

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 9, 2002

REGULAR CONSENT EFFECTIVE DATE July 10, 2002

DATE: July 1, 2002

TO: John Savage through Phil Nyegaard and Lance Ball

FROM: David Sloan

SUBJECT: Verizon Northwest Inc.: (Advice No. SC5-02) Makes special contract arrangements for Fiber Data Distributed Interface (FDDI) to a confidential customer.

STAFF RECOMMENDATION:

Staff recommends that the Commission take no action with regard to this filing. Pursuant to ORS 759.250(5), if the Commission does not act within ninety (90) days of the filing, the special contract is deemed approved.

DISCUSSION:

Verizon Northwest, Inc. (Company) filed Advice No. SC5-02 on May 31, 2002. Pursuant to ORS 759.250, the Commission has 90 days from the date of filing to terminate the effectiveness of a special contract. However, the customer has requested expedited review of this contract. The filing will result in a net annual revenue increase of approximately \$13,200.

Description of the services: Fiber Data Distributed Interface (FDDI) service is a 100 Mbps (Megabits per second) fiber optic data transmission service. The customer uses the service as a supporting structure for local area networks (LAN) to facilitate connecting high bandwidth servers and users together. This technology allows the customer to connect its remote offices with its corporate LAN at the same data transmission speeds as those used by onsite users. Verizon does not have a tariffed service that can meet this customer's needs.

Description of the contract: The filing is for the continuation of FDDI service currently being provided to this confidential customer pursuant to an existing special contract (SC3-01). However, it is treated as a new contract since ORS 759.250 (7) requires that "No contract filed under subsection (2) of this section may be automatically renewed. A

contract renewal shall be treated as a new contract." The existing contract was reviewed with the Commission at the June 26, 2001, public meeting. At the public meeting the Commission took no action on Advice No. SC3-01, and pursuant to ORS 759.250, since no action was taken within ninety (90) days of the filing date, the special contract was deemed approved.

The service is unique to this customer in that it provides extremely high speed bandwidth that is normally used as a supporting, "backbone" technology across a Wide Area Network (WAN). This type of high-speed requirement is limited currently to a very small number of the Company's customers who use FDDI in a campus-like setting and need to expand it to nearby locations. If Verizon does not provide FDDI to meet the customer's high-speed data transmission needs, a number of competitors would be able to provide the service.

The current filing is a month-month special contract for the Company to provide FDDI service to a confidential customer for a period not to exceed 12 months. This is a continuation of the FDDI service provided pursuant to SC3-01. The confidential customer has notified the Company that prior to the end of the 12-month special contract period it will have a substitute service in place and will no longer require the FDDI service. The purpose of this special contract is to provide interim service to the confidential customer.

There is no termination liability associated with this contract, however a 30-day written notice of termination is required. The costs incurred by the Company to provision the service have been fully recovered during the 36-month life of the original special contract for FDDI service for this confidential customer (SC2-98). Adequate assurance is provided that other customers will not be harmed should the special contract customer terminate the contract early.

The FDDI service is provided at a rate of \$1,100 per month. I have reviewed cost studies provided by the Company, which demonstrate that the \$1,100 monthly rate exceeds the Company's cost of providing the service.

ORS 759.250 and Staff Procedures for Reviewing Special Contracts: ORS 759.250 allows telecommunications utilities to enter into special contracts with customers without being subject to standard tariff filing procedures under ORS 759.175. In addition, special contracts are not subject to hearings (ORS 759.180) or suspension (ORS 759.185).

ORS 759.250 outlines the requirements for Commission approval of telecommunications special contracts. First, the contract service must have limited

availability, respond to a unique customer requirement, or be subject to competition. Second, prices must exceed the long-run incremental cost of providing the service.

Telecommunications utilities are required to file special contracts no later than ninety days following the effective date of the contract. The Company has stated that this contract (SC5-02) will be effective upon review by the Commission at its July 9, 2002 Public Meeting. The filing is in compliance with this 90-day rule. Contracts must not exceed five years. Furthermore, the law states that the Commission shall issue an order on the filed contract within ninety (90) days of the filing. If the Commission does not act within ninety (90) days of the filing, the contract is deemed approved. Staff understands that if a telecommunications utility does not proffer sufficient evidence to support the contract under ORS 759.250, the staff may recommend that the Commission reject the contract.

Two areas of importance in assessing special contracts were identified in PUC Order No. 92-651 in docket UM 254, a generic docket to consider procedures and guidelines for special contract filings. These are the reasonableness of the contract rates and discrimination. Statutes that address these areas are ORS 759.210, classification of service and rates, and ORS 759.260, unjust discrimination.

Staff's analysis regarding conformance with ORS 759.210 is twofold. First, staff determines if a special contract rate class is developed by the telecommunications utility for one or more of the following reasons: a) the quantity of the contract service used; b) the purpose for which the contract service is used; c) whether price competition or a service alternative exists; d) the Verizon contract service being provided; e) the conditions of contract service; f) or other reasonable considerations. Second, staff determines if the special contract results in revenue sufficient to ensure just and reasonable rates for remaining customers (a "prudency review").

To determine conformance with ORS 759.260, staff determines if the special contract avoids unjust discrimination. This is basically a judgment call, which depends on the outcome of the analyses discussed in the preceding paragraph. ORS 759.260 does not restrict the Commission from subsequent scrutiny of the reasonableness of special contracts for ratemaking purposes.

Conclusions: Staff has investigated the filing. Staff concludes that the contract for provision of FDDI service responds to a unique customer requirement. Other customers are adequately protected from loss should the special contract customer terminate the contract early. The contract rate exceeds the LRIC of providing the service to the customer. The contract service is available to other similarly situated customers at the same prices stated in the contract.

ORS 759.250 does not restrict the Commission from subsequent scrutiny of the reasonableness of special contracts for ratemaking purposes under ORS 759.210 and ORS 759.260. Based upon the special contracts guidelines adopted by the Commission in Order No. 92-651 in Docket No. UM 254, staff finds that this contract for the provision of FDDI service does not raise issues concerning the reasonableness of rates or unjust discrimination.

PROPOSED COMMISSION MOTION:

That the Commission take no action with regard to this filing. Pursuant to ORS 759.250, if the Commission does not act, at the end of ninety (90) days of the filing, the special contract is deemed approved.