



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

March 3, 2011

Shannon Davis
Qwest Corporation
100 NW Kearney Avenue
Bend OR 97701

CT Corporation System
388 State Street – Ste 420
Salem OR 97301

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No.: 860-100-GB0193-11 / Docket No.: NC 305

**PLEASE READ ALL DOCUMENTS CAREFULLY –
DIRECT ALL CORRESPONDENCE TO THE PUBLIC UTILITY COMMISSION OF OREGON**

On January 25, 2011, a representative from your company met with the Oregon Utility Notification Center (OUNC) Enforcement Committee to discuss an alleged rule violation. At that meeting, an agreement was reached regarding penalties for the violation.

Enclosed are two sets of documents that formalize the allegation and the agreement. One set is made up of original documents. The other set is a set of copies for your files.

Please refer to the originals. The complaint simply serves as a formal notice to you of the violation you were charged with and requires that you submit an Answer to the **Public Utility Commission** responding to the allegation. You must serve your Answer on the Commission by mailing it to the Public Utility Commission of Oregon, Administrative Hearings Division, PO Box 2148, Salem, OR 97308-2148. Filing an answer would be your opportunity to admit or deny the allegation and, if denied, to ask for a formal hearing. Because you already reached an agreement with the OUNC Committee, you do not need to submit an answer. Instead, you need only sign and return the enclosed Stipulation in order to answer the Complaint.

The Stipulation sets forth the terms and conditions of the agreement you reached with the committee. **You must sign and return the Stipulation within 20 days of the date of this letter in order for it to be approved by the Public Utility Commission as a resolution to the pending Complaint. You need not make payment until the Commission has issued a final order in this matter.**

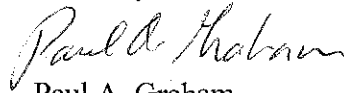
If for some reason you no longer agree to the terms of the Stipulation, you **MUST FILE AN ANSWER TO THE COMPLAINT**, admitting or denying the allegation.

If there is a discrepancy between the formal Stipulation and the agreement reached at the meeting that causes you concern, please contact Michael Thompson at (503) 378-6760.

Otherwise, please return the signed Stipulation to the Public Utility Commission of Oregon at the following address so this matter can be resolved:

Public Utility Commission of Oregon
Administrative Hearings Division
550 Capitol St NE – Suite 215
PO Box 2148
Salem OR 97308-2148

Sincerely,



Paul A. Graham
Attorney-in-Charge
Business Activities Section

Enclosures
PAG/nal/#2576245

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 NC 305

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 QWEST CORPORATION, (a Colorado
9 corporation),

10 Defendant.

COMPLAINT

11 1.

12 This proceeding is initiated by the Public Utility Commission of Oregon (hereinafter
13 “Commission”) to determine whether civil monetary penalties should be assessed as provided in
14 ORS 757.993. The Commission maintains its office at:

15 550 Capitol St NE – Suite 215, PO Box 2148, Salem, OR 97308-2148.

16 2.

17 At all times herein relevant, the defendant was doing business in this state.

18 3.

19 Under ORS 757.993, the Commission has discretion to seek penalties for violations of
20 rules adopted by the Oregon Utility Notification Center (OUNC).

21 4.

22 Under ORS 757.552, OUNC has adopted rules that prescribe requirements for
23 notification to OUNC of excavation activity and marking of underground facilities for the
24 purpose of preventing damage to such facilities.

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5.

OUNC adopted OAR 952-001-0070 which was in effect at all times herein relevant. The rule provides in relevant part:

(1) * * * [W]ithin two business days (48 hours) after the excavator notifies the Oregon Utility Notification Center of a proposed excavation, the operator or its designated agent shall:

- (a) Mark with reasonable accuracy all of its locatable underground facilities within the area of proposed excavation. All marks shall indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than two (2) inches;
- (b) Provide marks to the excavator of the unlocatable underground facilities in the area of proposed excavation, using the best information available including as-constructed drawings or other facility records that are maintained by the facility operator; or
- (c) Notify the excavator that the operator does not have any underground facilities in the area of the proposed excavation. Acceptable notifications must include locate request call back information and if done using an AVR (Automatic Voice Response) must have a repeat option and call back number to hear the information again.

6.

On or about September 1, 2010, defendant violated OAR 952-001-0070 (1) in that the defendant failed to locate and mark with reasonable accuracy all of its locatable underground facilities within the area of proposed excavation.

7.

ORS 757.993 provides, in relevant part, that:

“* * * every person who violates or who procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.”

8.

Defendant has violated OUNC rules in the past resulting in Order Nos. 10-419 entered on October 25, 2010, and Order No. 09-404, entered on October 7, 2009.

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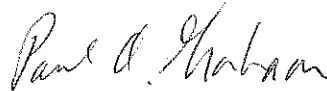
9.

WHEREFORE, the Commission directs the defendant to file a verified answer to this complaint within twenty (20) days from the date this complaint is mailed to the defendant. If no verified answer or other written appearance raising a question of fact or law is filed with the Commission at its office in Salem, Oregon, within the 20-day period, the allegations of the complaint shall be deemed admitted, and a penalty shall be imposed in the amount of \$5,000 for the alleged violation.

DATED this 3rd day of March, 2011.

Respectfully submitted,

JOHN R. KROGER
Attorney General



Paul A. Graham, OSB #77190
Attorney-in-Charge
Of Attorneys for PUC Staff

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 NC 305

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 QWEST CORPORATION, (a Colorado
corporation),

9 Defendant.

STIPULATION FOR ENTRY OF FINAL ORDER

10 The Public Utility Commission of Oregon, appearing by and through Paul A. Graham,
11 Assistant Attorney General, and Qwest Corporation, the defendant herein, hereby stipulate as
12 follows:

13 1.

14 A Complaint in this case is pending before the Commission charging the defendant with
15 one violation of law, OAR 952-001-0070.

16 2.

17 Both parties to this proceeding are willing to forego further processing of that Complaint
18 and further are willing to resolve this matter on the basis of this stipulation.

19 3.

20 The defendant admits that the violation was committed as alleged in the Complaint and is
21 willing for the Commission to enter an order finding that the violation was committed as alleged
22 in the Complaint. Defendant contends that the violation was the result of actions by a third party
23 contractor, but accepts responsibility for payment of the fine as an operator subject to OAR 952-
24 001-0070.

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4.


The parties further agree that the Commission may enter an order assessing civil monetary penalties against the defendant in the amount of \$5,000 under the following terms and conditions:

- A. \$5,000 shall become due and payable on or before the 30th day following the Commission's entry of a final order in this case.
- B. Payment shall be by money order or company check made out to the **Public Utility Commission of Oregon**, and the memo line of the money order or company check shall state the "NC" docket number in the caption of this stipulation.

5.

This stipulation is conditioned upon final approval of its terms by the Commission. If the stipulation is not accepted in its entirety, it shall be deemed withdrawn.

DATED this 3rd day of March, 2011.



 Paul A. Graham, OSB #77190
 Attorney-in-Charge
 Of Attorneys for PUC Staff

DATED this _____ day of _____, 2011.

Representative for Defendant (signature)

(Print name)