

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: February 18, 2003**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** February 19, 2003

DATE: February 10, 2003

TO: John Savage through Phil Nyegaard and Lance Ball

FROM: David Sloan

SUBJECT: VERIZON NORTHWEST INC.: (Advice No. SC01-03) Provides special contract arrangements for Transport LAN service 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. SC01-03 on January 16, 2003. 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 \$60,000.

Description of the services: Transport LAN Service (TLS) provides the confidential customer with high-speed LAN-to-LAN (local area network) connectivity using Ethernet protocol at 100 Mbps and 1000 Mbps (Megabits per second). The service is provided over dedicated fiber optic facilities between the customer's communications hub and remote sites. The technology allows the customer to connect its remote offices with its corporate LAN at the same data transmission speeds as those used by on site users. Verizon does not have a tariffed service that can meet this customer's needs.

Description of the contract: The filing is a 36-month special contract for TLS. The filing replaces SC3-01, which was reviewed with the Commission at the June 26, 2001 public meeting. The Commission took no action and Advice No. SC3-01 was deemed approved at the end of the 90-day statutory period.

TLS 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 to customers that have a campus-like communications hub (i.e. corporate headquarters) and remote locations (LANs) that need to communicate with the hub. If Verizon does not provide TLS to meet the customer's high-speed data transmission needs, a number of competitors would be able to provide the service.

Termination liability language in Exhibit A to the contract specifies that should the customer seek early termination of the special contract or early discontinuance of the service, a termination liability will be assessed, equal to 25 percent of the monthly charge times the number of months remaining in the term. This termination liability language adequately protects other customers in the case the confidential customer should seek early termination of the special contract.

The TLS is provided at a rate of \$1,300 per month per port for Fast Ethernet 100 Mbps and \$3,500 per month per port for Gigabit Ethernet 1000 Mbps. I have reviewed cost studies provided by the Company, which demonstrate that the proposed monthly rates exceed 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 confidential customer has requested a thirty-day expedited review and approval of the special contract by the Commission. However, I have discussed the Commission's normal processing of special contracts with the Company and the Company has agreed that the Commission's adoption, at its February 18, 2003 public meeting, of staff's recommendation to take no action on the special contract will satisfy the confidential customer's request for expedited review. The Company has stated that this contract (SC01-03) will be effective for services rendered after the Commission's February 18,

2003 Public Meeting. 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 TLS 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 TLS 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.