

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UT 125

In the Matter of

QWEST CORPORATION, fka
U S WEST COMMUNICATIONS, INC.,Application for Increase in Revenues.

ORDER

DISPOSITION: QWEST MOTION UNDER ORS 9.350 GRANTED;
PROCEEDINGS STAYED

This matter came before us on certification by the Administrative Law Judge (ALJ) to review a ruling issued July 3, 2024. That ruling denied Qwest Corporation dba CenturyLink QC's motion seeking an order to require Frank Patrick and James Pikel to prove that they are authorized to appear on behalf of the Northwest Public Communications Counsel (NPCC) and its members. For reasons stated below, we reverse the ALJ's ruling and grant Qwest's motion.

I. BACKGROUND

In its January 26, 2024 motion, Qwest raises two arguments that cast doubt on Mr. Patrick's and Mr. Pikel's authority to represent NPCC and its payphone service provider (PSP) members. First, Qwest contends that these attorneys "appear to have conflicts of interest with the parties they purport to represent because they have acquired those parties' claims."¹ Second, Qwest asserts "counsel appear to lack authority to represent the PSPs because no attorney-client relationship could remain with the many PSPs which no longer have any corporate existence or any personnel authorized to form an attorney-client relationship or otherwise to participate in this proceeding."²

The ALJ denied Qwest's motion. The ALJ first confirmed that he had the authority to determine whether an attorney is authorized to appear. He concluded, however, that Qwest had failed to adequately support its two arguments challenging the appearance of Mr. Patrick and Mr. Pikel. The ALJ found that Qwest's arguments rely on a purported

¹ Qwest Motion at 1 (Jan. 26, 2024).

² *Id.*

conflict of interest between the attorneys and individual PSPs but determined that no individual PSPs are currently parties in these proceedings. Based on a review of the remand proceedings to date, the ALJ explained that only Qwest, NPCC, and Staff were parties to the case.

Qwest filed a Motion to Certify the ALJ's Ruling to the Commission, which the ALJ summarily granted. In its motion, Qwest clarifies that Oregon Rules of Professional Conduct do not distinguish between whether a conflict-of-interest rests with a party or non-party. Thus, while disagreeing with the ALJ's conclusion that the attorneys do not represent individual PSPs in these proceedings, Qwest maintains that a disqualifying interest still exists. Qwest argues the ethical rules:

“[A]re concerned with an attorney's conduct, including his authority to act on behalf of his client, his personal and proprietary interests, his responsibility to third parties, and his compliance with the Rules. An attorney may also have a disqualifying conflict of interest with a former client who, by definition, would not be a party to the matter. Nowhere do the relevant Rules make dispositive whether the attorney's conflict involves a named party.”

NPCC has filed various correspondence in response to Qwest's motion to certify and characterizes Qwest's underlying challenge as a delay tactic.³ NPCC did not address the question of whether a disqualifying interest may exist with a non-party but has offered to provide an *in camera* review of the documentation showing that NPCC has indeed hired Mr. Patrick and Mr. Pikel to act as counsel in this case.

³ NPCC initially filed a response to Qwest's Motion Pursuant to ORS 9.350 to Prove Authority of Counsel on February 12, 2024. In that filing NPCC refuted Qwest's arguments but also requested “further clarification of the ALJ's expectations and sufficient time to comply” with any determined need for additional information from NPCC. Following Qwest's motion to certify the ALJ's denial of the underlying motion, NPCC filed a letter to the ALJ on July 23, 2024, asking the ALJ “whether you intend to require a formal response to Qwest's pending ‘Request’”. On August 26, 2024, following the ALJ's certification of the denial to the Commission, NPCC filed a motion for reconsideration and renewed request to for leave to file a response. The ALJ effectively granted NPCC's request by ruling on September 17, 2024, in which he gave NPCC an opportunity to file a formal response to address Qwest's arguments related to its motions. NPCC filed a formal response on September 18, 2024, as corrected by an errata filing on September 19, 2024.

II. Applicable Law

Qwest filed its motion under ORS 9.350, which provides:

“The court or judge thereof may, on motion of either party and on showing reasonable grounds therefor, require the attorney for an adverse party to prove the authority under which the attorney appears, and until the attorney does so, may stay all proceedings by the attorney on behalf of the party for whom the attorney assumes to appear.”

Oregon Rules of Professional Conduct (RPC) 1.7 prohibits a lawyer from representing a client "if the representation involves a current conflict of interest." RPC 1.7(a)(2) states a conflict of interest exists if:

“[T]here is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”

III. DISCUSSION

At the outset, we agree with the ALJ’s conclusion that, while the Oregon Supreme Court and its disciplinary board are the only entities authorized to sanction an attorney for violation of ethical rules, this Commission has the authority to manage its proceedings, supervise the attorneys appearing before it, and decline to allow an attorney to appear in Commission proceedings should they not abide by the “standards of ethical conduct required of attorneys appearing before the courts of Oregon.”⁴ We also agree with the ALJ’s finding that no individual PSPs are a party to these remand proceedings. Despite several filings in which Mr. Patrick carelessly noted that he represented “NPCC and its members” before the PUC, the records make clear that only Qwest, NPCC, and Staff are parties to the remand.

We further find, however, that Qwest has met its burden under ORS 9.350 and provided reasonable grounds to question whether a potential conflict of interest exists arising from Mr. Patrick’s representation of NPCC and his possible ownership of the rights of one of NPCC’s PSP members. As noted in the ALJ’s July 3, 2024 Ruling:

“Qwest’s evidence shows that NPCC’s counsel (Mr. Patrick) was directed by a federal judge to withdraw from representing an individual PSP in a federal action after the judge concluded Mr. Patrick “created, at the least, a potential conflict of interest between himself” and an individual PSP by representing the PSP while foreclosing a lien for attorneys’ fees, obtaining a judgment against that same PSP, and purchasing that PSP’s claims at auction. The Oregon State Bar and Mr. Patrick also stipulated to a 60-day

⁴ OAR 860-001-0310(1). See also *Kidney Ass’n of Ore. v. Ferguson*, 315 Or 135, 141 (1992).

suspension of Mr. Patrick’s law license based on the same underlying conduct.⁵”

The fact that Davel Communications Inc., the PSP Mr. Patrick represented in the federal action, is not a party here does not by itself eliminate the potential conflict of interest. Filings in this docket show that NPCC is a regional payphone provider association. Although individual PSPs are not parties here, NPCC is seeking refunds to PSPs for any overcharges paid under Qwest’s tariffs. Thus, on its face, Mr. Patrick’s ownership of one PSP’s rights to refunds in these proceedings would create at least the potential of conflict with the interests of other PSPs represented by NPCC. The potential exists that Mr. Partick’s own personal interests may differ from those of the other members of NPCC.

Reasonable questions remain whether Mr. Patrick can, under the rules of professional responsibility, effectively represent NPCC, a trade association of PSPs, if he owns the rights in these proceedings of one of those PSPs. While Mr. Patrick (as a potential PSP claim owner) might have a similar interest as other PSPs in maximizing recovery of the overcharges for all, conflicts may arise during potential settlement discussions, the structure and timing of any refunds ordered, how such refunds should be allocated among individual PSPs, etc. Such potential conflicts may be exacerbated because many PSPs have ceased to exist.

For this reason, we conclude that Mr. Patrick should be required to clarify his ability to serve as counsel for NPCC by demonstrating that no conflict of interest exists. We note that NPCC acknowledges that Mr. Patrick once owned the claims of two PSPs (NSC and Davel) represented by NPCC, but states that, after he acquired them, “he assigned them to the other NPCC members pro rata rather than keeping those claims as his personal property.”⁶ If true, such information may confirm Mr. Patrick’s authority to serve as counsel for NPCC. As Qwest notes in its reply, however, Mr. Patrick provides “no evidence of such assignments, and do[es] not say when they occurred, who authorized the other PSPs to receive such assignments, what consideration was given by whom, or who now owns the claims of the recipients—whether it is Mr. Patrick, Mr. Pikl, an entity in which they have an interest, or someone else.”⁷ Qwest also notes that this assertion contradicts Mr. Patrick’s sworn deposition testimony from 2020, where he stated that his law firm assigned the interest in Davel’s claims that he acquired through litigation to an entity in which Mr. Patrick was a majority owner.⁸

⁶ NPPC Reply at 16 (Feb 12, 2024).

⁷ Qwest Corporations Response in Support of Motion Pursuant to ORS 9.350 to Prove Authority of Counsel at 4 (Feb 20, 2024).

⁸ *Id.*

We clarify that Mr. Patrick's ability to appear as counsel for NPCC in these proceedings determines Mr. Pikel's authority as well. Mr. Pikel is not licensed to practice law in Oregon and relies on the sponsorship of Mr. Patrick to appear *pro hac vice*.

IV. CONCLUSION

Qwest's Motion Pursuant to ORS 9.350 to Prove Authority of Counsel, filed January 26, 2024, is granted. Mr. Patrick and Mr. Pikel are ordered to prove by competent evidence that they are authorized to appear on behalf of NPCC in these proceedings. To do so, Mr. Patrick and Mr. Pikel must provide evidence confirming: (1) their authority to represent NPCC; (2) any PSP interest obtained or held by Mr. Patrick; and (3) the current status of any such interest, including the transfer of such interest.

Mr. Patrick and Mr. Pikel should provide this evidence pursuant to a confidential filing to the ALJ. The filing will be exempt from disclosure under the Public Records Law as provided by ORS 192.355(4). The filing must be received by 3:00 p.m. on October 10, 2024.

Finally, although the PUC is obligated to comply with the Court of Appeal's remand in this matter regardless of whether NPCC is a party, we conclude this matter should be stayed pending resolution of a determination of Mr. Patrick's and Mr. Pikel's authority to appear. We commit to an expedited resolution of this matter.

V. ORDER

IT IS ORDERED that:

1. Mr. Patrick and Mr. Pikel must provide evidence confirming (1) their authority to represent NPCC; (2) any PSP interest obtained or held by Mr. Patrick; and (3) the current status of any such interest, including any transfer of such interest.
2. The evidence must be filed by 3:00 p.m. on October 10, 2024.

Made, entered, and effective Oct 3, 2024.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Les Perkins
Commissioner