

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 26, 2008**

REGULAR CONSENT EFFECTIVE DATE September 9, 2008

DATE: August 14, 2008

TO: Public Utility Commission

FROM: David Sloan

THROUGH: Lee Sparling, Bryan Conway, and Lance Ball

SUBJECT: VERIZON NORTHWEST INC: (Advice No. SC08-07) Provides special contract arrangements between Verizon Northwest Inc. and a confidential customer for Transparent Lan Service (TLS).

STAFF RECOMMENDATION:

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

DISCUSSION:

Verizon Northwest, Inc. (Verizon) filed Advice No. SC08-07 on June 11, 2008. The filing provides special contract arrangements between Verizon and a confidential customer for TLS. Pursuant to ORS 759.250, the Commission has 90 days from the date of filing to terminate the effectiveness of a special contract. For this filing, the end of the 90-day statutory period would be September 9, 2008.

Description of the services: TLS is an all fiber-based, metropolitan area local area network (LAN) interconnecting service. TLS connects customer locations together at native LAN speeds and Ethernet interfaces of 10,100 and/or 1,000 Megabit per second Ethernet.

LANs are extended over a dedicated fiber loop into their local Verizon wire center, where Central Office based switches provide connectivity to circuits from the other locations, or access to a shared backbone from transport to other local wire centers if needed.

Description of the contract: The filing is a 36-month special contract for TLS. The contract is an individual case basis (ICB) contract to satisfy a unique requirement of the confidential customer. The contract is effective on receipt of regulatory approvals, which Verizon interprets as the day the contract is reviewed by the Commission at a public meeting and the Commission either approves the contract or decides to take no action.

The one gigabit per second TLS facility is provided at a monthly rate of \$3,500 per circuit/port. The proposed monthly rate exceeds the company's long-run incremental cost of providing the service.

Charges for any other services or features required by the customer are charged at rates prescribed in the applicable tariffs. Shortfall and Termination liability language in the contract adequately protects other customers in case the confidential customer should seek early termination of the special contract.¹

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 90 days following the effective date of the contract. Contracts must not exceed five years, and ORS 759.250 does not permit automatic contract renewals. The contract's 60-month term (including allowed extensions) is within the statutory limitation.

Furthermore, the law states that the Commission shall issue an order on the filed contract within 90 days of the filing. If the Commission does not act within 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

¹ Prior to SC08-07, the TLS service has previously been provided to the confidential customer pursuant to special contracts SC1-00 and SC10-03, as amended by SC07-03.

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; or f) 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 is timely filed and responds to a unique customer requirement. The contract rates exceed the long-run incremental cost of providing the service to the customer. Other customers are adequately protected from loss should the customer terminate the contract early. The contract service is available to other similarly situated customers at the same prices stated in the contract. 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.

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.

PROPOSED COMMISSION MOTION:

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 90 days after the filing the special contract is deemed approved.