

ORDER NO. 02-068

ENTERED JAN 31 2002

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UC 570/UT 125 (Phase I)/UT 80

PORTLAND STATE UNIVERSITY,)
UNIVERSITY OF OREGON, OREGON)
STATE UNIVERSITY, OREGON HEALTH)
& SCIENCE UNIVERSITY, LANE)
COUNCIL OF GOVERNMENT AGENCIES,)
AND KAISER PERMANENTE,)
Complainants,)
vs.)
QWEST CORPORATION,)
Defendant. (UC 570))
In the Matter of the Application of QWEST)
CORPORATION for an Increase in Revenues.)
(UT 125—Phase I))

ORDER

DISPOSITION: SETTLEMENT APPROVED; ORDER NOS. 00-190 AND 00-191 MODIFIED

On October 12, 2001, the complainants and Qwest Corporation (Qwest) filed a joint motion for approval of the settlement they had reached. They also filed a joint motion for modification of Order Nos. 00-190 and 00-191 and an explanatory brief supporting their motions. The Administrative Law Judge (ALJ) gave notice of the motion to parties on the relevant service lists and set dates of November 21, 2001, for comments on the proposal and December 7, 2001, for reply comments. Staff filed comments and reply comments. No other party commented on the motions.

Complainants filed a complaint against Qwest on December 15, 2000. The complaint deals with calculation of the refund ordered by the Commission in UT 125, Order No. 00-190. Complainants asked for injunctive relief and damages and also moved for a stay of the disbursement of the residual refund (that is, the funds remaining from those set aside for former Qwest customers) until resolution of their complaint. On January 3, 2001, the ALJ issued a ruling granting complainants' motion for a stay.

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Complainants challenged the method Qwest used to calculate the UT 125 rate case refund for customers of ISDN PRI service. Qwest made a refund of \$1,710.90 per ISDN PRI circuit, but complainants claim that the refund should have been approximately \$7,700 per circuit. Complainants have also established that Qwest inadvertently failed to provide any refund to customers for 661 ISDN PRI circuits. The difference between the refund that Qwest made and the refund that complainants claim Qwest should have made is about \$12 million. The total refund that Qwest is required to make is a fixed amount. Therefore, Qwest believes that if the Commission determined that Qwest was required to make the full amount of these additional refunds, Qwest would have to adjust the refunds made to other customers to account for any change in the refund to ISDN PRI customers.

To avoid the expense and uncertainty of litigation, complainants and Qwest reached a settlement that would give an additional refund for each ISDN PRI circuit in an amount in excess of \$2,800 and would also provide identical refunds for the 661 overlooked circuits. This settlement would benefit all eligible customers of ISDN PRI service, not just complainants. Complainants and Qwest believe that this is a fair compromise of a disputed claim.

The settlement also provides that the source of the additional refunds, totaling over \$6.5 million, would be the residual amount remaining in a fund established by the Commission in Dockets UT 125 (Phase I)/UT 80 to make refunds to former customers. Complainants and Qwest believe that this is an appropriate use of the residual fund and that Commission approval of this settlement will make other customers no worse off than they would have been if complainants had prevailed on their claim and Qwest were required to adjust the refunds already made to other customers.

The settlement provides that Qwest will give a temporary bill credit for the 661 circuits that did not receive such temporary bill credits beginning on September 22, 2000, in an amount equal to the monthly temporary bill credit received by other ISDN PRI customers beginning on September 22, 2000.¹ After that reconciliation, Qwest will continue to provide the overlooked circuits with temporary bill credits equal to those provided to other ISDN PRI circuits.

Staff filed comments on the settlement agreement on October 22, 2001, and on December 7, 2001. Staff indicates that it is willing to support the parties' stipulation as a reasonable resolution of the UC 570 dispute.

¹ Order No. 00-190, at 4, provides:

C. Temporary Bill Credit. Beginning from the date of the refund and extending until permanent rates become effective, as determined in the rate design phase of this docket, USWC will use bill credits and switched access rate reductions to reduce the company's revenues by \$63 million per year. This calculation is made in reliance on USWC's local billing units as of August 31, 1997, and USWC's carrier common line minutes of use for the five months preceding and six months following August 1997. The actual effect of the reduction in revenues will be greater than \$63 million because of the company's growth since 1997.

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We have reviewed the settlement agreement, the joint brief in support of voluntary settlement, and Staff's comments. We conclude that the settlement is a reasonable resolution of complainants' complaint and that it should be approved.

We conclude further that the parties' joint motion to modify Order Nos. 00-190 and 00-191 should be granted. We have reviewed these orders and determined that Order No. 00-191 readopts portions of Order No. 97-171 and mentions former customer refunds but does not deal directly with the residual fund. The ordering paragraph dealing with readoption of the refund procedures in Order No. 97-171 at 134 currently reads:

Issue 11, Refund Procedures. The discussion at pages 101-107 of Order No. 97-171 is readopted except: 1) the interest rate is revised to 8.77 percent; 2) the refund eligibility date is updated from May 19, 1997, to reflect the provisions of the Stipulation adopted as modified in Order No. 00-190 (*see* Appendix A to that order); 3) we update the date when the refund will begin, in accordance with the Stipulation, *supra*; 4) we allow refunds to former customers; and 5) we allow temporary rate reductions and bill credits as provided in the Stipulation, *supra*.

Order No. 00-190 discusses the residual fund at 22-23, in paragraph 1.c.iii. modifying the Stipulation (Appendix A), and will be modified as ordered below. That paragraph currently reads:

1.c.iii. Claims against the Fund will be paid in the order in which they are verified. The Fund shall be disbursed until it is exhausted or until three months elapse from the time the last refund bill credit is given, whichever comes first. If three months elapse and the Fund has a residual amount, after administrative costs are approved and assessed, that amount will be spread across all U S WEST retail customers of record as of the first of the month following the date the disbursement ends. The residual amount shall appear as a credit on retail customers' bills and shall be identified as 'Residual refund as ordered by PUC.'

ORDER

IT IS ORDERED that:

1. The settlement agreement reached between complainants and Qwest Corporation in resolution of complainants' complaint in UC 570 is approved. The agreement is attached to this order as Appendix A and incorporated herein.
2. The residual fund created by Order No. 00-190 at 22-23 shall not be credited to retail customers' bills as provided in Order No. 00-190, but shall be used in resolution of the parties' dispute in UC 570, as described in the settlement agreement.

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3. Ordering paragraph 1.1.c.iii., Order No. 00-190 at 22-23 is modified to read as follows:

1.c.iii. Claims against the Fund will be paid in the order in which they are verified. The Fund shall be disbursed until it is exhausted or until three months elapse from the time the last refund bill credit is given, whichever comes first. If three months elapse and the Fund has a residual amount, after administrative costs are approved and assessed, that amount will be used in settlement of the dispute in UC 570.

4. The ordering paragraph of Order No. 00-191 at 134 is modified to read as follows:

Issue 11, Refund Procedures. The discussion at pages 101-107 of Order No. 97-171 is readopted except: 1) the interest rate is revised to 8.77 percent; 2) the refund eligibility date is updated from May 19, 1997, to reflect the provisions of the Stipulation adopted as modified in Order No. 00-190 (*see* Appendix A to that order); 3) we update the date when the refund will begin, in accordance with the Stipulation, *supra*; 4) we allow refunds to former customers and use the residual fund in settlement of the dispute in UC 570; and 5) we allow temporary rate reductions and bill credits as provided in the Stipulation, *supra*.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

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.