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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: MOTION TO SHOW CAUSE GRANTED;  
QWEST TO FILE REPORT**

On January 7, 2002, Commission Staff filed a motion asking the Administrative Law Judge (ALJ) to issue an order requiring Qwest Corporation (Qwest) to show cause how its tariff filing complies with Commission Order No. 01-810. Staff further requested the ALJ to require Qwest to provide the information it delineated in the memorandum in support of its request. Staff's motion was made pursuant to ORS 756.515, 759.180, and 759.205.

In its Memorandum, Staff details the following background. Order No. 01-810 at 64, ordering paragraph 2, requires Qwest to file by October 12, 2001, revised rate schedules consistent with the findings of fact and conclusions of law in the order, to be effective no later than January 1, 2002. Qwest filed its revised rate schedules, also called tariffs here, by October 12, 2001. Staff reviewed the tariffs and worked with Qwest to ensure that the filings were consistent with the order.

On December 27, 2001, four days before the tariffs were to take effect, Sheila Harris, a Qwest manager, emailed Commission Staff members Phil Nyegaard and Lance Ball as follows:

Phil and Lance: I wanted to provide you with a copy of a bill insert that will appear in Qwest's customer bills during January. The bill insert provides information/highlights of Qwest's new rate design. While January 1, 2002, is the effective date of the rate changes, unfortunately, due to limitations of our billing systems, we are not able to implement all rate changes on January 1, 2002. As such, it is necessary to phase in the actual rate changes throughout the first quarter of 2002, with the majority of Residential and Business, Exchange Services, rate changes implementing on

February 23, 2002—with an appropriate adjustment to January 1, 2002. Please feel free to phone or email me with any questions.

Ms. Harris attached a copy of the proposed bill insert to her email. The insert provides a few more specifics about the company's proposed "implementation plan" for the rate changes. Qwest's new local long distance rates will take effect on January 1, 2002. The temporary credit of \$2.47 for residential lines and the higher credit for business lines "ceases in January." Rates for other, unspecified services "will be phased in over several billing periods." Qwest further provides that "At the time new rates are reflected on customer bills, a corresponding bill credit or bill debit will be made back to the January 1, effective date."

Due to the holiday season, Staff represents that it was not immediately able to assemble the necessary members and legal counsel to review Qwest's unexpected "effective but not yet implemented" proposal for the UT 125 rate changes. On January 2, 2002, Staff met by telephone with Ms. Harris, Don Mason of Qwest, and Larry Reichman, Qwest's legal counsel. Staff and Qwest were unable to resolve their differences. In response to Staff's request, Ms. Harris sent an email about when Qwest planned to make the various rate changes effective:

Lance:

Per your request, [t]he following represents Qwest's current planned schedule to begin displaying the January 1, 2002, UT 125 Phase II rate changes on customers bills.

01/01/02—Switched Access, Message Toll, NRC and Usage  
01/04/02—Elimination of the temporary credit  
02/23/02—Residence and Business Local Exchange services  
03/08/02—Private Line

Staff contends that Qwest's proposed "effective but not implemented" rate schedule violates the Commission's Order No. 01-810. The order clearly requires Qwest to file rate schedules to be effective no later than January 1, 2002. Until Staff received Ms. Harris's email on December 27, 2001, Staff fully expected that all scheduled rate changes would take effect on January 1, 2002. Staff's expectations were reasonably based on its past experience with rate cases and simple common sense. For example, the most relevant dictionary definition of "effective," Staff notes, defines the term as "being in effect: operative." *See Webster's Ninth New Collegiate Dictionary at 397 (1984).*

However, according to Staff, Qwest has a different interpretation of "effective," which seems to leave out the "operative" component of the definition. Qwest's position, according to Staff, seems to be that the order allows it to file rate changes by the January 1, 2002 deadline but implement them at a later time. Further, under Qwest's interpretation of the order, Qwest is under no constraint as to when it implements the rate changes.

Staff strongly disagrees with Qwest's interpretation of the order. Staff asks the Commission to order Qwest to explain how its "effective but not implemented" theory satisfies the order.

In the alternative, Staff asks that Qwest abandon its theory about the meaning of "effective date" and explain what it will do to rectify the situation it has caused. If Qwest takes this road, Staff asks that Qwest further specify what it means when it informs customers that "a corresponding bill credit or bill debit will be made back to the January 1 effective date." Staff argues that Qwest should not be enriched by its violation of the order and that customers should not be harmed. Staff asks the Commission to extract a promise from Qwest that it will pay interest to all customers receiving a bill credit. According to Staff, Qwest should further agree that it will not debit customer billings for any underpayments caused by Qwest's failure to make its rate changes effective January 1, 2002, as ordered. Qwest will need to ensure that all taxes, Public Utility Commission fees, universal service program surcharges, and so forth are accurately accounted for and paid. Staff asks the Commission to further require Qwest to audit and file a final, detailed accounting reconciliation with the Commission showing all adjustments required by its failure to satisfy the Commission's order. Qwest should further promise, and the Commission require, that it will set up a special service number, with adequate staffing, to take customer calls related to this unfortunate situation. Finally, Qwest should agree to issue a statement accepting sole responsibility for the confusion and expense caused by its failure to satisfy the Commission's order.

Whichever approach Qwest chooses to take, Staff asks that Qwest be required to provide complete, detailed information as to when it will implement each required rate change. It is unclear from Ms. Harris's email of January 2, 2002, when the rate changes for vertical services (call waiting, call forwarding, and the like), Centrex, and other services will be effective. Staff also asks the Commission to ascertain what Qwest will do if it is unable to meet a planned implementation date.

Staff points out, finally, that if Qwest had contacted the Commission when it first realized that it was unable to meet the January 1, 2002 effective date for rate changes, the Commission might have allowed Qwest to delay all rate changes until they could be made simultaneously. Qwest's approach, Staff contends, is a blatant disregard of the Commission's order. Staff believes that its alternative approach, asking Qwest to specify what it will do to rectify the situation, is reasonable. Staff is willing to craft a memorandum of understanding (MOU) to implement the alternative approach if Qwest agrees. Staff also notes that the Commission has legal authority to seek fines against Qwest for violation of its Order (*see* ORS 756.990(2); 759.990(6)(b)). The Commission may want to consider this option, Staff notes, especially if Qwest rejects Staff's memorandum of understanding suggestion.

**Qwest's Response.** Qwest filed its response on January 22, 2002. Qwest argues that its tariff filing complies with both the letter and the spirit of Order No. 01-810 and is consistent with Qwest's prior practice in implementing Commission orders authorizing rate changes.

Qwest asserts that it had to implement the rate changes in staggered fashion because of the complexity and enormity of the reprogramming task required by the order. Qwest argues that it had a short time period and a huge task and was unable to implement the rate change any faster than it did. Further, Qwest contends that customers will suffer no prejudice from Qwest's method of implementing the rate changes. Two thirds of the ordered revenue reductions were fully implemented on January 1, 2002, with the remainder implemented over the following weeks, with all customers receiving adjustments to reflect the January 1, 2002 effective date. Granting Staff's motion, Qwest contends, will consume significant Commission resources to conduct a full evidentiary hearing. Qwest argues that there is no good reason to require such an expenditure of Commission and company resources.

Qwest asserts, first, that its tariff filing complies with the order. The literal terms of the order required Qwest to file rate schedules by October 12, 2001, that comply with the order and show an effective date of January 1, 2002. Qwest did so, it maintains. First, Qwest asserts, it filed rate schedules in compliance with the order on October 12, 2001, without requesting an extension although the filing involved around one thousand individual rate changes.

Qwest notes that Staff reviewed its October 12 filing and notified Qwest within one week of the filing that Staff did not believe that the filing complied with the local business access service rates required by the order. On November 15, 2001, Staff and Qwest signed a memorandum of understanding (MOU) agreeing to certain revisions to the rate schedules filed with Advice No. 1849 S1 with respect to both local business access service and measured EAS rates. Qwest filed the MOU with the Commission for approval along with Qwest's Application for Reconsideration, the procedural vehicle Staff suggested for Qwest's filing, and the first supplement to Advice No. 1849 S1 setting out the revised rates for local business access services to which Qwest and Staff had agreed. The disagreement with Staff, according to Qwest, created additional delay and uncertainty with respect to the specific rates that Qwest was required to implement, and the uncertainty was not resolved until late December, when the Commission entered Order No. 01-1098 (issued December 21, served on December 26, 2001).

On November 16, 2001, Qwest filed its Second Application for Reconsideration of the order, asking the Commission to reconsider the portion of the order that applied an elasticity factor of  $-0.3632$  in calculating the revenue impact of Qwest's intraLATA toll rate reduction. Staff filed its response to this application on December 3, 2001, requesting that the Commission extend the effective date of the UT 125 rates until such time as the Commission issues a decision on Qwest's application if the Commission did not issue such a decision before December 31, 2001.

Qwest filed a reply on December 11, 2001 and disclosed its current plans for implementing the rate changes:

The complexity of this rate change does not permit the display of all rate changes on customers' bills commencing January 1, 2002. A series of programming changes will be implemented over a

period of time, with each change including appropriate adjustments to make them effective as of January 1, 2002.

By Order No. 01-1075, issued on December 20, 2001, the Commission denied Qwest's second application for reconsideration, rendering moot Staff's request for a stay of the effective date of the new rates. Qwest received a copy of that order on December 21, 2001, and learned on December 27, 2001 that the Commission had approved the MOU and revised rate schedules. Qwest urges the Commission to keep the uncertainty created by these events and their timing in mind in evaluating Qwest's efforts to implement the new rates.

Qwest turns to a discussion of how it is implementing the rate changes. Qwest insists that all the new rates ordered by the Commission are effective January 1, 2002, as the order mandates. That is, Qwest explains, once the rates are fully implemented, Qwest's Oregon customers will have paid the new rates from January 1, 2002, forward. Rates with the most significant revenue impact were implemented on January 1, but other rates will be implemented over the next several weeks.

For all rates implemented after January 1, Qwest represents that it will make adjustments on customers' bills when the rate is implemented to reflect the January 1, 2002 effective date. Qwest argues that this strategy makes the rates effective as of January 1.

Qwest provides the following information about its implementation schedule:

<b>Implementation Date</b>	<b>New Rates</b>
January 1, 2002	Switched Access, Message Toll, Nonrecurring Charges Local Usage, Centrex Plus, and Centrex 21 (term agreements)
January 4, 2002	Elimination of the temporary UT 125 credit
January 5, 2002	800 and OutWats Services
January 11, 2002	PUC fee surcharge
February 23, 2002	Residence and Business Local Exchange Services (including vertical services), EAS, and Centrex 21 (month to month)
March 8, 2002	Private Line

Qwest responds to Staff's question as to what it will do if it misses a planned implementation date. Qwest has already met the first four target dates in the schedule. If Qwest does not meet one of the remaining dates, Qwest plans to implement those rate changes as soon as possible. Whenever the implementation occurs, however, the rate changes will be effective as of January 1, 2002, as Qwest will make appropriate adjustments at the time of implementation.

Qwest points out that the order required both rate restructuring and rate changes, so an enormous amount of work was required to implement the rate changes. Qwest estimates that approximately 10,300 person hours and approximately \$688,000 were required to implement the order; it was not technically or physically possible to complete this amount of work by January 1.<sup>1</sup> Qwest argues that it implemented the UT 125 rate changes in exactly the same manner as it has done historically, including several recent rate changes, with Staff's knowledge. Since at least 1992 in UT 85, Qwest argues that it has implemented rate changes following the effective date, making retroactive adjustments back to the effective date for both rate increases and rate decreases. Qwest argues that such implementation is routine practice.<sup>2</sup> Qwest also notes that it follows this same approach of implementing rate changes in other states.

Qwest argues that its method of implementing the rate changes will not harm customers. Qwest argues that its rate changes have been implemented effective January 1, 2002, since those are the rates that customers will effectively pay after any required adjustments are made. Even if Qwest had implemented all rate changes on January 1, 2002, almost all Oregon customers would still have seen adjustments on their bills to reflect the January 1 effective date, Qwest explains, because Qwest does not bill all customers on the same day of the month and because Qwest charges its customers in advance for certain services. Any customer with a bill date other than the first of the month would have an adjustment on their bill to reflect the January 1 effective date. Qwest's method of implementing these rate changes does not lead to an increased number of bill adjustments and is unlikely to generate significantly more customer confusion or inquiries than any other method of implementing the rate changes. Moreover, according to Qwest, bill credits are relatively common and also occur when a customer changes service in the middle of a billing cycle.

Qwest points out that the rate changes implemented January 1, 2002, represent the majority of the revenue reduction achieved by the order. These changes were relatively easier to implement, Qwest maintains, involving only a change to rate tables and not a more complicated rate restructuring. Switched access and intraLATA toll rate changes were implemented January 1, 2002. The revenue reduction attributable to the reduction of switched access rates is approximately \$21.8 million, Qwest represents; that attributable to intraLATA toll rate reductions is approximately \$23.4 million. The increase to the residential nonrecurring charge also was implemented on

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<sup>1</sup> Qwest gives considerable and very detailed information on what was involved in implementing the ordered rate restructuring and rate changes. That information will not be reiterated here.

<sup>2</sup> Qwest lists UT 85, UM 731, and its UM 731 phase in implementation of the federal Universal Service surcharge as instances of implementation dates that differed from ordered effective dates.

January 1, accounting for an increase in revenue of approximately \$1.4 million. Together, Qwest maintains, these items account for \$43.8 million, more than 68 percent of the overall revenue reduction. Thus, Qwest contends, even under Staff's definition of effective, over two thirds of the overall revenue reductions were effective on January 1.

Qwest responds to Staff's suggested alternative approach by rejecting it. Qwest believes that there is nothing strange about how it is implementing the rate changes especially in view of the fact that this is the same manner in which Qwest has historically implemented rate changes, with Staff's full knowledge and without Staff's opposition. Qwest responds to Staff's suggestions one by one.

First, Staff suggests that Qwest should pay interest to all customers receiving a bill credit. Under this theory, according to Qwest, residential and business exchange access customers and business private line customers would be entitled to receive interest for the amount of rate reductions reflected in bill credits to reflect the February 23 and March 8 implementation dates for those rates. Qwest calculates that interest at 8.77 percent (the rate of return used in this case) on the total amount of those credits for that time period would equal approximately \$25,885, less than two cents per access line. Qwest also urges that if it pays interest, it should be entitled to collect interest for additional charges it assesses to reflect the January 1 effective date of rate increases. Such interest receipts would lower the overall amount of interest paid. Qwest submits that the small amount of money at issue both overall and for each customer does not justify the additional expense, administrative burden, and further delay that would be caused by adjusting the billing systems to reflect interest.

Staff suggests that Qwest should only issue credits to customers whose rates decreased as of January 1 but should not debit customers to reflect rate increases effective January 1. Qwest is unclear about how Staff would propose to implement this idea where rates for some services increase and rates for others decrease, leaving a customer with an overall rate decrease. Qwest argues that Staff's suggestion is unfair and punitive. Qwest's method of implementing the rate changes with adjustments retroactive to January 1 ensures that all rates are effective January 1. Staff's suggestion would actually result in some new rates being effective January 1 and others being effective on later dates. Qwest argues that its approach better achieves Staff's asserted goal of having all new rates effective January 1.

Implementing Staff's approach would deprive Qwest of revenues for those services whose rates increased effective January 1. Qwest estimates that it would collect approximately \$1.2 million less than it should if the Commission implemented Staff's suggestion, based on August 1997 billing units. Qwest argues that Staff's approach would exceed the Commission's power and could be an unconstitutional taking. Further, Qwest contends that implementing Staff's approach would also require additional programming and cause further delay.

Taxes, fees, and surcharges will be accurately paid, Qwest assures; Qwest indicates that it will respond to the Commission's audit requests.

In response to Staff's suggestion that Qwest should set up a special service number with adequate staffing to take customer calls related to the rate change implementation, Qwest disagrees that a special number is useful or necessary. Qwest assures the Commission that it will handle any inquiries about the new rates in the ordinary course of business and will train its customer service representatives to answer questions about implementation of the new Oregon rates. Qwest will try to have adequate staffing to meet customers' expectations and Commission requirements regarding telephone access to the business office.

Staff states that Qwest should issue a statement accepting sole responsibility for any confusion. Qwest does not believe that there will be confusion, but is willing to discuss with Staff any additional notices that may assist customers in understanding the rate changes.

**Staff's Reply.** Staff filed its reply on February 4, 2002. Staff points out that Qwest asserts that the Commission's order may be interpreted as allowing it to implement rates over time, past the effective date, without first notifying and obtaining permission from the Commission to do so. Qwest also refuses to voluntarily adopt the remedial measures Staff suggested in its motion.

Staff makes three points before it proceeds to address Qwest's arguments. First, Staff notes that the Commission is uniquely situated to explain what it meant when it ordered Qwest to file rate schedules so that rates were effective as of January 1, 2002. Staff contends that this is not a legal issue. The Commission may simply declare what it means, and has historically meant, by use of the term "effective."

Second, Staff notes that the three cases Qwest relies on to show Commission past practice illustrate that Qwest has always treated the need to implement rates after the effective date as an exception to the relevant order, requiring prior notification to and permission from the Commission. In UT 125, Qwest unilaterally decided to implement rates past the effective date with no meaningful notification and no authorization from the Commission. Staff is disturbed by Qwest's new approach and asks the Commission to declare whether it is acceptable.

Third, Staff notes that there is no question that Qwest's decision to implement rates past the effective date will require numerous retroactive adjustments and will create confusion for its customers. Staff asks the Commission for direction on how it desires to proceed to ensure that Qwest takes appropriate remedial action.

Staff does not believe there is any need for further briefing or for evidentiary hearings on these issues. The Commission has complete authority, according to Staff, to declare what it meant when it ordered Qwest to file rate schedules to make rates effective no later than January 1, 2002. Staff argues that the Commission never intended to allow Qwest's "effective but implemented later" approach.

Staff has always interpreted the direction that rates be effective as of a certain date as requiring that rates be in place, operative, and implemented as of the



specified date. In the present case, Staff expected that the UT 125 rates would be operative on January 1, 2002.

Qwest's approach is untenable, Staff contends, primarily because it would allow Qwest unbridled discretion to decide when to make the rates operative. Even at the point of Staff's reply, Qwest had not made a commitment as to when it will implement all rates. In its Response, Qwest stated that if it does not meet one of the dates it has outlined, it plans to implement those rate changes "as soon as possible." Thus, in Qwest's view, it is Qwest and not the Commission that has decision making power over the implementation of the new rates.

Staff contends that there is nothing to stop Qwest, given this approach to effective dates, from immediately implementing all rate changes that favor the company and refusing to implement the changes it does not like for a year or more. Staff asks what would happen if Qwest went out of business before it decided to implement those rate changes it did not favor. Staff also asks what will happen to customers who overpaid for the "effective but not implemented" rate reductions and then left the system before the rates became operative.

In its response, Qwest argues that it must implement rates over time because of billing cycles. Qwest's concern is not valid, according to Staff. Under the Commission's order, Qwest simply needs to prorate the rates to reflect the January 1, effective date. A particular customer's place in the billing cycle does not dictate when that customer's new rates will be effective. All rates are effective January 1, and Staff argues that Qwest is required to prorate the customer's next bill to reflect that date.

Similarly, Qwest's list of items it recites as necessary to enact the rate change does not support adoption of its interpretation of "effective date," according to Staff. The Commission provided Qwest several months to prepare for the required rate change. If Qwest found itself unable to comply with the order, it should have filed a timely motion for relief, such as an extension of the effective date for all rates. Staff notes that Qwest tries to blame the Commission for Qwest's failure to meet the effective date. Staff points out that Qwest filed incorrect tariffs in October and filed for reconsideration of the Commission's order, two acts that contributed to the short time line Qwest cites.

Staff rebuts Qwest's assertion that it is not unusual for a company to implement rates at a later date than the effective date with retroactive adjustments to the effective date. Staff points out that in UT 85 and UM 731, when Qwest could not meet the set deadlines for implementing rates, it notified Staff or the Commission and obtained

permission to implement rates at a later date.<sup>3</sup> In UT 125, Qwest failed to provide meaningful notice to the Commission or Staff of its intent to implement certain rates over time. Instead, Qwest proceeded with its implementation plan without notice to Staff, without permission from the Commission, and in violation of the Commission's order. Qwest sent Staff an email four days before the effective date for the new rates, on December 27, 2001. The email did not request Staff's or Commission approval for Qwest's plan but merely informed Staff what action Qwest was taking.<sup>4</sup>

Staff suggests that in the future, whenever a company finds that it cannot meet the effective date set forth in an order, or any other requirement set forth in an order, it must file a motion in a timely manner, specifying the relief the company requires. Further, a company should take no action until the Commission has ruled on its motion.

Finally, Staff requests that the Commission implement this new procedure in this docket. Qwest should not be allowed to modify its proposed implementation schedule unilaterally. If Qwest discovers a need to modify the schedule, it must first file a motion, allow sufficient time for the Commission to consider it, and receive Commission approval before making any changes.

Staff reiterates that it has proposed potential remedies in its motion. Staff suggested that Qwest agree to (1) pay interest to all customers receiving a bill credit; (2) not debit a customer for any underbillings caused by its implementation scheme; (3) pay all taxes, fees, surcharges; (4) provide the Commission a detailed accounting reconciliation of all adjustments; (5) set up a special service number to handle expected customer inquiries arising from implementing rates after the effective date; and (6) accept sole responsibility for the confusion and expense caused by its failure to abide by the Commission's order. Staff also noted that the Commission has legal authority to seek fines against a company that violates one of its orders. In its response, Qwest rejects all remedies but (3).<sup>5</sup> Staff asks that if the Commission wishes to pursue any of the above suggested remedies, or others of the Commission's choosing, it identify the remedies it is interested in and direct Staff to enter into negotiations with Qwest to achieve a Memorandum of Understanding with the company resolving this matter.

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<sup>3</sup> The UM 731 phase in of the surcharge rate is not apposite here, we note, because there was no need for any company to file a tariff to set the universal service surcharge rate. The Commission had already set the rate in its universal service order. Qwest had also elected modified regulation under ORS 759.405, so its tariff filing requirements were subject to the reduced level of review under ORS 759.425. The Commission had limited authority to order Qwest to modify the filed tariff. Thus the UM 731 surcharge rate situation sets no precedent here.

<sup>4</sup> Staff points out that Qwest's notice to the Commission of its implementation plan on December 11, 2001, is unsatisfactory. The notice was given in a footnote buried in its reply in support of its motion for reconsideration of the elasticity adjustment. Staff characterizes the footnote as vague, obtuse, and misleading in its context. The focus of Qwest's responsive filing in the reconsideration request was to argue against extending the January 1 effective date. Qwest now claims that the footnote represents notice of its plan to extend the January 1 effective date. Staff disputes this claim.

<sup>5</sup> We note that Qwest indicated it would respond to the Commission's audit requests; that means Qwest also concedes Issue 4 on Staff's list.

**Discussion and Resolution.** The procedural status of this case is unusual. Although Staff filed a motion to show cause, in its reply Staff states that it filed its motion primarily to alert the Commission to Qwest's novel approach to the directive in Order No. 01-810 that UT 125 rates were to be "effective no later than January 1, 2002." Staff also asks us for guidance on how to remedy the situation caused by Qwest's unilateral decision to implement certain UT 125 rates after the January 1 effective date. Staff states that it does not believe further briefing or evidentiary hearings are necessary on any of the three issues it raises in its reply.

In view of Staff's stated purpose in filing its motion, we grant Staff's motion to show cause how Qwest's tariff filing complies with our Order No. 01-810. We consider, however, that Qwest's response has shown how Qwest believes its filing complies with our order; no further answer or argument is necessary.

Qwest believes that its staggered approach to implementing rates complies with our directive that UT 125 rates be effective January 1, 2002. We are dismayed at Qwest's interpretation. When we say that rates are to be effective on a date certain, we mean that rates are to go into effect, be implemented, and be operative on that date. We do not mean that rates may take effect later, retroactive to that date. We most emphatically do not mean that rates may take effect on a series of different dates at a utility's discretion.

We do not believe that the term "effective" is ambiguous. We do not believe that regulated utilities have found this term ambiguous. In the past, when Qwest or another utility was ordered to make rates effective on a date certain, the utility either complied with the Commission order or asked permission from the Commission to defer the effective date for the new rates. Qwest has done neither, yet asserts that its interpretation of "effective" complies with our order. We find Qwest's interpretation disingenuous and self serving.

Moreover, Qwest's purported notice to Staff, in a footnote to its reply in support of its motion for reconsideration of the elasticity adjustment, is inadequate by any standard and fails to allow for a response by Staff or the Commission. Qwest's email to Staff on December 27, 2001, simply informs Staff that Qwest will not make all of its rates effective on January 1, 2002, as ordered. Qwest's behavior in failing to implement the new rates on the ordered date and in failing to gain Commission approval for its planned implementation is unacceptable.

We find that Qwest has violated our Order No. 01-810 by failing to implement its new tariffed rates on the ordered date. We further find that Qwest has violated ORS 759.205<sup>6</sup> and 759.260.<sup>7</sup>

Staff asks us to implement a new procedure in this docket. We shall do so. If Qwest has not already implemented all the rate changes ordered in UT 125, it may not modify its proposed implementation schedule unilaterally. If Qwest discovers a need to modify the schedule, it must first file a motion, allow sufficient time for the Commission to consider it, and receive Commission approval before making any changes.

Staff also urges us to require Qwest to negotiate an MOU with respect to underbillings and other issues. The date for planned implementation of Qwest's new rates is past. Therefore, instead of negotiating an MOU, we will require Qwest to produce a report for us no later than three weeks from the date of this order. Qwest may report via an MOU or using another vehicle, but we encourage Qwest to work with Staff in the process. The report must cover (a) how Qwest handled underbillings caused by its implementation scheme (Item 2 on Staff's list above); and (b) when Qwest can provide examples of adjustments to all appropriate taxes, fees, and surcharges. Specifically, these examples should include sample bills showing adjustments to rates, taxes, fees, and surcharges resulting from the rate changes. There should be separate examples with explanations of the following: a calculation of the adjustment to the PUC fee charge; a calculation of the adjustment to the Oregon Universal Service surcharge for a situation where the rate change adjustment occurs on, or after February 1, 2002, but some part of the adjustment relates to the January 1 through 31 time frame<sup>8</sup> (Items 3 and 4 on Staff's list); (c) how Qwest has and will handle customer inquiries arising from implementing rates after the effective date and arrange to take responsibility for any confusion resulting from its failure to abide by the Commission's order (Items 5 and 6 on Staff's list). We accept Qwest's representation that any interest to customers receiving a bill credit would be so small as to be negligible, and do not wish to pursue Item 1 on Staff's list.

We note that we have an administrative rule in place, OAR 860-021-0135, that sets out how a utility must handle underbillings. In relevant part, that rule provides:

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<sup>6</sup> ORS 759.205 provides:

No telecommunications utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect or receive any rate not specified in such schedule. The rates named therein are the lawful rates until they are changed as provided in this chapter.

<sup>7</sup> ORS 759.260 provides in relevant part:

(1) Except as provided in ORS 759.265 [not applicable here], no telecommunications utility or any agent or officer thereof shall, directly or indirectly, by any device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by it than:

(a) That prescribed in the public schedules or tariffs then in force or established; . . .

<sup>8</sup> The surcharge rate and revenue base changed on February 1, 2002.

(4) When a customer is required to repay an underbilling, the customer shall be entitled to enter into a time-payment agreement without regard to whether the customer already participates in such an agreement. If the customer and utility cannot agree upon payment terms, the Commission shall establish terms and conditions to govern the repayment obligation. The energy or large telecommunications utility shall provide written notice advising the customer of the opportunity to enter into a time-payment agreement and of the Commission's complaint process.

We expect Qwest to provide us with documentation showing that it has complied with this rule in handling its underbillings to customers. This documentation should be in the report described above.

Staff notes that we have legal authority to seek fines against a company that violates a Commission order. We find that Qwest has violated our Order No. 01-810, which required that new UT 125 rates be effective on January 1, 2002. We reserve our option to pursue this remedy against Qwest.

**ORDER**

IT IS ORDERED that:

1. If Qwest proposes further to modify the implementation schedule for the UT 125 rates, it shall first file a motion with the Commission and shall take no action on the rate implementation until the Commission has disposed of its motion.
2. Qwest shall provide the Commission with a report no later than three weeks from the date of this order, covering the points set out at pages 12 and 13 above.

Made, entered, and effective \_\_\_\_\_.

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**Roy Hemmingway**  
Chairman

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**Lee Beyer**  
Commissioner

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**Joan H. Smith**  
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 to a court pursuant to applicable law.