

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UT 125**

4 In the Matter of

5 QWEST CORPORATION, fka
6 U S WEST COMMUNICATIONS, INC.,

7 Application for Increase in Revenues.

**QWEST CORPORATION'S RESPONSE
TO NPCC'S MOTION FOR
RECONSIDERATION AND REQUEST
TO SUPPLEMENT THE RECORD**

8 Qwest Corporation ("Qwest") respectfully submits this response to NPCC's Motion for
9 Reconsideration and Request To Supplement the Record, filed January 22, 2024 ("NPCC's
10 Reconsideration Request"). NPCC and its members (collectively, "NPCC") request that the
11 Commission reconsider the determination in its January 16, 2024, Ruling ("Ruling") that
12 Qwest's billing records for NPCC's members from 1996 to the present are not relevant to the
13 phase one inquiry and are not required to be produced at this time. NPCC also requests, for the
14 first time, that the "PUC ... provide and include in the record all tariffs for Qwest rates for Public
15 Access Line (PAL) and CustomNet/Fraud Protection in place from May 1, 1996 to the present."

16 The Commission should deny NPCC's request for reconsideration. NPCC does not cite
17 the rule that governs reconsideration (OAR 860-001-0720) and does not identify any new
18 ground, error, or good cause as required by that rule. To the contrary, NPCC has conceded that
19 Qwest's billing records are not needed to establish the rates for payphone services that were in
20 effect for the period in question (1996 through 2003) because these can be established by the
21 rates Qwest had on file with the Commission for that period. Qwest does not object to NPCC's
22 request that the Commission provide and include in the record Qwest's filed rates for payphone
23 services commencing May 1, 1996, but such records are required only through 2003, not the
24 present.

1 **ARGUMENT**

2 **A. Qwest’s billing records are not required to establish the effective payphone**
3 **service rates.**

4 NPCC’s Reconsideration Request is the third time that NPCC has formally asserted that
5 Qwest’s billing records are needed in the first phase of this proceeding. NPCC made the same
6 request for production of records in its Proposal for Proceeding filed on November 7, 2023,
7 which the Commission denied in its November 30, 2023, Prehearing Conference Memorandum.
8 NPCC renewed the same request in its Proposed Record Supplementation filed on December 14,
9 2023, which the Commission denied in its January 16, 2024, Ruling. NPCC presents no new
10 grounds, error, or good cause for reconsideration of the Commission’s Ruling as required by
11 OAR 860-001-0720.

12 The Commission correctly decided that Qwest’s billing records to NPCC’s members are
13 “not necessary to answer the first phase questions.” Ruling at 8. NPCC still asserts that Qwest’s
14 complete record of billings to NPCC’s members is needed to establish the rates that Qwest
15 charged for payphone services from 1996 to 2003. That is not correct. The rates that Qwest
16 charged for payphone services during that period were set forth in its rate schedules filed with
17 the Commission. The rates Qwest charged can be established by reference to filed rate schedules
18 and those rates can then be evaluated for NST compliance during the 1996 to 2003 time period.
19 No claim has been made that Qwest did not charge its filed rates at any time (which, of course, it
20 is required to do under ORS 759.205),¹ and production of billing records is not required to
21 establish the rates that were effective during this time period.

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25 ¹ Not only has NPCC not asserted any such claim, it proposed that Qwest stipulate “it charged
26 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”, which NPCC asserted is an
“unquestionably true fact[.]” NPCC’s Reconsideration Request, Ex. 3.

1 **B. NPCC conceded these records are not required for phase one.**

2 NPCC has conceded that these billing records are not required for phase one. NPCC
3 chose to file its initial brief in support of its motion on January 12, 2024, almost three weeks
4 before it was due and four days before the Commission even issued its Ruling establishing the
5 evidentiary record. Clearly, NPCC believed it has sufficient evidence to make its showing
6 without Qwest’s billing records.

7 **C. NPCC’s members should have their billing records.**

8 Even if these billing records were relevant to the phase one issues—which they are not—
9 NPCC’s members should have those records. NPCC asserts that “it’s a heavy lift to require small
10 businesses to maintain all of their records for over 25 years when some of the members’
11 principals are not even alive today.” NPCC’s Reconsideration Request at 13 n.5. Regardless of
12 whether maintaining records is an undue burden, parties that are actively pursuing litigation
13 should maintain evidence needed to prove their claims. NPCC and its members have been filing
14 and litigating purported refund claims since 2001, filing seven claims in three forums. They bear
15 the burden of proof in this case, and so long as they are pursuing these claims, they should retain
16 relevant evidence. If they do not have the evidence needed to prove their claims, then they
17 should withdraw their Motions and this litigation should finally come to an end.

18 There is another likely explanation for why counsel does not have access to these records
19 from their purported clients. As shown in Qwest’s Motion Pursuant to ORS 9.350 To Prove
20 Authority of Counsel, filed January 26, 2024, it is highly unlikely that NPCC’s counsel has an
21 authorized attorney-client relationship with many, if any, of the payphone service provider
22 (“PSP”) members. Moreover, many if not all of the PSPs are no longer in existence and have no
23 personnel, as NPCC has admitted. These facts likely explain why NPCC’s purported counsel is
24 seeking to impose irrelevant demands for the PSPs’ billing records on Qwest.²

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26 ² Further, as requested in Qwest’s Motion, the Commission should stay these proceedings and
not consider NPCC’s Reconsideration Request until the serious questions about NPCC’s

1 **D. Qwest does not object to NPCC’s new request to supplement the record.**

2 In addition to requesting reconsideration of the Commission’s denial of NPCC’s
3 supplementation request, NPCC also requests that the Commission supplement the record by
4 “including all of Qwest’s tariffs for payphone rates and CustomNet from May 1, 1996 to the
5 present.” Even though NPCC did not make this request in a timely manner, Qwest does not
6 object to the Commission’s including in the record Qwest’s filed rates for payphone services for
7 the period from May 1, 1996, through 2003. Such records are not required through the present, as
8 NPCC requested.

9 **E. The Commission should ignore much of NPCC’s filing.**

10 NPCC includes a large amount of irrelevant and prejudicial material in its filing. This
11 includes its mischaracterization of the Court of Appeals’ decision; its rehashing of the arguments
12 it made in November 2023 regarding the scope of the remand and procedural schedule; its
13 mischaracterization of the Commission’s November 30, 2023, Prehearing Conference
14 Memorandum; its mischaracterization of the Refund Orders the Commission issued in this
15 docket in 2000 which form the primary basis of NPCC’s 2017 Motions at issue here; and its
16 mischaracterizations of Qwest’s positions. NPCC also improperly filed approximately 30 pages
17 of exhibits consisting of email communications among counsel which are replete with NPCC’s
18 spurious allegations and unfounded accusations. These are not relevant to NPCC’s
19 Reconsideration Request and were undoubtedly included to prejudice the other parties and the
20 orderly consideration of the case.

21 Qwest will not further burden the record with its refutation of this irrelevant material, but
22 does not want to leave the impression that NPCC’s invective and misstatements are not disputed.
23 NPCC should be admonished to refrain from such unprofessional conduct.

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26 counsel’s authority to represent NPCC’s members have been addressed and resolved.

1 **CONCLUSION**

2 For the foregoing reasons, the Commission should deny NPCC's Motion for
3 Reconsideration.

4 DATED: January 30, 2024

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