

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: November 8, 2005**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** November 16, 2005

DATE: October 26, 2005

TO: Public Utility Commission

FROM: David Sloan

THROUGH: Lee Sparling, Phil Nyegaard and Lance Ball

SUBJECT: VERIZON NORTHWEST INC: (Advice No. SC05-05) Makes special contract arrangements between Verizon and a confidential customer for Dense Wavelength Division Multiplexing (DWDM) 4-Channel Node, Mid-Span Amplifier, Gigabit Ethernet Protected Optical Transport Channel and IntelliLight Optical Transport Service (IOTS).

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. For this filing, the end of the 90-day statutory period is November 16, 2005.

DISCUSSION:

Verizon Northwest Inc (Verizon) filed Advice No. SC05-05 on August 18, 2005. The 60-month contract makes special contract arrangements between Verizon and a confidential customer for Intellilight Optical Transport Service¹ configured as:

- Two each Customer Premise 4 Channel Node Primary² at \$2,200 per month, each,
- One each Network Optimization, Mid-Span Amplifier at \$1,500 per month,
- Four each Gigabit Ethernet Protected Optical Transport Channel at \$1,000 per month, each, and
- Eight each IOTS Ring Mileage, at \$200 per airline mile, per month.

¹ Intellilight Optical Transport Service is defined in Verizon's Federal Communications Commission (FCC) tariff No. 14, Section 20.1.

² Does not include optional interfaces.

The contract also includes three service options, but the customer has made no commitment to order any of the options. The service options may be added up to month 24 of the term at the contract prices. The service options are:

- 10Gigabit Ethernet LAN-PHY protected Optical Transport Channel at \$4,100 per month, each,
- 10Gigabit Ethernet WAN-PHY Protected Optical Transport Channel at \$4,100 per month, each, and
- Gigabit Ethernet Protected Optical Transport Channel at \$1,000 per month, each.

The contract services respond to a unique customer requirement for services not offered in Verizon's current tariff. Therefore, the special contract filing is required.

The filing is timely filed pursuant to ORS 759.250(2), which allows the company to file the contract with the Commission no later than 90 days following the effective date. Pursuant to contract language, the effective date was August 18, 2005, the date the contract was filed with the Commission. Pursuant to ORS 759.250(6), the company has requested that the customer's name not be divulged. The net annual revenue effect of the filing is approximately \$86,520.

I have reviewed the financial analysis provided with the filing, which demonstrates that the proposed monthly rates exceed the company's long-run incremental cost (LRIC) of providing the services.

Termination liability language in the contract specifies that in the case of early termination of the special contract or early discontinuance of the service, the confidential customer is liable for all services provided by Verizon prior to the termination date. Additionally, if the cancellation or early termination occurs within the first twenty-four (24) months of the effective date, the customer must pay Verizon 100 percent of the applicable monthly recurring charges for the terminated services multiplied by the number of months remaining in the first 24 months of the term, plus 25 percent of the applicable monthly recurring charges for the remaining months of the contract. If the customer terminates service after the first 24 months of service, then a termination charge equal to 25 percent of the applicable monthly recurring charges multiplied by the remaining months in the term will be due. The contract termination liability language should adequately protect other customers in a case of cancellation or early termination.

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 (LRIC) of providing the service.

Telecommunications utilities are required to file special contracts no later than ninety days following the effective date of the contract. 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.

Conclusions: Staff has investigated the filing. Staff concludes that the contract was timely filed and responds to a unique customer requirement. Other customers are adequately protected from loss should the special contract customer terminate the contract early. The term of the contract does not exceed the statutory limit of five years. 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.

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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 does not raise issues concerning the reasonableness of rates or unjust discrimination.

PROPOSED COMMISSION MOTION:

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.