

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

THE NORTHWEST PUBLIC  
COMMUNICATIONS COUNCIL,

Complainant,

v.

QWEST CORPORATION,

Defendant.

NORTHWEST PUBLIC  
COMMUNICATIONS COUNCIL MOTION  
THAT CASE BE CLASSIFIED AS A  
MAJOR PROCEEDING AND REQUEST  
FOR ORAL ARGUMENT BEFORE  
ENTRY OF FINAL ORDER

The Northwest Public Communications Council (“NPCC”) hereby moves that this case be classified as a “major proceeding” because it qualifies under the mandatory provisions of the Commission’s rules. In the alternative, NPCC moves for discretionary designation of this case as a major proceeding. The NPCC incorporates by reference NPCC’s briefing on its pending motion for summary judgment in this docket for further background and factual support for this motion.

Pursuant to ORS 756.518(2), the PUC has defined a “major proceeding” as follows:

(1)[A] “major proceeding” is a proceeding that has, or is expected to have, a full procedural schedule with written testimony or written comments and that:

...

(b) has a significant impact on utility customers or the operations of a regulated utility for energy utilities having more than 50,000 customers or telecommunications utilities having more than 50,000 access lines.

NPCC MOTION THAT CASE BE CLASSIFIED AS A MAJOR  
PROCEEDING AND REQUEST FOR ORAL ARGUMENT  
BEFORE ENTRY OF FINAL ORDER - 1  
SEADOCS:195168.1

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(2) a party in a proceeding that does not meet the criteria in Section (1) of this rule may petition the ALJ for major case status if the case:

- (a) is likely to result in a significant change in regulatory policy; or
- (b) raises novel questions of fact or law.

OAR 860-014-0023. The NPCC believes that this docket qualifies as a “major proceeding” under both subsections (1) (which is mandatory) and (2) (which is permissive).

Under subsection (1) of the Commission’s rule, a major proceeding must first have a full procedural schedule with written testimony or written comments. The current status of this proceeding is that NPCC has moved for summary judgment against Qwest on liability and Qwest has cross-moved for summary judgment dismissing the proceeding based on its asserted lack of liability to NPCC members. If both motions are denied, then written testimony will be required to resolve whatever fact issues the Commission finds exist regarding liability. If, as NPCC expects, its motion for a summary determination of Qwest’s liability is granted, then there will still need to be a proceeding to determine damages, *i.e.*, the amount of Qwest’s refund obligation.

Although calculation of damages in this case is theoretically a simple matter of subtraction,<sup>1</sup> the calculations will involve review of monthly phone bills of about a dozen of Qwest’s customers from April 1997 through at least March 2003 for several thousand public access lines (“PALs”). NPCC will want discovery against Qwest to attempt to obtain electronic records of such phone bills as well as to supply any missing data that the NPCC members may not still possess. Likewise, Qwest can be expected to seek discovery against NPCC’s members regarding their payments during the refund period. When such data is compiled, the parties will likely want to sponsor expert testimony to authenticate the data and calculations. Depending on whether the parties’ calculations are different or substantially the same, the parties may also seek

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<sup>1</sup> The Commission simply needs to subtract the new NST-compliant PAL rates from the rates that were paid by NPCC members.

cross-examination of each other's witnesses. Thus, the proceeding will require a full procedural schedule under OAR 860-014-0023(1).

In addition to having a full procedural schedule, subsection (1)(b) of the major proceeding rule requires that the case have a "significant impact on utility customers." NPCC has estimated that the potential refunds that Qwest owes for the entire refund period is about \$6 million. The customers of the service at issue are mostly small businesses and the refunds are significant to their ability to compete with Qwest and to raise the necessary capital to ensure "widespread deployment" payphones as is the nation's policy. See 47 U.S.C. § 276(b)(1). Examined on a more granular level, if Qwest's rates in compliance with federal law are established at approximately \$10 per PAL per month compared to an average rate during the refund period of about \$30, the PSPs are entitled to refunds of about \$20 per line per month over a period of 70 months. Thus, the refund claim is for about \$1,400 per line.<sup>2</sup> This is unquestionably a significant impact relative to a line rate that is currently about \$10 per month.

In the alternative, if the Commission finds that this is not automatically a major case under subsection (1) of the major proceeding rule, the NPCC hereby petitions for a major case status under subsection (2)(b) of the rule. As demonstrated by the pending cross-motions for summary judgment, this case "raises novel questions of fact or law." The questions are unquestionably novel in that the claim is one of first impression before the Commission.

Assuming the Commission declares that this is a "major proceeding" the NPCC is entitled "upon request" to have oral argument "before a final order is issued." ORS 756.518(2). NPCC hereby requests oral argument pursuant to the statute. In the unlikely event this case is not deemed qualified as a major proceeding, NPCC respectfully requests oral argument in the ALJ's discretion. The issues are novel and the case has been long-running. NPCC submits that oral argument would be helpful to the Commission in reaching the correct conclusion in this

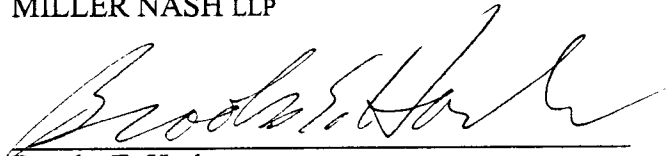
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<sup>2</sup> The numbers are admittedly just ball park estimates, but are close enough to establish significance.

case. If the rate cases are an indication, there is significant likelihood of appeal by the losing party in this docket, given the amount that is at stake. See, *Northwest Public Communications Council v. PUC*, 195 Or. App. 95, 100 P.3d 776 (Oregon App. 2004). Accordingly, the Commission should ensure that the issues are fully joined and that the Commission has an opportunity to question the parties to ensure that the issues are fully understood before a final order is entered.

DATED this 25<sup>th</sup> day of January, 2005.

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CERTIFICATE OF SERVICE

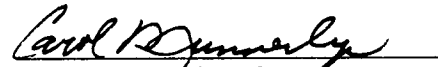
DOCKET NO. DR 26/UC 600

I hereby certify that a true and correct copy of the foregoing has been provided via electronic mail and first-class U.S. mail to the following:

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DATED at Seattle, Washington this 25<sup>th</sup> day of January, 2005.

  
Carol Munnerlyn, Secretary