NOTICE OF TELEPHONE PREHEARING CONFERENCE served electronically and via U.S. Mail on DR 26/UC 600 Service Lists. (Dial-in #503-945-7131.)
- TELEPHONE CONFERENCE scheduled 5/21/2009 9:30 AM  
City: SALEM OR  
Room: VIA TELEPHONE--CAVE Building: PUC  
Reporter: TAPE  
Law Judge: ARLOW, ALLAN
- Date: 5/4/2009 09-155 Action: ORDER  
DR 26/UC 600 - Order No. 09-155 signed by Commissioners Lee Beyer, John Savage, and Ray Baum;  
DISPOSITION: MOTION FOR LEAVE TO AMEND COMPLAINT DENIED IN PART AND GRANTED IN PART.
- Copies served electronically and via U.S. Mail on 5/4/09.
- Date: 3/30/2009 Action: COMMENTS/RESPONSE  
DR 26/UC 600 - NPCC's Reply in Support of Complainant's Motion for Leave to Amend Complaint; Filed electronically by Brooks E. Harlow; Hard copies rec'd 3/31/09. Original certificate of service rec'd 4/1/09.
- Date: 3/13/2009 Action: COMMENTS/RESPONSE  
DR 26/UC 600 -- Qwest Corporation's Response to NPCC's Motion for Leave to Amend Complaint. Electronically filed by Lawrence H. Reichman. Hard copy rec'd. 3/16/09.
- Date: 2/26/2009 Action: MOTION  
DR 26/UC 600 - NPCC's Motion for Leave to Amend Complaint and Exhibit A (and Proposed Amended Complaint). Electronically filed by David L. Rice. Hard copy rec'd. 2/27/09.
- Date: 2/6/2009 Action: LAW JUDGE CONFERENCE REPORT  
DR 26/UC 600 - ALJ Arlow's Prehearing Conference Report setting due date for amended complaint or joint stipulation.
- Copies served electronically and via U.S. Mail on 2/6/09.
- Date: 2/6/2009 Action: LAW JUDGE CONFERENCE REPORT  
DR 26/UC 600 -- ALJ Arlow's Prehearing Conference Report (Revised); Disposition: Abeyance Lifted, Proceedings to Recommence; Date Set for Motion to File Amended Complaint or Joint Stipulation, and the Prehearing Conference Report issued earlier this date is rescinded.
- Copies served electronically on 2/6/09 and via U.S. Mail on 2/9/09.
- Date: 2/5/2009 Action: CONFERENCE  
DR 26/UC 600 - NOTICE OF TELEPHONE PREHEARING CONFERENCE served electronically and via U.S. Mail on 2/3/09.
- TELEPHONE CONFERENCE scheduled 2/5/2009 2:00 PM  
Room: MEADOW CONF. RM. Building: PUC  
Address: VIA TELEPHONE  
Reporter: NONE  
Law Judge: ARLOW, ALLAN
- Date: 1/28/2009 Action: COMMENTS/RESPONSE  
DR 26/UC 600 - Qwest Corporation's Response to NPCC's Motion to Lift Order Holding Case in Abeyance. Electronically filed by Lawrence H. Reichman. Hard copy rec'd 1/29/09.
- Date: 1/14/2009 Action: MOTION  
DR 26/UC 600--Northwest Public Communications Council's (NPCC's) Motion to Lift Order Holding Case in Abeyance; Filed electronically by Brooks E. Harlow; Hard copy rec'd 1/15/09.



## Summary Report

## DR 26 NORTHWEST PUBLIC COMMUNICATIONS COUNCIL

- Date: 4/1/2008 Action: LAW JUDGE RULING/MEMORANDA  
DR 26/UC 600 - ALJ Petrillo's Ruling Granting NPCC's Motion to withdraw its Motion requesting that the Commission lift its order holding this matter in abeyance.
- Copies served electronically and via U.S. Mail on 4/1/08.
- Date: 3/18/2008 Action: MOTION  
DR 26/UC 600 -- NPCC's Motion to withdraw its motion to lift abeyance order, filed on 2/4/08 with Attachments A - D. Electronically filed by Brooks E. Harlow. Hard copy rec'd 3/19/08.
- Date: 2/19/2008 Action: COMMENTS/RESPONSE  
DR 26/UC 600 -- Qwest's Response to NPCC's Motion to Lift Order Holding Case in Abeyance. Electronically filed by Alex M. Duarte. Hard copy rec'd 2/20/08.
- Date: 2/4/2008 Action: MOTION  
DR 26/UC 600 -- Northwest Public Communications Council's Motion to Lift Order Holding Case in Abeyance. Electronically filed by Brooks E. Harlow. Hard copy rec'd. 2/5/08.
- Date: 5/3/2005 05-208 Action: ORDER  
DR 26/UC 600 -- Order No. 05-208, signed by Commissioners Lee Beyer; John Savage, and Ray Baum;  
DISPOSITION: ALJ RULING AFFIRMED.
- Copies served electronically and via U.S. Mail on 5/5/05.
- Date: 4/8/2005 Action: COMMENTS/RESPONSE  
DR 26/UC 600 -- Qwest's Response to NPCC's Request for Certification. Electronically filed by Lawrence Reichman. Hard copy rec'd 4/11/05.
- Date: 4/4/2005 Action: MOTION  
DR26/UC 600 - NPCC's Request of NPCC for Certification to the Commission. Electronically filed by David L. Rice. Hard copy rec'd 4/5/05.
- Date: 3/24/2005 Action: LAW JUDGE RULING/MEMORANDA  
DR 26/UC 600 - ALJ Petrillo's Ruling holding proceeding in abeyance pending FCC decision.
- Copies served electronically and via U.S. Mail on 3/24/05.
- Date: 3/18/2005 Action: LAW JUDGE CORRESPONDENCE  
DR 26/UC 600 - ALJ Petrillo's letter to the parties regarding status of this docket.
- Copies served electronically and via U.S. Mail on 3/18/05.
- Date: 3/1/2005 Action: CONFERENCE  
DR 26/UC 600 - NOTICE OF TELEPHONE CONFERENCE scheduled 3/3/2005 2:00 PM  
Room: CAVE Building: PUC  
Address: VIA TELEPHONE  
Reporter: TAPE  
Law Judge: PETRILLO, SAM
- Notice of Telephone Prehearing Conference served electronically on 2/28/05 and via U.S. Mail on 3/1/05. (Dial-in #503-378-3333, ref. #5156.)
- Date: 2/17/2005 Action: COMMENTS/RESPONSE  
DR26/UC 600 - Qwest's Reply Memorandum in Support of Cross-Motion for Summary Judgment in Docket DR 26/US 600. Electronically filed by Lawrence Reichman. Hard copy rec'd 2/18/05.
- Date: 2/9/2005 Action: COMMENTS/RESPONSE  
DR 26/UC 600 - NPCC's Comments regarding staff's interest in hearing from parties regarding the "appropriate jurisdictional forum for this dispute." (Also faxed on 2/7/05.) Electronically filed by Brooks E. Harlow. Hard copy rec'd 3/9/05.

## Summary Report

## DR 26 NORTHWEST PUBLIC COMMUNICATIONS COUNCIL

Date: 2/8/2005 Action: LAW JUDGE RULING/MEMORANDA  
DR 26/UC 600 - ALJ Petrillo's Ruling Granting Qwest's request for an extension of time to file its reply in support of its Cross-Motion for Summary Judgment.

Copies served electronically 2/7/05 and via U.S. Mail on 2/8/05.

Date: 2/4/2005 Action: COMMENTS/RESPONSE  
DR 26/UC 600 - QWEST CORPORATION'S Response to NPCC's Motion that Case be Classified as a Major Proceeding and Requesting Oral Argument. Filed by Lawrence Reichman.

Date: 2/3/2005 Action: MOTION  
DR 26/UC 600 - Qwest's Motion for Extension to Reply in Support of Cross-Motion for Summary Judgment. Filed by Lawrence Reichman.

Date: 1/25/2005 Action: COMMENTS/RESPONSE  
DR 26/UC 600 - NPCC's Reply to Qwest's Response to NPCC's Motion for Summary Judgment and NPCC's Response to Qwest's Motion for Summary Judgment, including Affidavit of Brooks E. Harlow with Exhibits 1 - 4. Filed by Brooks E. Harlow.

Date: 1/25/2005 Action: MOTION  
DR 26/UC 600 - NPCC's Motion that Case be Reclassified as a Major Proceeding and Request for Oral Argument Before Entry of Final Order. Filed by Brooks E. Harlow.

Date: 1/25/2005 Action: COMMENTS/RESPONSE  
DR 26/UC 600 - STAFF of the Public Utility Commission of Oregon's Reply to Qwest's Cross-Motion for Summary Judgment; Filed by Jason Jones.

Date: 1/7/2005 Action: LAW JUDGE RULING/MEMORANDA  
DR 26/UC 600 - ALJ Petrillo's Ruling Granted NPCC's Motion for Extension of Time.

Copies served electronically and via U.S. Mail on 1/7/05

Date: 1/6/2005 Action: MOTION  
DR 26/UC 600 - NPCC's Expedited Motion for an Extension of Time to Reply to Qwest Re Motion for Summary Judgment. Faxed by Brooks E. Harlow.

Date: 1/4/2005 Action: MOTION  
DR 26/UC 600 - Qwest Corporation's Cross-Motion for Summary Judgment and Affidavits of Lawrence Reichman and Sheila M. Harris. Filed by Lawrence Reichman.

Date: 1/4/2005 Action: COMMENTS/RESPONSE  
DR 26/UC 600 - Qwest's Memorandum in Opposition to NPCC's Motion for Partial Summary Judgment and in Support of Qwest's Cross-Motion for Summary Judgment. Filed by Lawrence Reichman.

Date: 12/6/2004 Action: LAW JUDGE RULING/MEMORANDA  
DR 26/UC 600 -- ALJ Michael Grant issues Ruling: DISPOSITION: MOTION FOR EXTENSION OF TIME GRANTED.  
Copies served electronically and via mail on 12/6/04.

Date: 12/3/2004 Action: MOTION  
DR 26/UC 600 - Qwest's Motion for an extension of time through January 3, 2005, in which to serve and file its response to NPCC's Motion for Partial Summary Judgment now due December 20, 2004. Filed by Lawrence Reichman.

Date: 12/1/2004 Action: OTHER FILING/PLEADING  
DR 26/UC 600 - NPCC's Revised Declaration of Randy Linderman, entirely replacing the original. Faxed by Brooks E. Harlow. Hard copy (1) rec'd 12/2/04.

Date: 11/29/2004 Action: RECONSIDERATION  
DR 26/UC 600 - PUC Decision (Upheld by Marion County Court) Reversed and Remanded for Reconsideration to PUC by Court of Appeals. Faxed by Neoma Lane. (Appeal of Order No. 02-181.)

Date: 11/29/2004 Action: MOTION  
DR 26/UC 600 - NORTHWEST PUBLIC COMMUNICATIONS COUNCIL 's Motion for Summary Judgment, with Declaration of Randy Linderman. Faxed by Brooks E. Harlow. Hard copy rec'd 11/30/04.

## Summary Report

## DR 26 NORTHWEST PUBLIC COMMUNICATIONS COUNCIL

Date: 7/3/2002	Action: APPEAL
Transmittal of Record to Marion County Circuit Court ; Case No. 02C14442. PUC appeal #02-05.	
Date: 6/7/2002	Action: APPEAL
Summons Received, Marion County Circuit Court Case No. 02C14442, Attorneys for NORTHWEST PUBLIC COMMUNICATIONS COUNCIL (fka THE NORTHWEST PAYPHONE ASSOCIATION) = Richard Busch and D. Gary Christensen. Appeal of Order No. 02-181.	
Date: 3/22/2002	02-181 Action: ORDER
DR 26/UC 600 - Order No. 02-181 signed by Commissioners Roy Hemmingway, Lee Beyer and Joan H. Smith; Disposition: Complaint/Request for Declaratory Ruling Dismissed. Copies served 3/25/02.	
Date: 6/21/2001	Action: LAW JUDGE RULING/MEMORANDA
ALJ Petrillo's Ruling; Disposition: Motion to Stay Granted. Copies served 6/21/01.	
Date: 6/15/2001	Action: MOTION
Qwest Corporation's Stipulated Motion to Stay Proceedings; filed by Lawrence Reichman.	
Date: 5/31/2001	Action: OTHER CORRESPONDENCE (ACKN, SVC, LTR)
NO SEPARATE FILE FOR UC 600 -- SEE This docket for all Action entries, Calendar entries and Service List information.	
Date: 5/14/2001	Action: INITIAL (APPLICATION, COMPLAINT, PETITION)
DR 26/UC 600: THE NORTHWEST PUBLIC COMMUNICATIONS COUNCIL, on behalf of PSPs A to Z, and NPCC MEMBERS: Central Telephone, Inc.; Communication Management Services, LLC; Davel Communications, a/k/a Phonetel Technologies, Inc.; Interwest Tel, LLC; Interwest Telecom Services Corporation; NSC Communications Public Services Corporation; National Payphone Services, LLC; Pacific Northwest Payphones; Partners in Communication; T & C Management, LLC; Corban Technologies, Inc.; and Valley Pay Phones, Inc. FAXED by David L. Rice for Richard J. Busch. Hard copies received 5/18/01 and 5/21/01. See also 11/16/09 Amended Complaint filings.	
Ack Letter and Service Form served 5/25/01.	
Answer Due 6/15/01.	
No separate official file for UC 600. DR 26 contains all action entries and postings, calendar entries, and service list information.	

IN THE COURT OF APPEALS OF THE STATE OF OREGON

A166810  
UT 125/UT 80

In the Matter of

QWEST CORPORATION fka U.S. WEST  
COMMUNICATIONS .

QWEST CORPORATION,

Application for an Increase in Rates

PURSUANT TO ORAP 4.22

STIPULATED MOTION FOR AN ORDER  
TO SUPPLEMENT THE RECORD ON  
APPEAL BY ADDING PARTS OF THE  
RECORD NOT PREVIOUSLY INCLUDED  
Attached as Exhibits and Index of  
Supplements

STIPULATED MOTION

Undersigned counsel Moves the Court for an order to supplement the record with the documents identified on the Attached Exhibit 1 and attached as Exhibit 2. Counsel Respectively represent: Northwest Public Communications Council (NPCC), Petitioner; Denise Fjordbeck, representing the State of Oregon and PUC; and Lawrence H. Reichman, counsel for Qwest Corporation. Appellant Agreed to a shortened record with the understanding that it might have to be supplemented. The Order requested by this Stipulated Motion is to allow the supplement by addition of the below designated items that are a part of the record in UT 125 and DR 26 or one of its related PUC Dockets. They were not included previously due to the size of the record and the length of time of the case since its original filing in 1995 by the Commission which have been difficult to track and include.

The parties have agreed to supplement the record to add those items in the Record which each believe are pertinent for the Court's consideration. Those items are designated in Exhibit 1,

the Index of the Documents and the documents are submitted herewith as Exhibit 2. It has been agreed that the supplement should be denoted as Volume IV, Supplement to the Record with the abbreviation Supplement to Record RecSup to avoid confusion with a separate abbreviations designated in the ORAPS, and to avoid the need to reproduce the entire Record. The items to be Added are Numbered sequentially starting with the next successive page number in the Record prior to this supplement and attached and will be electronically filed or as the PUC and Court directs.

Dated: February 17, 2020

Respectfully submitted,

*s/ Frank G. Patrick*

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Frank G. Patrick – OSB 760228

PO Box 231119

Portland, OR 97281

Phone (503) 245-2828 • (503) 318-1013

[fgplawpc@hotmail.com](mailto:fgplawpc@hotmail.com)

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that I electronically Filed and Served the foregoing **STIPULATED MOTION and EX 1 and EX TO SUPPLEMENT THE RECORD**, at the Oregon Court of Appeals as follows:

Service was by:  Mailing  Hand Delivery  Email  E-Filing ORAP Rule

Public Utility Commission Of Oregon  
550 Capitol Street NE, Suite 215  
PO Box 2148  
Salem, OR 97308-2148  
**Respondent**

Jona Jolyne Maukonen, OSB 043540  
E-Mail: [jona.j.maukonen@doj.state.or.us](mailto:jona.j.maukonen@doj.state.or.us)  
Denise G. Fjordbeck, OSB 822578  
E-mail: [denise.fjordbeck@doj.state.or.us](mailto:denise.fjordbeck@doj.state.or.us)  
Oregon Dept. Justice, Appellate Div.  
1162 Court Street NE  
Salem, Oregon 97301  
Tel: 503-378-4400  
**Attorney for Respondent, PUC**

PERKINS COIE LLP  
Lawrence H. Reichman, OSB No. 860836  
1120 N.W. Couch Street, Tenth Floor  
Portland, OR 97209-4128  
Tel: 503 727-2019  
E-mail: [LReichman@perkinscoie.com](mailto:LReichman@perkinscoie.com)  
**Attorney for Respondent QWEST**

I further certify that upon review, all parties are registered with E-filing at the State of Oregon Electronic Filing System and that the motion was filed by e-filing.

E-Filing:  
**ATTN: Records Section**  
State Court Administrator  
Supreme Court Building  
1163 State Street  
Salem, OR 97301-2563

FEBRUARY 17, 2020

s/ Frank G. Patrick  
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Portland, OR 97281  
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