

ORDER NO. 02-009

ENTERED JAN 08 2002

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UT 125/PHASE II
RATE DESIGN

In the Matter of the Application of)
QWEST CORPORATION for an) ORDER
Increase in Revenues.)

DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED

On November 13, 2001, the Northwest Payphone Association (NWP) filed an application for reconsideration of Order No. 01-810. On November 28, 2001, Qwest Corporation (Qwest) and Commission Staff responded in opposition to NWP's application. On December 12, 2001, NWP filed a reply to Qwest's and Staff's responses.

NWP's Position. NWP asserts that the Commission made two errors of law or fact in Order No. 01-810. First, NWP argues that the Commission erroneously assumed that Qwest's CustomNet service differs from the "Selective Class of Call Screening Service" discussed in a Federal Communications Commission (FCC) order that is directly on point. As a result, NWP maintains that the order fails to properly apply federal law.

Second, NWP argues that the Commission improperly disregarded the FCC's most recent explanation of the evidence required for and the standards to apply to the development of a cost based rate for public access line (PAL) services under the new services test (in the Wisconsin Order; see the discussion below).

1. *NWP's first argument is that the Commission should have concluded that the FCC's new services test applies to CustomNet.* The order, at 56, concludes that the new services test does not apply to CustomNet because CustomNet is available to any class of subscriber and is thus not a payphone service. NWP asserts that this conclusion is erroneous. NWP argues that CustomNet is the name Qwest gives to outgoing or originating line screening and is a service essential to prevent payphone fraud. Without it, a payphone user could simply dial "0" and ask the operator to place a long distance call and the operator would not know that the call originated at a payphone.

According to NWPA, the FCC has already determined that call screening services like CustomNet are payphone services. In the Memorandum Opinion and Order, *Local Exchange Carriers' Payphone Functions and Features I*, 12 FCC Rcd. 17,996 at ¶¶12, 15, n. 19 (1997) (Payphone Features Order), the FCC applied the new services test to Bell Atlantic's "incoming/outgoing call screening" and the GTE's "selective class of call screening service." NWPA asserts that CustomNet and selective class of call screening are functionally the same service, differing only in their proprietary names, and that the Commission therefore erred in concluding that the new services test did not apply to CustomNet.

NWPA argues that the Commission also made an error of law in its decision on page 56. The Commission decided that the Payphone Features Order did not apply because CustomNet is available to all subscribers and is therefore not exclusively a payphone feature. NWPA asserts that the new services test applies to "any unbundled features [ILECs] provide to their own payphone services." Order on Reconsideration, 11 FCC Rcd. 21,233 at ¶163 (1996) (Order on Reconsideration). NWPA notes that Qwest has admitted that it provides CustomNet to its own basic PAL lines ordered by its payphone division. Therefore, NWPA argues, the Commission should have decided that CustomNet is subject to the new services test.

The order also contends that CustomNet is not a payphone specific service because over 37 percent of the lines with CustomNet serve customers other than payphone service providers (PSPs). NWPA argues that a number of PSPs order CustomNet and that payphones account for (a confidential number) of CustomNet service. However, NWPA points out that usage data is ultimately irrelevant, because Qwest provides CustomNet to its own payphone operations and is therefore by definition subject to the new services test.

NWPA further argues that even if the Commission had determined that CustomNet is subject to the new services test, it could not have found that CustomNet passed that test on the record in this case. NWPA argues that Qwest failed to provide cost data and supporting analysis as required by the FCC. NWPA asserts that under the new services test, an ILEC must calculate the rates for all services subject to the test, including CustomNet and public access lines (PAL), by adding its direct costs to an appropriate level of overhead costs. Report and Order, *In the Matter of Amendments to Part 69 of the Commission's Rules*, 6 FCC Rcd. 4,524 at ¶44 (1991) (ONA Order).

NWPA asserts that Qwest never filed cost data for CustomNet and never set its CustomNet rates according to the new services test. According to NWPA, the FCC's Payphone Features Order provides clear guidance as to how the Commission should have evaluated Qwest's CustomNet rates, and the Commission did not comply with these guidelines.

2. *NWPA's second argument is that Qwest's PAL rates do not comply with the new services test.* NWPA argues that Qwest never filed sufficient evidence of its direct and overhead costs in support of its PAL rates. NWPA cites the ONA Order at ¶42 in support of its proposition that an ILEC must file engineering studies, time and wage

studies, or other cost accounting studies to establish its direct costs. NWPA also asserts that ILECs must prove their overhead costs by filing "cost data sufficient to establish that such charges will not recover more than a just and reasonable portion of the carrier's overhead cost." 47 C.F.R. §61.49(h). At a minimum, according to the ONA Order, an ILEC must demonstrate that rates are cost based and submit data sufficient to permit a state commission to "evaluate the reasonableness of the manner in which overhead costs are loaded onto the cost of the service, including review of the ratios of direct unit cost to unit investment and direct unit cost to unit price." ONA Order at ¶44.

NWPA faults the order, at 55, for stating that the FCC has not specified what kind of evidence is necessary to determine whether PAL rates satisfy the new services test. NWPA maintains that the FCC has provided specific guidance on this type of evidence in *The Matter of Wisconsin Public Service Commission Order Directing Filings*, 15 FCC Rcd. 9,978 (2000) (Wisconsin Order) at ¶¶7-13.

NWPA argues that the Commission erred in relying on Qwest's cost to price ratio to infer the overhead on payphone rates. NWPA argues that the FCC's Common Carrier Bureau directed Bell Atlantic "to explain in detail how its development of rates for these features complied with the new services test, Section 276, and the Payphone Orders." Payphone Features Order at ¶6.¹

NWPA also argues that Qwest's overhead loading for PAL service is unreasonable, contrary to the order's finding at 56. Qwest's overhead loading, according to the order, ranges from 26 percent to 91 percent for different PAL services. NWPA argues that this much overhead is inexcusable. The Payphone Features Order found that a range of overhead loading up to 4.8 times direct costs is reasonable, as the order states at 55, but NWPA contends that the Payphone Features Order involved features with direct costs that were extremely low or zero and that were provided for free or for a monthly rate of \$0.015. The FCC stated in that order that "We do not find that our determination here concerning overhead loadings of Bell Atlantic's provision of payphone features and functions will necessarily be determinative in evaluating overhead loadings for other services." Payphone Features Order at ¶13.

NWPA further argues that Qwest failed to explain why its overhead loading has that range. According to the ONA Order, at ¶44, all ILECs must justify the overhead loading methodology they select as well as any deviations from methodologies they use for related services.

¹ NWPA asserts that the order, at 56, determined that Qwest's PAL rates were calculated according to the new services test. The order makes no determination about how Qwest calculated its PAL rates; instead, it finds that the rates are consistent with the new services test. NWPA's argument on this point will not be addressed, because it is based on a false assertion.

NWPA also faults the order, at 56, for justifying Qwest's rates by stating that the FCC's requirement of cost based rates does not mean that rates must be set at costs. According to NWPA, that statement is incorrect. NWPA contends that Qwest must back up its PAL overhead costs with cost studies and other data, citing to the Wisconsin Order at ¶11 ("Given that the new services test is a cost-based test, overhead allocations must be based on cost, and therefore may not be set artificially high in order to subsidize or contribute to other LEC services.").

Finally, NWPA argues that the order, at 56, improperly declines to follow the Wisconsin Order because the Wisconsin Order applied to certain named ILECs and did not issue from the whole Commission. NWPA argues that the FCC would not apply a different standard to Qwest and that this Commission should grant deference to the interpretation of the FCC rules found in the Wisconsin Order until the FCC issues an order reversing its findings.

OPINION

Applicable Law. OAR 860-014-0095(3) provides:

- (3) The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is:
 - (a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;
 - (b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;
 - (c) An error of law or fact in the order which is essential to the decision; or
 - (d) Good cause for further examination of a matter essential to the decision.

1. CustomNet and the new services test. NWPA argues that CustomNet is subject to the new services test because Qwest provides CustomNet to its own payphone services and the FCC's Order on Reconsideration states that the new services test applies to "any unbundled features [ILECs] provide to their own payphone services." The order, at 54, however, states that CustomNet is a tariffed retail service and takes official notice of the tariff for that service on file with the Public Utility Commission. A tariffed retail service is not an unbundled feature, and the language from the Order on Reconsideration does not apply to CustomNet.

NWPA also argues that CustomNet is subject to the new services test because it is equivalent to GTE's selective class of call screening service. In the Payphone Features Order, the FCC found that GTE's screening service was subject to the new services test as a payphone specific service. NWPA contends that we asserted that the Payphone Features Order involved services that were different from CustomNet.

This is an incorrect statement. We stated (n. 27 at 56): "In the Payphone Features Order, the FCC determined that GTE's selective class of call screening service is subject to the new services test, describing it as a payphone specific feature. At ¶15." We then concluded, at 56, that CustomNet is not a payphone specific feature. We do not have a factual record on which to decide what kind of service GTE's call screening is. We did decide, order at 56, that CustomNet is not a payphone specific feature because 37 percent of its users are not PSPs. Therefore, we concluded and again conclude that the new services test does not apply to CustomNet.

Because we again decide that CustomNet is not subject to the new services test, it is not necessary to address NWPA's arguments about cost data and overhead for CustomNet.

2. Qwest's PAL rates. NWPA asserts that Qwest's PAL rates do not comply with the new services test. This matter was discussed in the order on the basis of the same arguments presented here. *See* order at 50-52. We considered the arguments NWPA presented, and presents here, and determined that Qwest's PAL rates satisfy the new services test. We found in the order and again find the cost data submitted in UM 773 was a sufficient basis for determining Qwest's direct costs, and that its overhead is reasonable.

We continue to view the test in a much less formalistic way than NWPA does. Even the ONA Order, to which NWPA repeatedly recurs, characterizes the new services test as a "flexible cost based approach to pricing new services." At ¶38; *see* order at 53.

Finally, NWPA argues that the Wisconsin Order sets guidelines for the new services test. We gave reasons in Order No. 01-810, at 54, for not relying on that order. NWPA has brought no new arguments to convince us that we should rely on it.

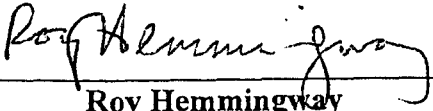
CONCLUSION

We conclude that NWPA has not shown grounds for reconsideration of Order No. 01-810 and that its application should be denied.

ORDER

IT IS ORDERED that NWPA's application for reconsideration of Order No. 01-810 is denied.

Made, entered, and effective JAN 08 2002



Roy Hemmingway
Chairman



Lee Beyer
Commissioner

COMMISSIONER SMITH WAS
UNAVAILABLE FOR SIGNATURE

Joan H. Smith
Commissioner



A party may appeal this order to a court pursuant to applicable law.

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