

**ITEM NO. 3**

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: September 27, 2005**

**REGULAR**   X   **CONSENT**        **EFFECTIVE DATE**       October 3, 2005      

**DATE:** September 19, 2005

**TO:** Public Utility Commission

**FROM:** Jim Stanage and Roger White

**THROUGH:** Lee Sparling through Phil Nyegaard through Lance Ball

**SUBJECT:** QWEST CORPORATION: (Docket UX 30) Petition to exempt Billing and Collection Service from regulation.

**STAFF RECOMMENDATION:**

Suspend and further investigate Qwest's petition.

**DISCUSSION:**

**Background**

Qwest Corporation (Qwest) filed a petition August 4, 2005, to exempt its Billing and Collection Services from regulation. Pursuant to Oregon Revised Statutes (ORS) 759.030(7), the Commission has 60 days from the filing date to either determine the appropriateness of the filing or determine that further investigation is necessary. The Commission has until October 3, 2005, to take action on this petition.

Because the services in Qwest's petition are "non-basic services" under ORS 759.410, they are price capped at their current rates. Thus, Qwest has downward pricing flexibility for its billing and collection services. Consequently, Qwest could decrease current rates down to their respective price floors at any time<sup>1</sup> as provided in statute, but could not raise rates unless the services were exempted from regulation.

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<sup>1</sup> Under ORS 759.410 (8)(a): "Notice of a price change authorized under subsection (4) of this section, of the introduction of a new regulated telecommunications service or of the packaging of services, must be given to the commission within 30 days following the effective date of the price change..."

### Procedures for Reviewing Service Exemptions

Oregon law, under ORS 759.030(3)(a), requires the Commission to exempt a telecommunications service from regulation if “*price and service competition exist.*” Under ORS 759.030(2), upon petition by any *interested party*:

...the commission may exempt in whole or in part from regulation those telecommunications services for which the commission finds that price or service competition exists, or that such services can be demonstrated by the petitioner or the commission to be subject to competition, or *that the public interest no longer requires full regulation thereof.* [Emphasis added.]

Under ORS 759.030(4), prior to making findings under sections (2) or (3), the Commission is required to *consider*:

- a) The extent to which services are available from alternative providers in the relevant market.
- b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions.
- c) Existing economic or regulatory barriers to entry.
- d) Any other factors deemed relevant by the Commission.

### Descriptions of the Services Proposed for Exemption

Qwest's billing and collection services are a comprehensive billing service that provides third-party customers with the means to bill their services to end user subscribers via the Qwest phone bill. Qwest's standard billing and collection service offering, includes, but is not limited to, the following services which Qwest will provide for each contracted third-party service provider: transaction (message) processing, bill rendering, remittance processing, collection of delinquent bills, and accounts receivable management. Optional services include, but are not limited to, market messages, recording with and without assembly and editing, and Qwest-provided end user billing inquiry.

It should be noted that Qwest's billing and collection services are *wholesale* (i.e., carrier-to-carrier) services that are governed by ORS 759.410(3) because they are “switched access” services. Thus, billing and collection services are not sold to retail (i.e., end-user) customers.

## **Staff Analysis**

### **Price and Service Competition**

Under ORS 759.030 and OAR 860-032-0025, the Commission is required to consider the extent to which services are available from alternate providers in the relevant market and the extent to which the services of alternate providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

In its petition, the company presents the names of several companies that it cites as providers of billing and collection services in Oregon, although it does not present any conclusive evidence of effective competition.

It would be reasonable for the Commission, in considering this petition and whether price and service competition exist, to evaluate the *degree of market power* that Qwest holds in Oregon for its billing and collection services. The petition does not provide such evidence. Nevertheless, such evidence is crucial for meeting the implied statutory requirement of ORS 759.030(4)(a) to demonstrate that competition is robust enough to protect customers' interests or that the structure of the market for billing and collection services has changed such that Qwest no longer is positioned to exercise market power.

### **Economic or Regulatory Barriers to Entry**

Qwest has not identified any regulatory or economic barriers to entry. Staff believes there may be barriers to entry such as normal startup and operating costs.

### **The Cost of Service and Rates**

Qwest did not submit a cost study with its petition, but did submit cost studies for its billing and collection services subsequently with fifteen special contracts for billing and collection services that were filed late (e.g., a year or more in some cases). Qwest has never established price floors for billing and collection services in Oregon. Since Qwest did not provide any market demand data regarding its competitors (e.g., their market sales levels or market shares) for billing and collection services that is specific to Oregon, it would be premature to draw any conclusions about the company's ability to engage in predatory pricing or other anti-competitive behavior.

### Other Factors

There are at least three other factors that are relevant to deregulation of Qwest's petition: (1) the potential for price discrimination by the company; (2) the prospects for the company's abandonment of some of its service subscribers; and (3) the opportunity for the company to engage in predatory pricing of these services.

Price discrimination occurs whenever a seller provides a product or service to similarly situated customers at different prices. As a regulated utility it would be illegal for Qwest to sell the petition services to similarly situated customers at different prices. However, if the Commission grants the company's petition to exempt these services from regulation, then similarly situated customers would lose Commission protections from unjust price discrimination.

Second, if the Commission grants this petition to exempt the petition services from regulation, then the company would be free to abandon any customers it chooses. This could leave customers at risk of losing their rights to reasonable prices for these services.

Third, deregulation of these services too early in the development of competitive markets could create an opportunity for the company to engage in predatory pricing practices or other anti-competitive behavior. Given the difficulty of proving predation, after the fact, in such a complex and highly technological marketplace, this risk must be considered.

### The Public Interest No Longer Requires Regulation of the Petition Services

Under ORS 759.030(2), the Commission "*may exempt*" a telecommunications service from regulation if "*the public interest no longer requires full regulation thereof.*" Thus, under this section, Qwest does not need to make a showing that price and service competition exist for Qwest's petition services to be exempted from regulation, if the Commission wants to allow it. [Emphasis added.]

### Conclusions

Staff's analysis outlined above has led to the following conclusions:

- 1) Qwest's petition does not provide information sufficient to make a finding that *price and service competition exist* for the petition services or that *regulation is no longer necessary to protect the public interest*.
- 2) A further investigation could produce more complete information that could be important in making a decision concerning the petition's merit.

### **Commission's Decision Alternatives**

The Commission has the following decision alternatives:

- 1) Suspend and further investigate Qwest's petition to exempt billing and collection services from regulation.
- 2) Allow the petition to go into effect.

### **PROPOSED COMMISSION MOTION:**

The Commission suspend and further investigate Qwest's petition to exempt its billing and collection services from regulation.