

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UT 125

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

DISPOSITION: STIPULATION ADOPTED

**Procedural History**

On April 14, 2000, the Public Utility Commission of Oregon (Commission) entered Order No. 00-190, adopting a Stipulation between U S WEST Communications, Inc., now known as Qwest Corporation (Qwest), and the Commission Staff (Staff) in the revenue requirement phase (Phase I) of this docket.

On September 14, 2001, the Commission entered Order No. 01-810 establishing a rate design for the stipulated revenue requirement approved in Order No. 00-190. As part of Order No. 01-810, the Commission approved revised rates for public access lines (PAL) and CustomNet service, adopting the rate recommendations proposed by Qwest and agreed to by Staff. The Northwest Payphone Association, now known as Northwest Public Communications Council (NPCC), opposed the PAL and CustomNet rates adopted by the Commission, arguing that the rates were not developed in compliance with Section 276 of the Telecommunications Act of 1996.

On November 13, 2001, NPCC filed an application for reconsideration of Order No. 01-810. On January 8, 2002, the Commission entered Order No. 02-009 denying NPCC's application for reconsideration.

NPCC appealed Order Nos. 01-810 and 02-009 ("the rate design orders") to Marion County Circuit Court (Circuit Court). On October 1, 2002, the Circuit Court entered a judgment affirming the Commission's orders. NPCC thereafter filed an appeal with the Oregon Court of Appeals (Court).

On November 10, 2004, the Court entered a decision reversing and remanding Order Nos. 01-810 and 02-009.<sup>1</sup> The Court determined that the rate design orders were unlawful in that: (1) the Commission's rates for PAL did not comply with certain federal requirements, and (2) the Commission did not adequately consider whether Qwest's proposed rates for CustomNet were subject to the same federal requirements.

On March 13, 2006, the presiding Administrative Law Judge (ALJ) convened a telephone conference to establish procedures necessary to comply with the Court's remand. During the conference, Qwest indicated that it would file proposed PAL and Fraud Protection (formerly CustomNet) rates to comply with the Court's decision. Qwest also indicated that it would seek to adjust other Qwest rates because of the recalculation of payphone service rates.

On March 31, 2006, Qwest filed its proposed PAL and Fraud Protection rates. On April 25, 2006, Qwest filed a letter on behalf of the parties requesting that the Commission decide, as a threshold matter, whether Qwest may raise any customer rates to offset reduced revenues resulting from a Commission decision approving lower PAL and Fraud Protection rates. On September 11, 2006, the Commission entered Order No. 06-515 denying Qwest's proposal to raise residential Caller ID rates to offset a decrease in PAL and Fraud Protection rates resulting from the Court-ordered remand in docket UT 125.

As a result of Order No. 06-515, the unresolved issues on remand are whether the PAL and Fraud Protection rates filed on March 31, 2006, comply with the Court's remand to develop rates in compliance with applicable federal requirements, and in particular, the new services test prescribed by the Federal Communications Commission (FCC).

### **Stipulation**

Since Order No. 06-515 was entered, Staff has performed a cost review of the rates proposed by Qwest on March 31, 2006. In addition, a number of settlement conferences have been held to discuss whether the proposed rates are consistent with the Court's remand and applicable federal requirements.

On October 15, 2007, Qwest, NPCC, and Staff (collectively, the "Parties"), filed a Stipulation designed to resolve all outstanding issues. The parties agree that Qwest's proposed PAL and Fraud Protection rates filed on March 31, 2006, comply with federal requirements and satisfy the Court's remand. In support of this determination, the parties offer into evidence the testimony and exhibits of Staff witness John Reynolds.

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<sup>1</sup> *Northwest Public Communications Council v. Public Utility Commission of Oregon*, 196 Or. App. 94, 100 P.3d 776 (2004). The judgment of the Marion County Circuit Court effectuating the remand was entered in Case No. 02C12247 on or about May 19, 2005.

Mr. Reynolds reviewed Qwest's proposed rates to ensure that the methodology used to develop those rates was consistent with requirements in the FCC's new services test.<sup>2</sup> Specifically, Mr. Reynolds found:

- (a) The proposed rates do not recover more than direct costs plus a just and reasonable amount of overhead;
- (b) The cost studies used to develop the proposed rates employ Qwest's Integrated Cost Model (ICM), September 26, 2002, version. The ICM is a forward-looking cost model used by Qwest in current UNE filings and is consistent with the total service long run incremental cost (TSLRIC) method used in determining UNE costs;
- (c) Inputs used in the ICM cost study are consistent with those used in other current cost studies. Qwest used current (2002) input costs rather than input costs associated with earlier UNE dockets. To account for the difference between those costs, Qwest weighted the input investment by a "benchmark" ratio of approved UNE rates to the September 2002 study-calculated rates;
- (d) The overhead cost methodology is the same as is used in other Qwest studies and is consistent with the method used in UNE pricing;
- (e) To avoid double recovery, Qwest deducted the subscriber line charge (SLC) from the cost calculations to determine the tariff rate;
- (f) Certain additional "retail" costs, such as billing and sales expense, were appropriately included.

The calculations supporting Mr. Reynolds' analysis of Qwest's proposed rates are set forth in Confidential Staff Exhibit 2. The calculations disclose that the annual revenue generated by Qwest's proposed rates is very nearly the same as the forward looking cost computed by Mr. Reynolds.<sup>3</sup> The Commission concurs with the analysis set forth in Mr. Reynolds' testimony and exhibits, and agrees with his conclusion that Qwest's proposed PAL and Fraud Protection Rates satisfy the requirements of the new services test.

### **Commission Decision**

The Commission has reviewed the Stipulation, together with the testimony and exhibits filed in support of the agreement. Based upon our examination, we find that Qwest's proposed PAL and Fraud Protection rates filed March 31, 2006, are in compliance with applicable federal requirements, including the new services test, as mandated by the Court of

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<sup>2</sup> The requirements of the new services test are detailed on pp. 2-3 of Mr. Reynolds' testimony.

<sup>3</sup> See Confidential Exhibit Staff/2, Reynolds/1, Line 6.

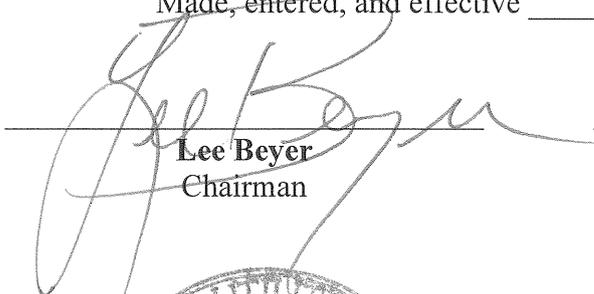
Appeals in its remand order. We therefore adopt the Stipulation and accept it and the supporting testimony and exhibits into the record in this docket.

**ORDER**

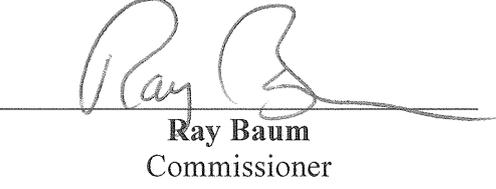
IT IS ORDERED that:

1. The Stipulation entered into among Qwest Corporation, Northwest Public Communications Council, and the Public Utility Commission of Oregon Staff is adopted.
2. The Public Access Line rates and Fraud Protection rates filed by Qwest Corporation on March 31, 2006, comply with applicable federal requirements and satisfy the remand of Order Nos. 01-810 and 02-009 mandated by the Oregon Court of Appeals in *Northwest Public Communications Council v. Public Utility Commission of Oregon*.

Made, entered, and effective NOV 15 2007.

  
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**Lee Beyer**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
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**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.