

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

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

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

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

**NPCC’s PROPOSAL FOR PROCEEDING**

In accordance with Your Honor’s Memorandum dated October 18, 2023, Northwest Public Communications Council (NPCC) provides this proposal containing its suggestions for how this post-remand action should proceed. Counsel apologizes that it is being filed with the Filing Center after November 2, 2023, the date suggested in the October 18 memorandum.

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

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

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

The Court of Appeals was crystal clear in saying what future proceedings in this docket should look like:

Page 2 – NPCC's **PROPOSAL FOR PROCEEDING**

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

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

After issuance of PUC Order 07-497, the obligation for Qwest to bring itself into NST compliance by calculating and paying refunds for any overcharges it made before 2007 was **self-executing**. That is, in 2007 Qwest did not require any additional orders from the PUC to trigger Qwest's obligation to do so. *Accord*: federal law (FCC order 13-24, the FCC's *Wisconsin* Order, 17 F.C.C.R. 2051 (2002) and the Telecommunications Act of 1996, 47 U.S.C. §276); Oregon law (ORS 183.310; 184.480; 756.040(2); 759.105; 759.185); and several prior PUC orders (e.g., 96-107; 96-183; 97-171; 06-515; 07-497). That is why Qwest was in contempt of earlier PUC orders and applicable law at all times

after 2007, and that contempt served as the basis for the contempt motion which should have been granted.

On an irrelevant point raised by Qwest: the Court of Appeals was not asked in the recent appeal to determine whether the record showed a refund obligation, and it misspoke in *dicta* when it said that the record did not reveal that obligation. In fact, the record clearly reveals that obligation because all 1996-2007 rates charged by Qwest were ***stipulated by Qwest*** to be “interim rates subject to refund with 11.2% interest per annum” in PUC Order 96-107, p. 3. Then, the stipulation in PUC Order 07-497 established final NST rates which replaced the “interim rates” Qwest had been charging since 1996 as a matter of law.

Thus, the law and the record unequivocally reveal that refunds are required for the time period when Qwest was charging “interim rates subject to refund.” The only missing data at this point is the dollar

amount of refunds owing to each Qwest customer, which can be easily calculated once Qwest produces its “readily available” billing records.<sup>1</sup>

With these directives in mind, there are only two efforts necessary to conclude this docket:

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

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<sup>1</sup> In a phone call in February, 2023, while Qwest was contemplating whether to file a petition for review with the Oregon Supreme Court, Qwest’s counsel, Larry Reichman, told NPCC’s counsel that those records were in electronic format, were “readily available,” and would be produced to NPCC once the Oregon Supreme Court had ruled on Qwest’s petition for review (that petition was denied June 1, 2023). Since then, Qwest has been asked and has refused to produce the records to NPCC.

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

The schedule below provides ample time for the remaining activities necessary to fulfill the Court’s ruling and bring the parties into compliance with Oregon law.<sup>2</sup>

### Schedule

#### Deadline

#### Event

November 30, 2023

Qwest will produce an analysis and all backup records showing all charges it imposed on Oregon ratepayers from May 1, 1996 to the present related to all services identified in attached **Attachment A**. The

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

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

December 15, 2023

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

December 30, 2023

NPCC and PUC will report to the ALJ on its evaluation of Qwest's 11/30/23 analysis for accuracy and completeness.

*December 30, 2023*

*If necessary, Qwest will be ordered to produce additional records so that its analysis can be made accurate and complete.*

January 15, 2024

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

March 1, 2024

Provided the 45-day payment is made, NPCC will dismiss the action at the PUC within ten days after the funds are confirmed by the receiving bank. The PUC may then impose any additional remedies on Qwest that it deems just.

RESPECTFULLY SUBMITTED:

*/s/ Frank G. Patrick*

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OSB 760228

P.O Box 231119

Portland, Oregon 97281

Attorney for NPCC

**CERTIFICATE OF SERVICE**

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

Service was by email to the addresses below:

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*/s/ Frank G. Patrick*





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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.

Confidential Material  
to Locked Cabinet  
Env. # 96(46)

[13141-0126/PA060880.072]

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Perkins Coie LLP and Affiliates

**DOCKETTEL**

636

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.

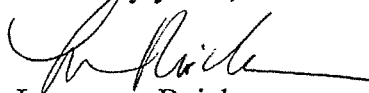
Exhibit C calculates the state average rate for each PAL line element. The rates are calculated based on the TSLRIC costs provided in Exhibit D, and reflect the subtraction of the CALC as required by the FCC's orders.

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**

<b>PRODUCT</b>	<b>USOC</b>	<b>UT 125 DEAVERAGED RATE</b>	<b>PROPOSED DEAVERAGED RATE</b>
<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

<b>PRODUCT</b>	<b>USOC</b>	<b>UT 125 DEAVERAGED RATE</b>	<b>PROPOSED DEAVERAGED RATE</b>
PAL Usage			
Minutes		\$0.03	\$0.01
Message		\$0.07	\$0.02
Custom Net/Fraud Protection		\$2.00	\$0.11
<b><u>PROPOSED REVENUE OFFSET</u></b>			
Residential Caller ID	NNK	\$5.00	\$5.60
	NSD	\$5.00	\$5.60