

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UT 125/DR 26**

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

**NPCC's MOTION FOR RECONSIDERATION AND  
REQUEST TO SUPPLEMENT THE RECORD**

NPCC hereby requests that the ALJ reconsider part of its *Ruling* made on January 16, 2024 and order the record supplemented for the reasons set out below.

**Relief Requested**

NPCC asks the ALJ to reconsider its 1/16/24 *Ruling* and enter an order to the following effect:

- Directing the PUC to provide and include in the record all tariffs for Qwest rates for Public Access Line (PAL) and CustomNet/Fraud Protection in place from May 1, 1996 to the present.<sup>1</sup>

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<sup>1</sup> PUC's counsel has been asked to do this but has refused. See **Exhibit 6**, email dated 1/16/24 at 5:20 p.m.

- Directing Qwest to submit its billing records for charges made to Oregon ratepayers from May 1996 to present for services known as Public Access Line (PAL) and CustomNet/Fraud Protection and order those records included in the record for use in phase one and phase two.<sup>2</sup>

### **Introduction**

In the recent opinion of the Court of Appeals, the Court identified a “missing” finding/determination that prevented it from ordering full and final relief on NPCC’s *Motion to Show Cause*:

But, as our review of the PUC’s prior orders in this docket makes clear, *the PUC has not yet determined* whether Qwest’s pre-2003 payphone rates are NST-compliant.

It is literally impossible to determine if Qwest’s pre-2003 payphone rates were NST compliant unless we know what those pre-2003 payphone rates are. Yet, on the record in place today, we don’t have that information so Phase One cannot be accomplished.

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<sup>2</sup> Qwest has been asked to do this but has refused. See **Exhibit 8**.

The Court of Appeals then ordered the PUC to conduct an inquiry and make that inquiry and finding:

And if, after proper inquiry, the PUC *finds* that Qwest’s pre-2003 payphone rates exceeded that allowed by federal law and amount to “unjust and unreasonable exactions,” the PUC has a duty to protect ratepayers, including NPCC’s members, by providing some appropriate remedy.

*NPCC v. Qwest*, 323 Or.App. 151, 168 (2022)(emphasis added). The case was then remanded to make those findings and remedies.

On remand, an ALJ was appointed.<sup>3</sup>

### **Relevant Procedural Background**

On October 18, 2023, ALJ Mellgren issued a Memorandum directing the parties to attempt to agree on a procedural schedule going forward. No agreement was reached so all parties filed separate proposals.

On November 2, 2023, Qwest filed its proposed schedule. In that pleading, Qwest wrongly stated that the Court of Appeals found that the

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<sup>3</sup> Judge Hon. Traci Kirkpatrick was the first ALJ appointed; she was replaced by the current ALJ, Hon. John Mellgren.

PUC had “not supported a factual finding with substantial evidence in the record.” Actually, the Court of Appeals held that the record before it lacked evidence to determine overcharges because the PUC had not yet *formally* ruled on the NST rates that were applicable to the 1996-2003 time frame. Those are not the same thing.

On November 7, 2023, NPCC filed its proposed schedule. In that filing, NPCC illuminated the ruling of the Court of Appeals and asserted that the burdens of proof lie with the PUC (to issue a finding of the NST-compliant rates for 1996-2003) and Qwest (to prove it did not overcharge its pre-2003 ratepayers, as required by statute) in the remand proceeding. NPCC further argued that the NST-compliant rates for 1996-2003 had already been established in Orders 96-107 and 07-497 and all that remained is for the PUC to expressly “announce” that foregone finding. NPCC additionally asserts that Qwest should be ordered to produce its billing records for 1996-2003 so everyone could see whether the rates Qwest was actually charging were or were not in excess of the NST rates established in Order 07-497; the first Phase One inquiry.

On November 7, 2023, the PUC filed its Comments on Qwest's Proposed Procedural Schedule. In that filing, the PUC suggested that the ALJ should first determine the respective burdens of proof and that the matter be handled in a two-phase manner.

On November 8, 2023, the ALJ and the parties had a telephone conversation to discuss procedures.

On November 30, 2023, the ALJ issued his *Prehearing Conference Memorandum* which required the parties to notify him if the record was incomplete and what additional records were needed to conduct phase one of the remand proceeding. He did not determine at that time which parties have the burdens of proof.

On November 30, 2024, the PUC filed the record that had been used in the Court of Appeals.

On November 30, 2023, the ALJ issued the *Prehearing Conference Memorandum*. That Memorandum divides the remand proceeding into two parts roughly commensurate with the issues the Court of Appeals

required to be addressed on remand. For phase one, the ALJ directed that two questions be answered:

1. The PUC is to make a finding of the NST rates for the subject services from 1996 to 2003 and compare those rates to the actual rates Qwest charged for the subject services to determine if there were overcharges; and
2. If there were overcharges, determine an appropriate remedy.

The ALJ directed that the decision on the amount of refunds owing be made during phase two of the remand proceeding.

On December 12, 2023, NPCC filed its request for additional documents to be added to the record in the form of Qwest's billing records. These records are needed to show Qwest's *actual* pre-2003 payphone rates, the rates that are to be compared to the pre-2007 *NST* rates.

On December 12, 2023, the PUC filed its request for additional documents to be added to the record. The PUC did not include in its request any of Qwest's billing records as NPCC had requested.

On December 12, 2023, Qwest filed its request for additional records to be added to the record. Qwest also did not include its billing records in its request. Instead, Qwest requested that a large number of irrelevant records from 1999 to 2009 be included. In this pleading, Qwest argued that its actual billing records should not be ordered to be produced in Phase One.

On December 20, 2023, NPCC responded to Qwest's proposed record supplementation with contentions that those records were not relevant and would only lead to a confusion of the issues. The ALJ allowed Qwest's supplementation subject to later argument being made that they were irrelevant or otherwise inadmissible.

In a series of emails from December 13, 2023 to January 16, 2024, the parties argued about whether Qwest's pre-2003 payphone billing records should be made part of the record in Phase One of the remand case. *See Exhibits 1-6*. In those emails, PUC's counsel suggests that those billing records are only relevant in Phase Two and the ALJ could use "tariffed" rates for comparison to NST-compliant rates in Phase One

because there had been “no allegation that Qwest ever charged customers rates that differed from those approved in its relevant tariffs.” *See Exhibit 1*, email dated December 13, 2024.

Subsequent emails failed to convince the PUC’s counsel that it could not compare two rates (actual with tariffed) if it lacked one of the rates being used in the comparison. *See Exhibits 2-6*. Remarkably, in an email dated January 16, 2024, PUC staff’s counsel actually said: “[PUC] Staff has taken no position on Phase 1 issues to date” and insinuated that NPCC bears the burden of showing Qwest violated the law rather than it being Qwest’s burden to show it hasn’t violated the law, its statutory obligation. *See Exhibit 6*. And even though PUC counsel is representing the PUC, she indicated that she has “access to PUC records broadly and consequently [is] unable to assist [NPCC] in locating the referenced documents” (i.e., the Qwest cost studies from which NST rates were determined).

On January 16, 2024, the ALJ entered the subject order in which he held that Qwest's billing records were not germane to the Phase One issues and said:

NPCC's request for Qwest to produce records would be more appropriate for the second phase of these proceedings when discovery would be allowed to develop a broader evidentiary record. Such record development is not necessary to answer the first phase questions.

The purpose of this Motion is to convince the ALJ that this ruling is wrong and should be reversed.

### **Need for Records—Motion to Reconsider**

It is a simple matter of logic that we are unable to compare two rates to each other unless we are in possession of *both* rates being compared to each other. Here, that means the PUC will not be able to compare the soon-to-be-announced 1996-2003 NST rates to Qwest's actual billed rates during that period unless and until the PUC has both sets of rates. But it also means the PUC cannot determine whether the tariffs are the same as or different from the actual rates charged.

### ***Comparison of Rates Requires Both Rates***

NPCC's MOTION FOR RECONSIDERATION AND TO SUPPLEMENT RECORD - Page 9

The NST-compliant rates have already been determined because since 1996, all of the subject rates were ordered to be “interim rates subject to refund with interest at 11.2%.” The “interim” period lasted from May 1, 1996 until NST-compliant rates were set. *See* Order 96-107, pp. 2-3 (modified on other grounds in Order 01-810; 01-810 was itself reversed by the Court of Appeals. *See NPCC v. PUC*, 196 Or.App. 94 (2004)).<sup>4</sup> Those NST rates were set in Order 07-497 and appear in Attachment A to that Order. A copy of the Order 07-497 is attached as **Exhibit 7** for Your Honor’s ease of reference.

To get the second rate for comparison to NST rates in phase one (i.e., the actual charges Qwest made) we must have access to Qwest’s billing records. Those documents are not presently in the record, and they were not part of the record at the Court of Appeals, either.

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<sup>4</sup> Order 96-107 says that Qwest’s “current rates will become interim rates on May 1, 1996.” This means those interim rates being charged were fixed and set and could not be amended without Qwest seeking to change them in a formal manner. Thus, because rates remained the same unless the PUC approved a rate change, and no such rate change was requested or approved, we know Qwest’s actual 1996 rates were supposed to remain the same until the Advices 1935 and 1946 became applicable in 2003. We just don’t have the information on what those actual rates were because Qwest has refused to provide it.

### ***Comparing Tariffed to Actual Still Requires Both Rates***

The PUC's attorney has suggested that it need not obtain Qwest's ***actual*** billing rates because it can use ***tariffed*** rates instead. However, nowhere in the record do any such "tariffs" appear for purposes of being used for that evidentiary purpose. Without the tariff rates being in the record, there is nothing to compare to the NST rates and thus no difference or equivalence can be determined; Phase One cannot be fulfilled without leaving this open to dispute.

But even then, assuming *arguendo* that tariffed rates are appropriate to use for comparison to NST rates, there is also nothing in the record proving that Qwest charged ***only*** tariffed rates in the interim period. That is, we still must somehow determine that Qwest's ***actual*** rates matched the ***tariffed*** rates, and the only way to do that is to have ***both*** the tariffed rates ***and*** the actual rates Qwest charged in the record and compare them to each other.

Thus, whether we use actual rates or tariffed rates to compare to NST rates, we still need to see the actual rates so we can be certain Qwest

was not charging more than the tariffs allowed. This simple logic was explained to Qwest and the PUC's attorney to no avail; *see Exhibit 2*, email dated December 13, 2023 at 8:19 a.m.

The PUC's lawyer seems content to just assume Qwest was only charging tariffed rates because, in her words: "There is no allegation that Qwest ever charged customers rates that differed from those approved in its relevant tariffs," and thus "tariffs are appropriate and sufficient evidence to demonstrate what rates Qwest was charging customers at the time the tariffs were in effect." *See Exhibit 1*, email dated December 13, 2023 at 3:26 p.m. This is the *ultimate* issue in this case, what did Qwest actually bill and receive illegally. NPCC after 26 years is not so trusting and neither should Your Honor be.

In response to the PUC's suggestion, there can be no "allegation" that actual rates differ from the tariffed rates *unless we have both sets of those rates*. Surely, the PUC is not suggesting that someone make allegations without first having proof of same? Once we have all of the charged rates (which we have never seen) and can compare them to the

tariffed rates, we can then decide if an “allegation” that those two rates “differed from” each other is justified. But not until.<sup>5</sup>

Thus, whether we use tariffed rates or actual rates for our comparison with the NST rates, we still need to see the actual rates and we need them for the phase one “comparison” analysis.

### **Motion to Supplement Record**

For the reasons set forth above, the ALJ should order the PUC to supplement the Record by obtaining and including all of Qwest’s tariffs for payphone rates and CustomNet from May 1, 1996 to the present.

The ALJ should also order Qwest to submit its actual billing records for payphone rates and CustomNet from May 1, 1996 to the present so they may also be included in the record.

### **Prayer**

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<sup>5</sup> To Qwest’s anticipated contention that NPCC members should have those rates from their own individual billing records, it’s a heavy lift to require small businesses to maintain all of their records for over 25 years when some of the members’ principals are not even alive today. On the other hand, Oregon law requires Qwest to maintain its billing records in perpetuity, so Qwest can easily access and produce them. *See* ORS §§759.015 and 759.125 and Oregon Administrative Rules, 860-32-0060(1) (records of telecommunications utilities must be maintained forever). Indeed, Qwest’s counsel told NPCC’s counsel in February, 2023 that those records were “readily available” and would be produced to NPCC’s counsel. Qwest’s counsel has since reneged on that promise. *See Exhibit 8.*

Accordingly, NPCC moves the ALJ to reconsider his January 16, 2024 ruling that the Qwest actual rates are only “appropriate for the second phase of these proceedings,” and order Qwest to produce them immediately and include them into the record so they can be used in Phase One and Phase Two.

NPCC also asks Your Honor to order the PUC to obtain and include the subject tariffs into the record for Phase One and Phase Two.

NPCC also asks for such other and further relief as is just.

RESPECTFULLY SUBMITTED:

/s/ Frank G. Patrick  
Attorney for NPCC

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

Service was by email to the addresses below on January 22, 2024:

[PUC.FilingCenter@puc.oregon.gov](mailto:PUC.FilingCenter@puc.oregon.gov)

Larry Reichman  
Perkins Coie, LLP  
1120 N.W. Couch Street, Tenth Floor  
Portland, Oregon 97209-4128  
[lreichman@perkinscoie.com](mailto:lreichman@perkinscoie.com)

Natascha Smith  
Assistant Attorney General  
Business Activities Section

**NPCC's MOTION FOR RECONSIDERATION AND TO SUPPLEMENT RECORD - Page 14**

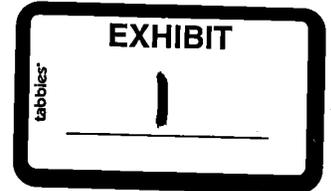
[natascha.b.smith@doj.state.or.us](mailto:natascha.b.smith@doj.state.or.us)

/s/ Frank G. Patrick

## James A. Pikel

---

**From:** Smith Natascha B <natascha.b.smith@doj.state.or.us>  
**Sent:** Wednesday, December 13, 2023 3:26 PM  
**To:** James A. Pikel; Reichman, Lawrence (Perkins Coie)  
**Cc:** frank@fgpatricklaw.com; Sherr, Adam; BEITZEL Russell \* PUC  
**Subject:** RE: UT 125 Remand



CAUTION: EXTERNAL EMAIL

Good afternoon,

I wanted to provide a response to NPCC's statement "if necessary we plan to ask the ALJ to order Qwest to provide as part of the supplemental record all of Qwest's billing records for all Oregon ratepayers who were charged for services that were required to comply with NST law (e.g., CustomNet/Fraud Protection, PAL charges, etc.) from May 5, 1996 to the present."

It is unclear if NPCC intends to include this issue in its request to supplement the record. To facilitate compliance with the requirement to detail other parties' positions in the supplementation request, I would like to provide Staff's position that requiring Qwest to produce individual billing records is premature at this point and more appropriate for inclusion in Phase II of the proceeding. There is no allegation that Qwest ever charged customers rates that differed from those approved in its relevant tariffs. As NPCC notes, the current inquiry is whether the rates that Qwest charged were or were not NST compliant. Consequently Qwest's tariffs are appropriate and sufficient evidence to demonstrate what rates Qwest was charging customers at the time the tariffs were in effect.

Best,  
Natascha Smith

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**From:** Smith Natascha B  
**Sent:** Wednesday, December 13, 2023 9:53 AM  
**To:** James A. Pikel <James.Pikel@solidcounsel.com>; Reichman, Lawrence (Perkins Coie) <lreichman@perkinscoie.com>  
**Cc:** frank@fgpatricklaw.com; Sherr, Adam <Adam.Sherr@lumen.com>; BEITZEL Russell \* PUC <Russell.BEITZEL@puc.oregon.gov>  
**Subject:** RE: UT 125 Remand

Good morning,

I would like to confirm that Staff has no object to the inclusion of the documents identified by Qwest for inclusion in the record.

Staff has identified additional documents for inclusion in the record highlighted in teal. These are the Testimony and Exhibits of Staff Witness John Reynolds cited and relied upon by the Commission in Order 07-497 as well as the Stipulation between Qwest and Staff approved in that Order. Staff has requested these documents from the PUC archives but has not yet received them. Accordingly, Staff may request additional time to produce these documents if necessary. Please share your position on including these items in the record as soon as feasible.

As you are aware, Staff initially intended to seek additional time for review of the appeals record. However due to the concern expressed by NPCC about timelines, Staff reconsidered its request. Instead, in its supplementation request, Staff will notice its intent to seek leave to supplement the record if it becomes clear that arguments being made by either Qwest or NPCC need additional factual background to support a Commission decision.

Best,  
Natascha Smith

**From:** James A. Pikel <[James.Pikel@solidcounsel.com](mailto:James.Pikel@solidcounsel.com)>  
**Sent:** Wednesday, December 13, 2023 6:19 AM  
**To:** Reichman, Lawrence (Perkins Coie) <[lreichman@perkinscoie.com](mailto:lreichman@perkinscoie.com)>  
**Cc:** Smith Natascha B <[natascha.b.smith@doj.state.or.us](mailto:natascha.b.smith@doj.state.or.us)>; [frank@fgpatricklaw.com](mailto:frank@fgpatricklaw.com); Sherr, Adam <[Adam.Sherr@lumen.com](mailto:Adam.Sherr@lumen.com)>  
**Subject:** Re: UT 125 Remand

**\*CAUTION EXTERNAL EMAIL\*** This email originated from outside of DOJ. Treat attachments and links with caution. **\*CAUTION EXTERNAL EMAIL\***

Larry,  
The current inquiry is not whether Qwest's rates from 1996 to 2003 were or were not "tariffed" nor is it whether Qwest was charging the tariffed rates. That is a completely separate issue.

The current inquiry is whether those interim/tariffed-or-not rates that Qwest actually charged were or were not NST compliant. Therefore, we need to see the evidence of the actual rates charged, not evidence of the tariff. That Qwest may or may not have charged only tariffed rates thus means nothing other than that Qwest might also be guilty of violating the tariff, which is not (yet) in issue.

If all you plan to do is say "see, we were charging the tariffed rates" then your argument is a non sequitur designed to mislead the ALJ away from the actual issue in play. And even then, you can't make that argument without showing the actual rates charged and comparing them to the tariffed rates, can you? We thus need to see Qwest's actual billing records, either way.

I suggest, probably in vain, that Qwest stop attempting to mislead and obfuscate and instead concentrate on the actual issue: were the rates Qwest actually charged between 1996 and 2003 NST compliant or not? That is the main issue in phase one. And we both know the answer, don't we?

Jim Pikel  
214-212-6628  
Sent from iPad, apologies any spelling errors.

The mountain remains unmoved at seeming defeat by the mist. — Rabindrath Tagore

On Dec 12, 2023, at 3:58 PM, Reichman, Lawrence (Perkins Coie) <[lreichman@perkinscoie.com](mailto:lreichman@perkinscoie.com)> wrote:

CAUTION: EXTERNAL EMAIL

Jim,

We would intend to include confidential documents and have them treated under the current protective order.

We do not agree to provide all the billing records as you request as part of Phase I because we don't see those as relevant or within the scope of what the judge ordered. The rates charged for purposes of Phase I were tariffed and we can agree to what those rates were for different time periods without delving into billing records for all customers.

Best,  
Larry

**Lawrence Reichman | Perkins Coie LLP**

**PARTNER**

1120 N.W. Couch Street Tenth Floor

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E. [LReichman@perkinscoie.com](mailto:LReichman@perkinscoie.com)

**PERKINS COIE**



**2022  
PRO BONO**

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**From:** James A. Piki <[James.Piki@solidcounsel.com](mailto:James.Piki@solidcounsel.com)>

**Sent:** Tuesday, December 12, 2023 1:38 PM

**To:** Reichman, Lawrence (POR) <[LReichman@perkinscoie.com](mailto:LReichman@perkinscoie.com)>; Smith Natascha B <[natascha.b.smith@doj.state.or.us](mailto:natascha.b.smith@doj.state.or.us)>; [frank@fgpatricklaw.com](mailto:frank@fgpatricklaw.com)

**Cc:** Sherr, Adam <[Adam.Sherr@lumen.com](mailto:Adam.Sherr@lumen.com)>

**Subject:** RE: UT 125 Remand

Larry:

On your highlighted documents, I assume you will be including all of the documents that were/are “confidential” such as those in the entry dated 4/11/2001 named “locked envelope #96/31.” If otherwise, please advise.

Because phase 1 deals with whether Qwest charged only NST-compliant rates, if necessary we plan to ask the ALJ to order Qwest to provide as part of the supplemental record all of Qwest’s billing records for all Oregon ratepayers who were charged for services that were required to comply with NST law (e.g., CustomNet/Fraud Protection, PAL charges, etc.) from May 5, 1996 to the present. That is the best evidence of charges made and whether they complied with the NST can then be determined from the NST rates adopted in 07-497. Those records are currently in Qwest’s possession, so we are asking you for that supplementation before going to the judge. Please let us know if you will comply with that request.

Finally, we reserve our rights to object to any of your supplemental records and will respond on or before December 21, 2023 once we see them. By not objecting to your proposed

supplementation at this time, we are not waiving our right to argue that they are not relevant or for some other reason should not be considered as part of the record in this case.

Thank you.  
Jim Piki

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**From:** Reichman, Lawrence (Perkins Cole) <[LReichman@perkinscole.com](mailto:LReichman@perkinscole.com)>  
**Sent:** Tuesday, December 12, 2023 12:43 PM  
**To:** Smith Natascha B <[natascha.b.smith@doj.state.or.us](mailto:natascha.b.smith@doj.state.or.us)>; [frank@fgpatricklaw.com](mailto:frank@fgpatricklaw.com); James A. Piki <[James.Piki@solidcounsel.com](mailto:James.Piki@solidcounsel.com)>  
**Cc:** Sherr, Adam <[Adam.Sherr@lumen.com](mailto:Adam.Sherr@lumen.com)>  
**Subject:** UT 125 Remand

CAUTION: EXTERNAL EMAIL

Dear parties,

I'm writing to confer about Qwest's intent to ask Judge Mellgren to supplement the record on remand. The principal items relate to the establishment of payphone service rates in Phase II of UT 125 in the 2000-02 timeframe. I'm attaching a copy of the UT 125 docket where I have highlighted in yellow the items Qwest thinks should be included in the record for purposes of remand. These all pertain to the issue of whether Qwest's payphone service rates comply with the new services test, and thus are clearly within the scope of the issues identified to be addressed on remand by Judge Mellgren

I suspect, but cannot confirm at this time, that the majority of these documents are included in the Transmittal of Shortened Record that the Commission prepared and forwarded to the court in connection with NPCC's appeal of the Phase II orders. You will see that on entry on June 12, 2002. In the event that record on review is not accessible for some reason, and in the interest of ensuring a complete record, I have separately highlighted specific entries that pertain to that issue.

In addition, there are a few documents in the UC 600/DR 26 record that are relevant to issues on remand. I have highlighted those in the second docket sheet attached hereto.

Please let me know your position on including these items in the record at your earliest opportunity. Thank you for your attention to this matter.

Best,  
Larry

**Lawrence Reichman | Perkins Cole LLP**  
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Portland, OR 97209-4128  
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\*\*\*\*\* CONFIDENTIALITY NOTICE \*\*\*\*\*

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

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## James A. Piki

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Sent from iPad, apologies any spelling errors.

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Finally, we reserve our rights to object to any of your supplemental records and will respond on or before December 21, 2023 once we see them. By not objecting to your proposed supplementation at this time, we are not waiving our right to argue that they are not relevant or for some other reason should not be considered as part of the record in this case.

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**From:** Reichman, Lawrence (Perkins Coie) <[LReichman@perkinscoie.com](mailto:LReichman@perkinscoie.com)>  
**Sent:** Tuesday, December 12, 2023 12:43 PM  
**To:** Smith Natascha B <[natascha.b.smith@doj.state.or.us](mailto:natascha.b.smith@doj.state.or.us)>; [frank@fgpatricklaw.com](mailto:frank@fgpatricklaw.com); James A. Piki <[James.Piki@solidcounsel.com](mailto:James.Piki@solidcounsel.com)>  
**Cc:** Sherr, Adam <[Adam.Sherr@lumen.com](mailto:Adam.Sherr@lumen.com)>  
**Subject:** UT 125 Remand

CAUTION: EXTERNAL EMAIL

Dear parties,

I'm writing to confer about Qwest's intent to ask Judge Mellgren to supplement the record on remand. The principal items relate to the establishment of payphone service rates in Phase II of UT 125 in the 2000-02 timeframe. I'm attaching a copy of the UT 125 docket where I have highlighted in yellow the items Qwest thinks should be included in the record for purposes of remand. These all pertain to the issue of whether Qwest's payphone service rates comply with the new services test, and thus are clearly within the scope of the issues identified to be addressed on remand by Judge Mellgren

I suspect, but cannot confirm at this time, that the majority of these documents are included in the Transmittal of Shortened Record that the Commission prepared and forwarded to the court in connection with NPCC's appeal of the Phase II orders. You will see that on entry on June 12, 2002. In the event that record on review is not accessible for some reason, and in the interest of ensuring a complete record, I have separately highlighted specific entries that pertain to that issue.

In addition, there are a few documents in the UC 600/DR 26 record that are relevant to issues on remand. I have highlighted those in the second docket sheet attached hereto.

Please let me know your position on including these items in the record at your earliest opportunity. Thank you for your attention to this matter.

Best,  
Larry

**Lawrence Reichman | Perkins Coie LLP**

**PARTNER**  
1120 N.W. Couch Street Tenth Floor  
Portland, OR 97209-4128  
D. +1.503.727.2019  
F. +1.503.346.2019  
E. [LReichman@perkinscoie.com](mailto:LReichman@perkinscoie.com)

**PERKINS**coie



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## James A. Piki

---

**From:** James A. Piki  
**Sent:** Friday, December 29, 2023 1:45 PM  
**To:** Reichman, Lawrence (Perkins Coie)  
**Cc:** Frank Patrick  
**Subject:** RE: call  
**Attachments:** LkReichMar 31, 2006 Prop Rates Stip ut125hah11523.pdf

Hmmm. How about this:

- Qwest stipulates that it charged the PUC tariffed rates, and nothing but the tariffed rates, at all times between 1996 and 2007 for all PAL and CustomNet services to all Oregon ratepayers: the complete roster of those who are entitled to refunds in this case.
- Qwest stipulates that it told the PUC the truth about its rates in the attachments to your letter submitted before the stipulation in 07-497 was entered (see attached).
- Qwest stipulates that the tariffed rates charged by Qwest were not NST compliant between 1996 and 2003 but were in fact several times higher than NST rates in most cases, which is what triggered the voluntary rate reductions in 2003.

If Qwest has pushback to any of that, I'd love to see it because the record seems pretty clear about all of that.

But I was hoping Qwest would see the writing on the wall and want to discuss other possible stipulations as well. However, if Qwest won't even stipulate to unquestionably true facts, you're probably right that any discussion would be a waste of time.

We will do this the hard way instead. I'm sure your client won't like the results of that process, but I've found you often can't save people from themselves.

Jim



---

**From:** Reichman, Lawrence (Perkins Coie) <LReichman@perkinscoie.com>  
**Sent:** Friday, December 29, 2023 12:15 PM  
**To:** James A. Piki <James.Piki@solidcounsel.com>  
**Subject:** RE: call

CAUTION: EXTERNAL EMAIL

Jim,

Sorry for the delay in responding. We are so far apart on all issues, I don't think it would be worthwhile. Happy New Year.

Best,  
Larry

**Lawrence Reichman | Perkins Coie LLP**

**PARTNER**  
1120 N.W. Couch Street Tenth Floor  
Portland, OR 97209-4128  
D. +1.503.727.2019  
F. +1.503.346.2019  
E. [LReichman@perkinscoie.com](mailto:LReichman@perkinscoie.com)

**PERKINS****COIE**



**2022  
PRO BONO**

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**From:** James A. Piki <[James.Piki@solidcounsel.com](mailto:James.Piki@solidcounsel.com)>  
**Sent:** Thursday, December 21, 2023 9:49 AM  
**To:** Reichman, Lawrence (POR) <[LReichman@perkinscoie.com](mailto:LReichman@perkinscoie.com)>  
**Subject:** call

Larry:

I left you a voice message several days ago, but perhaps you did not get it.

I'd like to speak with you about the Qwest/NPCC/PUC case to see if the parties can make some agreements or stipulations that would narrow the remaining issues and save our ALJ some time and effort, maybe a lot of time and effort. Let me know if you are interested in having that discussion.

If we don't speak before that, I hope you and your family have very happy holidays.

**James A. Piki** PARTNER  
Scheef & Stone, LLP

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2600 Network Boulevard, Suite 400, Frisco, TX 75034



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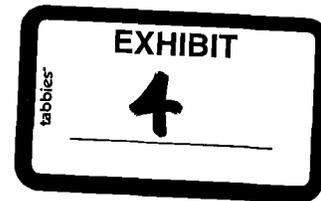
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James A. Piki

---

**From:** James A. Piki  
**Sent:** Tuesday, January 16, 2024 3:14 PM  
**To:** Smith Natascha B  
**Cc:** Frank Patrick  
**Subject:** Inquiry

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged



Natascha:

As you know, in phase one we are endeavoring to determine whether Qwest's actual rates charged to PSPs from 1996 to 2003 were NST compliant. **To make that determination, NPCC contends that we will need to see Qwest's actual billing records.** I know you have disagreed with this in the past, and I asked you to reconsider that position.

**But in order to determine if there were overcharges, we still need rates Qwest charged during that time period in order to compare them to the lawful NST charges which we know from 07-497.** NST charges are required to be cost-based, meaning if Qwest established its rates in 2003 (via advice 1935 dated 3/17/03, and advice 1946 dated 8/28/03), and if those rates were NST-compliant, they would necessarily have been based on Qwest's costs of providing the services plus a small amount for overhead—the NST standard. So where are those cost studies?

**I have searched the record and cannot seem to locate Qwest's cost studies.** I know they exist, somewhere, because per the Direct Testimony of John Reynolds on October 15, 2007, pp. 3-4, Qwest filed with the PUC a proposal including "costs studies" on February 28, 2003 that supposedly backed up Advice 1935 filed on March 31, 2006, and Mr. Reynolds "compared" Qwest's submitted costs with costs calculated using the UNE costs developed in Dockets UM 773, UM 844, and UT 148 to arrive at his opinion that the advice 1935 rates were, in fact, NST compliant. However, I cannot find those costs studies in the record index or the index at the Court of Appeals. Nor are they in the Reynolds transcript which we have reviewed. Other exhibits seem to be missing from the Reynolds transcript, also, although they are referenced. I originally did not think these costs were

pertinent to the remaining issues in the case, but given Qwest's request to supplement the record, they might *become* pertinent now that that request has been granted. If you can help us locate those cost studies, it would be appreciated.

I was also wondering if the PUC could help us out with the *overall* record in the 2003 timeframe. Here's what I mean by that:

When looking at the record index for UT 125 and DR 26, I note some pretty significant gaps. The UT 125 record index that we have skips from 11/18/2002 to 2/9/2006—39 months. See page 10/65. Even the DR 26 index skips from 7/3/2002 to 11/29/2004—28 months. See pages 13 and 14 of 14. Neither index has any records with dates in 2003, which is odd because 2003 is the year in which Qwest's cost studies were supposedly submitted and reviewed (see Reynold's testimony).

Can you help us find those "cost studies"? Are they somewhere in the record/index and I just missed them? If so, they might be germane to the NST compliance issue. And can you also help explain the gaps in the index?

One final inquiry: has ALJ Mellgren been delegated authority to make a final determination in this case per ORS 183.411? If not, exactly what authority does he have and what is the statutory basis for that authority? This inquiry is made pursuant to ORS 183.413(1) and (2)(k).

Thank you for your assistance.

**James A. Pikel** PARTNER

**Scheef & Stone, LLP**

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**James A. Piki**

---

**From:** James A. Piki  
**Sent:** Tuesday, January 16, 2024 3:35 PM  
**To:** Smith Natascha B  
**Cc:** Frank Patrick  
**Subject:** Burdens and duties

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged



Natascha:

If I am misreading the room, I apologize.

But from comments you have made and positions you have taken thus far, it appears that you (or your client) believe phase one involves NPCC somehow providing briefing or proof on whether Qwest charged rates higher than NST rates from 1996-2003. My understanding of Oregon law is completely different from that.

My understanding is that it is the PUC's **statutory obligation** to protect ratepayers by ensuring that regulated utilities such as Qwest observe the law. In this case, that means **the PUC** is tasked with ensuring that Qwest has not charged rates in excess of lawful, NST-compliant rates during the relevant period because if it did, Qwest is in violation of Oregon and federal law. **I do not see it being NPCC's burden to argue/prove/verify those charges, but rather the PUC is to evaluate whether Qwest's charges were NST compliant and if not, remedy the overcharges.**

My understanding is clearly supported by both Oregon statutory law and the clear language in the court of appeals' recent opinion where the court confirmed multiple PUC duties in no uncertain terms. From the opinion:

"As far as we can tell, the PUC has never (properly) **determined** whether Qwest's 1996-2003 payphone rates were NST-compliant."

The court then ordered the PUC to do so; Order 07-497 stipulates that the pre-2007 rates were not NST compliant, so that "**proper** determination" should be simple since it has already been made as a matter of fact.

“The PUC’s broad regulatory authority consists of ‘powers **and duties.**’ In addition to its ‘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 exercising that power, the PUC ‘**shall represent**’ ratepayers ‘in all controversies respecting rates,’ *id.*, ‘**shall make use of** [its] jurisdiction and powers’ to ‘**protect**’ ratepayers ‘from unjust and unreasonable exactions and practices,’ *id.*, ‘**shall inquire into** any \* \* \* violation of any law of this state \* \* \* relating to public utilities and telecommunications utilities by any public utility or telecommunications utility doing business therein,’ and ‘**shall enforce all laws of this state** relating to’ such utilities, ORS 756.160(1).”

To me, the most critical parts of the quotes above are the parts where the COA confirms that the PUC “shall represent **ratepayers**” and the PUC must “enforce all laws of this state,” meaning the PUC is akin to a prosecuting attorney here. The Court of Appeals went on:

“...the PUC does not have the discretion to simply ignore NPCC’s allegations that Qwest’s pre-2003 payphone rates violate section 276. And if, **after proper inquiry, the PUC finds** that Qwest's pre-2003 payphone rates exceeded that allowed by federal law and amount to "unjust and unreasonable exactions," the PUC has a **duty to protect ratepayers**, including NPCC's members, by **providing some appropriate remedy.**”

Those bolded terms found in the Court of Appeals’ opinion pretty much put the matter in perspective, in my view. **The burdens, duties, powers, etc. all reside with the PUC,** as do the obligations to protect ratepayers like NPCC members and to enforce the law.

This case is therefore now an administrative enforcement, quasi-criminal action with NPCC members in the role of complaining victims, Qwest is the perpetrator, the PUC is the prosecuting investigator/attorney, and the ALJ is the final decisionmaker/judge.

I suggest the PUC evaluate and prosecute this remand action accordingly. The PUC is not neutral here. Given the known facts and relevant law, the PUC is required **by statute** to be on the side of NPCC, not Qwest.

Historically, every time the PUC has sided with Qwest in these proceedings, the Court of Appeals has reversed the PUC's decisions. No one wants a repeat of that, except maybe the perpetrator, Qwest, or its highly-paid lawyers.

Like any victim of any crime, NPCC stands ready and willing to offer any assistance it can in the PUC's endeavors to bring Qwest's billing practices to light and impose an appropriate remedy, which the Court of Appeals basically said involves ordering refunds of overcharges.

I thus look forward to our clients working **together** in this case to bring Qwest to task and provide an appropriate remedy to NPCC members who have been waiting over 25 years for justice all while Qwest has withheld their money and used it to pay legal fees to fight against them.

**James A. Pikel** PARTNER

**Scheef & Stone, LLP**

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**James A. Pikel**

---

**From:** Smith Natascha B <natascha.b.smith@doj.state.or.us>  
**Sent:** Tuesday, January 16, 2024 5:20 PM  
**To:** James A. Pikel  
**Cc:** Frank Patrick  
**Subject:** RE: Inquiry

CAUTION: EXTERNAL EMAIL

Mr. Pikel,

**Staff has taken no position on Phase I issues to date.** My understanding of scope of Phase I for Docket UT 125 is confined to the list of issues communicated on p.1 of the 11/30/23 prehearing conference memorandum (reproduced in relevant part below). NPCC should make its own determination regarding appropriate compliance with the ALJ's ruling.

**As DOJ counsel, I do not have access to PUC records broadly and consequently am unable to assist you in locating the referenced documents.** Similarly, I have no knowledge as to what was included or omitted from the UT 125 record in 2003; although would note that the page of John Reynolds testimony you cite indicates that the cost study was submitted in Advice 1935, not UT 125. If there is evidence not otherwise not included in today's ruling which NPCC believes necessary for Phase I of the proceeding, **then you and Mr. Patrick should consider if NPCC wishes to seek authorization from the ALJ to further supplement the record.**

The notice of contested case rights and procedures was included as part of the prehearing conference memorandum. Additional information about ALJ Mellgren's authority, and the contested case process generally, are available on the UT 125 docket under the links to 'internal operating guidelines' and 'OAR 860-001.' The administrative hearings division can answer any questions you might have about how the contested case process works and may be able to provide you more information about what records are available ([puc.hearings@state.or.us](mailto:puc.hearings@state.or.us)).

**Further, public records requests can be made via the PUC's website (Public Utility Commission : Public Records Requests : Filing Center : State of Oregon).** However, because 2003 records are more than 10 years old, it is unclear to me if the PUC continues to retain these documents.

Best,  
Natascha Smith

“(...)The first phase will consist of legal briefing and oral argument. The second phase will proceed, if necessary, based on the resolution of the first phase of legal briefing. If the second phase is necessary, I will issue additional guidance and requirements at that time.

During the first phase of this remand proceeding, we will answer two questions. First, we will determine whether Qwest's rates from 1996-2003 complied with the new services test (NST). If the answer is no, we must also determine whether the law requires the Commission to issue refunds. During this first phase, we will not answer the question of what amount of refund or what other remedy may be appropriate. If necessary, the second phase of this docket will address those issues after additional development of the evidentiary record. (...)”

---

**From:** James A. Pikel <James.Pikel@solidcounsel.com>  
**Sent:** Tuesday, January 16, 2024 1:14 PM



To: Smith Natascha B <natascha.b.smith@doj.state.or.us>  
Cc: Frank Patrick <frank@fgpatricklaw.com>  
Subject: Inquiry

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Natascha:

As you know, in phase one we are endeavoring to determine whether Qwest's actual rates charged to PSPs from 1996 to 2003 were NST compliant. To make that determination, NPCC contends that we will need to see Qwest's actual billing records. I know you have disagreed with this in the past, and I asked you to reconsider that position.

But in order to determine if there were overcharges, we still need rates Qwest charged during that time period in order to compare them to the lawful NST charges which we know from 07-497. NST charges are required to be cost-based, meaning if Qwest established its rates in 2003 (via advice 1935 dated 3/17/03, and advice 1946 dated 8/28/03), and if those rates were NST-compliant, they would necessarily have been based on Qwest's costs of providing the services plus a small amount for overhead—the NST standard. So where are those cost studies?

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Can you help us find those "cost studies"? Are they somewhere in the record/index and I just missed them? If so, they might be germane to the NST compliance issue. And can you also help explain the gaps in the index?

One final inquiry: has ALJ Mellgren been delegated authority to make a final determination in this case per ORS 183.411? If not, exactly what authority does he have and what is the statutory basis for that authority? This inquiry is made pursuant to ORS 183.413(1) and (2)(k).

Thank you for your assistance.

**James A. Piki** PARTNER

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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.

---

<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.

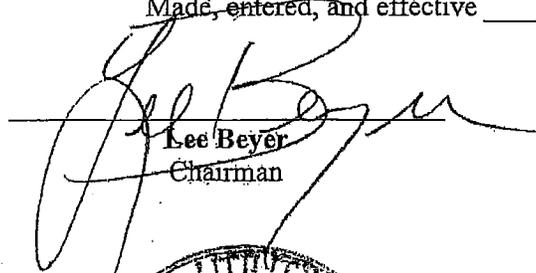
Appeals in its remand order. We therefore adopt the Stipulation and accept it and the supporting testimony and exhibits into the record in this docket.

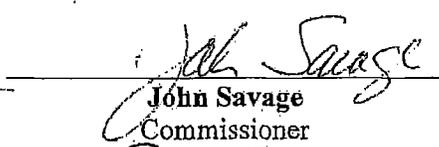
**ORDER**

IT IS ORDERED that:

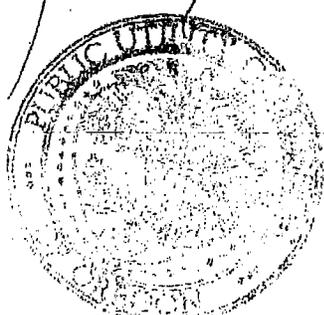
1. The Stipulation entered into among Qwest Corporation, Northwest Public Communications Council, and the Public Utility Commission of Oregon Staff is adopted.
2. The Public Access Line rates and Fraud Protection rates filed by Qwest Corporation on March 31, 2006, comply with applicable federal requirements 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

  
\_\_\_\_\_  
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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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

**DOCKETEL**

Confidential Material  
to Locked Cabinet  
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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	IMA		
Rate Group 1		\$18.00	\$7.98
Rate Group 2		\$18.00	\$7.98
Rate Group 3		\$18.00	\$7.98
PAL - flat	IKY		
Rate Group 1		\$26.00	\$8.78
Rate Group 2		\$28.50	\$9.62
Rate Group 3		\$30.50	\$10.30
PAL Carrier	IN8		
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*

## James A. Piki

---

**From:** Reichman, Lawrence (Perkins Coie) <LReichman@perkinscoie.com>  
**Sent:** Tuesday, December 12, 2023 3:58 PM  
**To:** James A. Piki; Smith Natascha B; frank@fgpatricklaw.com  
**Cc:** Sherr, Adam  
**Subject:** RE: UT 125 Remand



CAUTION: EXTERNAL EMAIL

Jim,

We would intend to include confidential documents and have them treated under the current protective order.

We do not agree to provide all the billing records as you request as part of Phase I because we don't see those as relevant or within the scope of what the judge ordered. The rates charged for purposes of Phase I were **tariffed** and we can agree to what those rates were for different time periods without delving into billing records for all customers.

Best,  
Larry

**Lawrence Reichman | Perkins Coie LLP**

PARTNER

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E. [LReichman@perkinscoie.com](mailto:LReichman@perkinscoie.com)

**PERKINS COIE**



2022  
PRO BONO

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**From:** James A. Piki <James.Piki@solidcounsel.com>

**Sent:** Tuesday, December 12, 2023 1:38 PM

**To:** Reichman, Lawrence (POR) <LReichman@perkinscoie.com>; Smith Natascha B <natascha.b.smith@doj.state.or.us>; frank@fgpatricklaw.com

**Cc:** Sherr, Adam <Adam.Sherr@lumen.com>

**Subject:** RE: UT 125 Remand

Larry:

On your highlighted documents, I assume you will be including all of the documents that were/are "confidential" such as those in the entry dated 4/11/2001 named "locked envelope #96/31." If otherwise, please advise.

Because phase 1 deals with whether Qwest charged only NST-compliant rates, if necessary we plan to ask the ALJ to order Qwest to provide as part

of the supplemental record all of Qwest's billing records for all Oregon ratepayers who were charged for services that were required to comply with NST law (e.g., CustomNet/Fraud Protection, PAL charges, etc.) from May 5, 1996 to the present. That is the best evidence of charges made and whether they complied with the NST can then be determined from the NST rates adopted in 07-497. Those records are currently in Qwest's possession, so we are asking you for that supplementation before going to the judge. Please let us know if you will comply with that request.

Finally, we reserve our rights to object to any of your supplemental records and will respond on or before December 21, 2023 once we see them. By not objecting to your proposed supplementation at this time, we are not waiving our right to argue that they are not relevant or for some other reason should not be considered as part of the record in this case.

Thank you.  
Jim Piki

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**From:** Reichman, Lawrence (Perkins Coie) <LReichman@perkinscoie.com>  
**Sent:** Tuesday, December 12, 2023 12:43 PM  
**To:** Smith Natascha B <natascha.b.smith@doj.state.or.us>; frank@fgpatricklaw.com; James A. Piki <James.Piki@solidcounsel.com>  
**Cc:** Sherr, Adam <Adam.Sherr@lumen.com>  
**Subject:** UT 125 Remand

CAUTION: EXTERNAL EMAIL

Dear parties,

I'm writing to confer about Qwest's intent to ask Judge Mellgren to supplement the record on remand. The principal items relate to the establishment of payphone service rates in Phase II of UT 125 in the 2000-02 timeframe. I'm attaching a copy of the UT 125 docket where I have highlighted in yellow the items Qwest thinks should be included in the record for purposes of remand. These all pertain to the issue of whether Qwest's payphone service rates comply with the new services test, and thus are clearly within the scope of the issues identified to be addressed on remand by Judge Mellgren

I suspect, but cannot confirm at this time, that the majority of these documents are included in the Transmittal of Shortened Record that the Commission prepared and forwarded to the court in connection with NPCC's appeal of the Phase II orders. You will see that on entry on June 12, 2002. In the event that record on review is not accessible for some reason, and in the interest of ensuring a complete record, I have separately highlighted specific entries that pertain to that issue.

In addition, there are a few documents in the UC 600/DR 26 record that are relevant to issues on remand. I have highlighted those in the second docket sheet attached hereto.

Please let me know your position on including these items in the record at your earliest opportunity. Thank you for your attention to this matter.

Best,  
Larry

**Lawrence Reichman | Perkins Coie LLP**

**PARTNER**

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**PERKINS COIE**



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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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