ORDER NO. 06-515

ENTERED 09/11/06

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UT 125

In the Matter of QWEST CORPORATION, fka U S WEST COMMUNICATIONS, INC. Application for an Increase in Revenues.	)	ORDER

DISPOSITION: QWEST RATE REBALANCING PROPOSAL DENIED

Introduction

The current proceedings in this docket are intended to implement the remand of Order Nos. 01-810 and 02-009 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 of the Marion County Circuit Court[1] remanding the case to the Public Utility Commission of Oregon (Commission).

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 Qwest Corporation) (Qwest or the Company), and the Public Utility Commission Staff (Staff) in the revenue requirement phase (Phase I) of this docket. Among other things, the Stipulation obligated Qwest to implement customer refunds of approximately $240 million and a going-forward rate reduction of approximately $63 million annually.

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.[2] As part of Order No. 01-810, the Commission approved revised rates for

[1] The Circuit Court's remand was entered in Case No. 02C12247 on or about May 19, 2005.

[2] Order No. 01-810 also established permanent price caps and price floors for Qwest. Pursuant to Senate Bill 622, now codified as ORS 759.400 *et seq.*, telecommunications utilities were given the option to replace traditional rate of return regulation with price cap regulation. Qwest elected price cap regulation

public access lines (PAL) and CustomNet service, adopting rate recommendations proposed by Qwest and agreed to by Staff. The Northwest Payphone Association (now, the Northwest Public Communications Council or "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.[3]

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 (hereafter also, "the rate design orders") to Marion County Circuit Court. On October 1, 2002, the Court entered a judgment affirming the Commission's orders. NPCC thereafter filed an appeal with the Oregon Court of Appeals.

On November 10, 2004, the Court of Appeals entered a decision reversing and remanding Order Nos. 01-810 and 02-009. 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.[4]

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 (jointly "payphone service 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.

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effective December 30, 1999. Qwest's initial price caps were the rates in effect at the time the utility elected price cap regulation. Pursuant to ORS 759.415, those price caps were superseded by rates established in Qwest's pending rate case. In other words, the price caps established in Order No. 01-810 entered in Phase II of this docket became the permanent price caps under the law. *See* Order No. 01-810 at 3.

[3] NPCC argued that the PAL and CustomNet rates proposed by Qwest did not satisfy the requirements of the "New Services Test," as mandated by the FCC's Payphone Orders. NPCC also argued that Qwest did not submit adequate cost information to the Commission. *See* Order No. 01-810 at 50-56.

[4] While NPCC's appeal was pending, Qwest filed Advice Nos. 1935 and 1946. Those filings became effective on March 17 and August 28, 2003, respectively, and significantly reduced Qwest's PAL rates. In fact, the proposed payphone service rates Qwest has filed in this case are the same rates approved in Advice Nos. 1935 and 1946 already in effect.

On March 31, 2006, Qwest filed its proposed PAL and Fraud Protection rates. It alleges that the lower payphone service rates reduce Qwest's revenues by approximately $1 million per year.[5] To offset the reduction, Qwest proposes to increase the rate for residential Caller ID service by $0.60 per month.

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 payphone service rates. On May 1, 2006, the ALJ issued a Ruling adopting the parties' procedural proposal.

Opening Briefs

On May 19, 2006, Qwest and Staff filed opening briefs addressing Qwest's proposal to "rebalance" rates to offset the anticipated reduction in payphone service rates. NPCC did not file an opening brief.

Qwest argues that the Court of Appeal's remand order and ORS 756.568 authorize the Commission to reopen this case and to adjust other rates to offset the alleged revenue reduction that results from approving lower rates for payphone services. It further maintains that the Commission must rebalance rates in order to provide the Company with the opportunity to recover its authorized revenue requirement and to avoid "impermissible single-issue ratemaking" that would occur if the Commission were to adjust only Qwest's rates for payphone services.[6]

Staff advances the following arguments in opposition to Qwest's proposal to rebalance rates:

a. Qwest's proposal to raise its residential caller ID service to offset lower PAL rates assumes that the Oregon Court of Appeals reversed all aspects of the Commission's Order No. 01-810. The Court's decision, however, is limited to applying federal law to payphone services (PAL and CustomNet) and does not impact other aspects of Order No. 01-810.

b. Because Qwest seeks to implement PAL rates in this case that are identical to its existing PAL rates, there is no rate difference to offset. Qwest voluntarily lowered its current PAL rates in Advice No. 1935 more than a year before the Court of

[5] Qwest's calculation is based upon the test year billing units utilized in Order No. 01-810.

[6] Qwest Opening Brief at 1.

Appeals issued its opinion in this matter. Having done so, Qwest cannot argue that the Court of Appeals decision now warrants rebalancing of customer rates.[7]

c. The price caps established in Order No. 01-810 were the last and only opportunity for the Commission to adjust Qwest's price caps for non-basic services such as residential Caller ID service. If Qwest contends that Order No. 01-810 is not a final order because of the Court of Appeals' decision, then the effective price caps must be the rates Qwest was charging when it elected price cap regulation in December 1999. However, because Qwest has been operating under the price caps established in Order No. 01-810, not the price caps in effect when it elected price cap regulation, a number of complex problems arise.[8]

d. Qwest's attempt to raise its residential Caller ID service is unlawful under ORS 759.410 and OAR 860-032-0190(4), which provide that Qwest cannot charge more than the established price caps for non-basic services. Having elected price cap regulation, Qwest cannot prospectively raise rates for non-basic services above the price caps established in Phase II. Qwest's proposal to increase residential Caller ID rates in this case must therefore be regarded not as a "prospective" rate increase, but rather as an unlawful attempt to treat Order No. 01-810 as "interim" in violation of the filed rate doctrine.

ALJ Memorandum/Proposed Decision. After reviewing the arguments advanced by the parties in their opening briefs, the ALJ issued a Memorandum dated June 7, 2006. The ALJ observed that the briefs filed by the parties did not address whether the Stipulation approved in Phase I of this docket precluded Qwest's rate rebalancing proposal. The ALJ prepared a proposed decision addressing the issue and provided the parties with an opportunity to address the matter in their reply briefs.

Reply Briefs. On June 23, 2006, the parties filed reply briefs. Qwest challenges the arguments advanced by Staff. As discussed more fully below, Qwest also maintains that the Phase I Stipulation is not applicable to matters before the Commission as a result of the Court's remand. Staff reiterates the arguments in its opening brief and concurs that Qwest's rebalancing proposal is not permitted under the Stipulation.[9]

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[7] Staff also states that, by electing price cap regulation, Qwest opted out of traditional revenue requirement regulation and instead chose to have pricing flexibility for non-basic services limited only by "price caps" and "price floors." It asserts that Qwest cannot exercise its pricing flexibility (*i.e.*, to lower PAL rates) and then maintain that it should receive an offsetting revenue increase by way of raising an established "price cap" for its residential Caller ID service.

[8] For example, Staff states that the rates Qwest charged for analog Private Line service were below the price floors when the Company elected price cap regulation. Thus, if Qwest contends that Order No. 01-810 is not final, then it has been charging unlawful rates for analog Private Line service. *See* Order No. 01-810 at 16-17.

[9] NPCC also filed a reply brief relating to Staff's comments regarding the filed rate doctrine. NPCC takes the position that the state filed rate doctrine does not apply to PAL rates because the FCC preempted

Commission Decision

I. The Stipulation. The ALJ's Memorandum/Proposed Decision interprets Paragraph 5 of the Phase I Stipulation to encompass the reduction in payphone rates that will likely be required as a result of the Court-ordered remand in this docket. The ALJ also found that the Stipulation precluded Qwest's proposal to offset the payphone rate reduction with an increase in Caller ID rates. The Commission concurs with the ALJ's interpretation of the Stipulation for the reasons set forth below:

1. Paragraph 5. Paragraph 5 of the Stipulation details the rights and obligations of the parties in the event the Stipulation is reversed or modified on appeal. It provides:

> Appeal of the Commission's Order. The parties recognize that the Commission's order implementing the terms of this Stipulation may be subject to suit pursuant to ORS 756.580 by any party aggrieved by the terms of said order (hereinafter in this paragraph 5 referred to as an 'appeal'). In the event of such appeal, the parties shall advocate that the court(s) should affirm said order. Despite the pendency of any such appeal, U S WEST agrees to implement the terms of Paragraphs 1 and 2 of this Stipulation, forty-five days after the Commission has finally disposed of any motions requesting rehearing and/or reconsideration of the order implementing the terms of this Stipulation. The parties further recognize that the order adopting the terms of this Stipulation may be reversed and/or modified on appeal. The parties further recognize that U S WEST's obligation to refund monies to customers and to reduce its ongoing rates may be modified on appeal, either by the issuing of a judgment incorporating or requiring different refunds or rate reductions, or by the Court of Appeals refusing to dismiss the Appellate Litigation. In the event that an order implementing the terms of this Stipulation is reversed or modified on appeal, the parties agree that U S WEST will be entitled to a credit for refunds and rate reductions made under Paragraphs 1 and 2 of this Stipulation against any such increased refund and/or rate reduction obligation imposed by a judgment reversing or modifying the order adopting the terms of this Stipulation or any subsequent order. Notwithstanding anything herein to the contrary, the parties understand that U S WEST

Qwest's PAL rates in 1996. Accordingly, NPCC requests that any Commission decision based on the filed rate doctrine be narrow in scope and address only residential caller ID service.

> does not waive its rights, if any, to seek recovery of any overpayments – whether in the form of surcharges or rate increases – in the event that U S WEST's refund and/or rate reduction obligation is reduced by a judgment reversing or modifying the order adopting the terms of this Stipulation or any other order. It is the intent of the parties to this Stipulation that the Commission's order implementing the terms of this Stipulation contain provisions implementing the terms of this Paragraph 5 and, in the event that the order does not contain provisions implementing this Paragraph 5, the order will be deemed to be materially different from the terms of this Stipulation.

2. <u>Paragraph 5 encompasses NPCC's appeal of Order Nos. 01-810 and 02-009</u>. Qwest argues that Paragraph 5 of the Stipulation encompasses only appeals of Order No. 00-190 adopting the Stipulation and does not apply to appeals of the rate design orders entered in Phase II of this docket (Order Nos. 01-810 and 02-009). In advancing this argument, Qwest appears to focus on the first four sentences of Paragraph 5, which variously refer to "the Commission's order implementing the terms of this Stipulation," "the order implementing the terms of this Stipulation," and "the order adopting the terms of this Stipulation."[10] While it might be possible to read those sentences to relate to Order No. 00-190, the fifth and sixth sentences of Paragraph 5 cannot be so narrowly construed.[11] Those sentences clearly encompass not only an appeal of Order No. 00-190 adopting the Stipulation, but also *an appeal of any subsequent Commission order implementing the terms of the Stipulation.*

Thus, the relevant inquiry for purposes of analyzing Paragraph 5 is whether the rate design orders entered in Phase II of this docket are orders "implementing the terms of the Stipulation." If so, then any increased rate reduction obligation imposed on Qwest as a result of NPCC's successful appeal of the Commission's rate design orders is governed by Paragraph 5. As discussed below, the terms of that paragraph limit Qwest

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[10] Qwest also states that the Stipulation is entitled "Stipulation to Resolve Matters on Appeal," suggesting that Paragraph 5 was intended to address only the litigation pending at the time Order No. 00-190 was entered. Qwest Reply Brief at 10. This interpretation is refuted by the language in Paragraph 5 encompassing any order implementing the Stipulation.

[11] As noted, the fifth and sixth sentences provide:

> The parties further recognize that U S WEST's obligation to refund monies to customers and to reduce its ongoing rates may be modified on appeal, either by the issuing of a judgment incorporating or requiring different refunds or rate reductions, or by the Court of Appeals refusing to dismiss the Appellate Litigation. In the event that *an order implementing the terms of this Stipulation* is reversed or modified on appeal, the parties agree that U S WEST will be entitled to a credit for refunds and rate reductions made under Paragraphs 1 and 2 of this Stipulation against any such increased refund and/or rate reduction obligation imposed by a judgment reversing or modifying the order adopting the terms of this Stipulation *or any subsequent order*. (Emphasis supplied.)

to a credit for refunds and rate reductions made pursuant to the Stipulation, and do not authorize Qwest to increase customer rates to offset additional revenue reductions resulting from the Court of Appeals' decision.

3. Order Nos. 01-810 and 02-009, entered in the rate design phase of this docket, are orders "implementing" the rate reductions in the Stipulation. Not surprisingly, Qwest maintains that the Commission's Phase II rate design orders cannot be considered "an order implementing the terms of the Stipulation." It argues that the term "rate reductions" in Paragraph 5 is limited to the $63 million overall rate reduction approved in Order No. 00-190, and cannot be construed to include reductions in specific customer rates required as a result of the appeal of the rate design orders. Qwest states:

> Paragraph 5 provides that in the event an order adopting the terms of the Stipulation is reversed and/or modified on appeal, Qwest's 'obligation to refund monies to customers and to reduce its ongoing rates may be modified on appeal, either by the issuing of a judgment incorporating or requiring different refunds or rate reductions.' The 'obligation . . . to reduce its ongoing rates' referenced in this sentence can reasonably be construed only as the *overall amount of the revenue reduction* agreed to in the Stipulation, because that is the only rate reduction addressed by the Stipulation. Thus, when this sentence identifies the possibility that a judgment in an appeal of an order adopting the Stipulation may require 'different . . . rate reductions' or an increase in Qwest's 'rate reduction obligation,' the only rate reduction possibly referenced is the overall amount of the revenue requirement reduction, *i.e.*, $63 million per year; that language did not refer to a reduction the Commission might make to a rate for a specific service in the future rate design proceedings.[12]

The Commission disagrees with Qwest's contention that the rate design orders entered in this docket are not orders "implementing" the rate reductions included in the Stipulation. Those rate reductions took the form of temporary bill credits for each class of service,[13] and effectively established an interim rate design that remained in effect until the Commission entered Order Nos. 01-810 and 02-009, establishing permanent rates in Phase II of this docket. In other words, the going-forward rate

[12] Qwest's Reply Brief at 12.

[13] The temporary bill credits are listed in Exhibit B of the Stipulation and resulted in monthly rate reductions of $1.85 for private line service, $2.47 for residential service, $5.93 for simple business service, and $6.68 for complex business service. The carrier common line rate paid by carrier access customers was also reduced.

reductions in the Stipulation were not finally implemented until the rate design was established.

Paragraph 2 of the Stipulation makes clear that the permanent rates established in the rate design phase of this docket were the final step in the process of "implementing" the $63 million rate reduction in the agreement. That paragraph provides, in relevant part:

> a. *Permanent rates, incorporating the $63 million revenue reductions, shall be established in the rate design phase of Docket UT 125*. The parties hereby agree to take all actions necessary in order to conclude the rate design phase of Docket UT 125 as quickly as possible. In order to expedite this process, U S WEST agrees to file its rate design proposal no later than the later of November 15, 1999 or 30 days after the Court of Appeals lifts the stay as described in Paragraph 4(c). (Emphasis supplied.)
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> b. *Prior to the implementation of the rates described in Paragraph 2(a), above*, U S WEST will give temporary bill credits to its Oregon local service customers who subscribe to the services set forth on Exhibit B and make a temporary rate reduction for its switched access customers on the following terms and conditions. . . . (Emphasis supplied.)

The foregoing language not only undermines Qwest's claim that the "rate reductions" mentioned in Paragraph 5 do not encompass the rates established in the rate design portion of this docket, but also acknowledges the fact that revenue requirement and rate design are inseparably linked. Ironically, Qwest acknowledges this commonly understood regulatory concept in its brief:

> As the Commission well knows, rate design is a balancing process in which individual rates are adjusted with the goal of achieving a rate design that provides a regulated company the opportunity to earn its allowed revenue requirement. The adjustment of each rate affects the overall revenue picture and may require adjustments to other rates so that the utility is neither deprived of the opportunity to earn its allowed return nor over-compensated for its services.[14]

[14] Qwest Opening Brief at 6.

Thus, as Qwest observes, rate design is the process of formulating customer rates that will produce the revenue requirement the Commission has determined to be appropriate. It is, quite simply, the process of "implementing" the approved revenue requirement.[15] For Qwest to maintain that the rate reductions authorized in the revenue requirement phase of this case were not implemented in the rate design phase misconstrues the Stipulation and makes no sense from a regulatory standpoint.[16]

4. <u>The Stipulation does not permit Qwest's rate rebalancing proposal</u>. In its brief, Qwest argues that it did not forego the right to rebalance rates in the event of a judicial decision reversing a Commission order implementing the Stipulation and increasing the amount by which Qwest must reduce its rates. Qwest points out that a waiver of rights must be clear and unequivocal and that nothing in the Stipulation "supports the conclusion that Qwest waived its right to seek rate rebalancing in the current remand proceeding . . . ."[17]

Again, we disagree with Qwest's interpretation of the Stipulation. Paragraph 5 clearly states that Qwest shall only be "entitled to a credit for refunds and rate reductions made under Paragraphs 1 and 2 of [the] Stipulation," in the instance where a subsequent order implementing the Stipulation is reversed and the court imposes an increased refund or rate reduction obligation upon Qwest. With respect to this issue, the ALJ's proposed decision states:

> Whereas paragraph 5 permits Qwest to seek a rate increase in the event a Court determines that Qwest's refund/rate reduction obligation should be *reduced*, it does not provide Qwest with the same opportunity where a Court finds that

[15] In a typical utility rate proceeding, the revenue requirement and rate design are addressed in the same Commission order. Qwest's revenue requirement and rate design were addressed separately in this proceeding in order to accommodate special circumstances. By adopting the revenue requirement in the Stipulation, the Commission was able to provide Qwest customers with immediate refunds totalling over $200 million and also eliminate risks associated with pending litigation. As noted, the forward-looking "rate reductions" were administered as temporary bill credits in order to effectuate an interim rate design that would remain in place until final rates could be determined. The bill credits had the effect of immediately reducing customer rates on a going-forward basis, and also prevented Qwest from accruing future refund and interest liabilities while the final rate design was under consideration. See, *e.g.*, Qwest Phase I Post-Hearing Brief, dated February 11, 2000, at 17.

[16] Qwest's position on this issue is also internally inconsistent. On the one hand, Qwest argues that the Commission must respond to the Court's remand by readjusting Qwest's rate design in a manner that will ensure the Company has an opportunity to earn its revenue requirement. On the other hand, for purposes of interpreting the Stipulation, it refuses to acknowledge that the rate design process implements the approved revenue requirement. In other words, Qwest wants the Commission to acknowledge the linkage between rate design and revenue requirement for purposes of implementing the Court's remand, but wants the Commission to ignore that linkage for purposes of interpreting the Stipulation.

[17] Qwest Reply Brief at 13, 15-16.

> Qwest's obligation should be *increased*. In the latter circumstance, Qwest is limited to receiving a credit for refunds and rate reductions already made in accordance with the Stipulation. Conspicuously absent from paragraph 5 is any language indicating that Qwest is entitled to increase rates to offset any *increased* refund or rate reduction obligation resulting from an appeal of the Stipulation or other order. This omission stands in stark contrast to Qwest's specific reservation of rights in the event of a Court decision *reducing* its refund/rate reduction obligation. . . . [T]he language of paragraph 5 makes clear that, by agreeing to accept only a credit for the refunds and rate reductions included in the Stipulation, Qwest deliberately relinquished the right to seek an offsetting revenue increase in the event of an adverse ruling on appeal.[18]

The Commission agrees that the Stipulation does not permit Qwest to seek an offsetting revenue increase where the Company's rate reduction obligation is increased on appeal. Paragraph 5 accomplishes this result by limiting Qwest to a credit for refunds/rate reductions already made by the Company, and further, by deliberately omitting any language preserving Qwest's opportunity to seek recovery for any additional monetary obligations imposed upon the Company by the Court.

Despite Qwest's protestations to the contrary, it made perfect sense from a regulatory standpoint for the Company to agree to forego the prospect of rate rebalancing. As noted in Order No. 00-190, the revenue requirement approved in the Stipulation was the last such determination by the Commission because of Qwest's decision to opt out of traditional rate of return regulation under ORS 759.400 *et seq*. Likewise, the price cap/price floor determinations made in the rate design phase of this docket established permanent rates for Qwest on a going-forward basis. Completing those undertakings was inordinately difficult, entailed a substantial commitment of resources, and consumed several years' time. Qwest's rate rebalancing proposal would require revisiting many of those issues in yet another complex and protracted docket.[19] We cannot imagine that the Commission or any of the parties, including Qwest, would have been willing to agree to any scenario requiring the agency to start all over again if Qwest's refund/rate reduction

[18] ALJ Memorandum/Proposed Decision at 5.

[19] We also find that Qwest's rate rebalancing proposal is flawed to the extent that it proposes resetting only residential Caller ID rates. Even if we agreed that rate rebalancing were required, it would be inappropriate to single out only one of Qwest's rates for review. Indeed, Qwest's proposal to limit rebalancing to Caller ID rates would entail the same "single-issue ratemaking" it accuses the Staff of endorsing.

obligations were increased.[20] That being the case, it is perfectly understandable why the Stipulation was drafted to preclude such a result.

6. Summary. The Commission concludes that the Stipulation in this docket does not permit Qwest's rate rebalancing proposal. Under the terms of that agreement, Qwest specifically agreed to accept the risk that subsequent appeals of the Commission's order implementing the Stipulation might result in a situation where Qwest was required to make refunds or rate reductions in addition to those set forth in the Stipulation. The language of the agreement demonstrates that the Company was fully cognizant of the potential consequences of its decision when it executed the Stipulation. Qwest cannot now be heard to complain that it is somehow prejudiced by having to reduce rates in response to a judicial determination without a corresponding offset, especially when that scenario is specifically provided for in the agreement. The simple fact is that Qwest took a calculated risk that did not turn out as expected. Relieving Qwest of the consequences of its agreement by raising other customer rates would contravene the terms of the Stipulation.

II. The Scope of this Proceeding. In addition to the foregoing, we agree with Staff that the Commission is without authority to reexamine Qwest's non-payphone rates in this remand proceeding. As noted above, Senate Bill 622, now codified as ORS 759.400 *et seq.*, allowed telecommunications utilities to opt out of traditional rate of return regulation by electing price cap regulation. In particular, ORS 759.405(1) provides that "[a] telecommunications carrier that elects to be subject to this section and ORS 759.410 shall be subject to the infrastructure investment and price regulation requirements of this section and ORS 759.410 and shall not be subject to any other regulation based on earnings, rates or rate of return." ORS 759.410(2) further provides that "[a] telecommunications carrier that elects to be subject to this section and ORS 759.405 shall be subject to price regulation as provided in this section and shall not be subject to any other retail rate regulation, including but not limited to any form of earnings-based, rate-based or rate of return regulation." For any utility electing price cap regulation, ORS 759.410 instructs the Commission to establish rates for basic services, as well as maximum prices (price caps) and minimum prices (price floors) for non-basic services.

[20] Qwest might contend that Paragraph 5 envisions just such a scenario in the event of a Court decision reducing the Company's refund/rate reduction obligations. But that possibility was extremely unlikely, since Qwest was the only party with an interest in reducing its refund/rate reduction obligation, and it was committed under Paragraph 5 to support the terms of the Stipulation.

Qwest elected price cap regulation effective December 30, 1999.[21] Pursuant to ORS 759.415(1), Qwest's initial price caps were replaced by the permanent price caps established in Qwest's pending rate case; that is, in Order No. 01-810 entered in Phase II of this docket.[22]

Qwest's assertion that the Court's remand obligates the Commission to revisit all of the Company's rates necessarily presumes that the non-payphone service rates approved in Order No. 01-810 are not final and may therefore be revised. We disagree. ORS 756.565 provides that all rates and orders issued by the Commission "shall be in force and shall be prima facie lawful and reasonable, until found otherwise in a proceeding brought for that purpose under ORS 756.610." Subsection (2) of ORS 756.610 further provides that a petitioner seeking judicial review of a Commission order may apply to the Court of Appeals for a stay of the Commission's order pending the final disposition of the appeal.

In this case, no party obtained a stay of Order No. 01-810 establishing permanent rates in this docket, and the only rates challenged on appeal were those relating to payphone services. Absent the issuance of a stay by the Court, the unchallenged rates adopted in Order No. 01-810 became final and unappealable.[23] Thus, the only Qwest rates subject to revision in this remand proceeding are the PAL line and Fraud Protection rates addressed on appeal.

Consistent with this interpretation, the Court of Appeals did not instruct the Commission to revisit all of Qwest's non-payphone rates. Instead, the Court required only that the Commission "reconsider its order in light of the New Services Order and other relevant FCC orders." In other words, the Commission's obligation on remand is limited to ensuring that the rates for payphone services are calculated based upon the federal methodology prescribed by the FCC.

As a practical matter, Qwest's theory that all of its rates remain subject to review could easily result in a scenario whereby its rates – including price caps for non-basic services – are not finalized for years. If, for example, the Commission accepted Qwest's proposal and increased Caller ID rates to offset the reduction in payphone service

[21] To date, Qwest is the only telecommunications utility that has elected into price cap regulation.

[22] As noted above, Qwest's initial price caps were the rates in effect at the time the utility elected price cap regulation. ORS 759.415(1) provides that "[i]n a rate proceeding brought by a telecommunications carrier that elects to be subject to ORS 759.405 and 759.410, or by the Public Utility Commission against an electing telecommunications carrier, prior to January 1, 1999, that is on appeal on September 1, 1999, a final rate for a telecommunications service implemented as a result of the final judgment and order or negotiated settlement shall become the maximum rate for purposes of ORS 759.410." Since UT 125 began prior to January 1, 1999, and because this rate docket was on appeal as of September 1, 1999, the rates established by the Commission in Order No. 01-810 comprise Qwest's permanent price caps.

[23] The revenue requirement determination established in Order No. 00-190 is also final and unappealable. No party ever filed an appeal challenging that determination.

rates, there would be nothing to prevent an appeal of the revised Caller ID rates. A Court decision reversing the Commission's decision on the Caller ID rates would then, under Qwest's theory at least, precipitate still another review of all Qwest rates. This process could continue *ad infinitum*, resulting in a situation where the permanent price caps/floors contemplated by Senate Bill 622 remain in a constant state of limbo. Fortunately, the statutory scheme prevents such an outcome by limiting the Commission's rate review to the payphone service rates that were addressed by the Court on appeal.

III. Other Arguments. Because we have concluded that the Stipulation does not permit Qwest's rate rebalancing proposal, and that the scope of this proceeding is limited to payphone rates, it is unnecessary to address the remaining arguments advanced in this matter.

ORDER

IT IS THEREFORE ORDERED that the request by Qwest Corporation to increase residential Caller ID rates to offset a decrease in payphone service rates resulting from the Court-ordered remand in this docket is denied.

Made, entered, and effective SEP 11 2006.

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.