

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: January 20, 2009**

REGULAR  CONSENT  EFFECTIVE DATE January 27, 2009

DATE: January 7, 2009

TO: Public Utility Commission

FROM: Jim Stanage

THROUGH: Lee Sparling, Bryan Conway, and Lance Ball

SUBJECT: QWEST CORPORATION: (Advice No. C10-2008) Establishes special contract arrangements between Qwest and a confidential customer for Integrated Services Digital Network Primary Rate Service.

**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 days of the filing, the special contract is deemed approved.

**DISCUSSION:**

Qwest Corporation (Qwest) proposes approval of a thirty-six month special contract with a confidential customer for Integrated Services Digital Network Primary Rate Service (ISDN-PRS). The contract includes services provided to the customer in Oregon as well as several other states. The contract went into effect on October 17, 2008, and will extend to October 17, 2011. It was filed on October 29, 2008. Pursuant to ORS 759.250, the Commission has ninety 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 January 27, 2009.

Qwest considers the contract services to be competitive.<sup>1</sup> If Qwest does not provide the contract services, a number of competitors would be able to provide the services.

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<sup>1</sup> Commission Order No. 96-021 gave the company pricing flexibility, pursuant to ORS 759.050, in exchanges that comprise competitive zones. Currently, all of Qwest's exchanges are competitive zones.

## **Description of Services**

ISDN-PRS consists of 23 bearer (B)-channels and one data (D)-channel, for a total transmission rate of 1.544 Megabits per second (Mbps). It is designed for transmission through a T1 facility. Each 64 kilobits per second (kbps) B-channel carries user information such as voice calls, circuit-switched data, or video. The D-channel is a 64 kbps channel that is used to carry the control or signaling information.

A T1 Facility offers faster speeds than Single Line ISDN. T1 is a term coined by AT&T for a system that transfers digital signals at 1.544 Megabits per second (as opposed to Single Line ISDN's mere 64 kilobits per second). Integrated T1 includes a DS1 facility, common equipment, local exchange switching and 24 flat rated channels for access to the local exchange and toll networks.

## **Description of Contract**

The contract is a thirty-six month, multi-state, volume discount arrangement between Qwest and a confidential customer for ISDN-PRS. Service is being provided under the contract at a monthly rate of \$512.00 per unit, which represents a 36 percent discount off the regularly tariffed rate of \$800.00. The contract includes services provided to the customer in Oregon as well as other states. The filing states that the company will give the discounted prices to any similarly situated customer requesting it. The contract will generate annual net revenues of approximately \$18,000.

## **Staff Procedures for Reviewing Special Contracts**

Although the form of regulation that applies to Qwest changed November 12, 2008, pursuant to ORS 759.255 and the regulatory plan allowed by the Commission under Order 08-408 (UM 1354), its services offered through special contracts remain fully regulated. Thus, Qwest special contracts for its regulated services are still subject to ORS 759.250. This statute allows telecommunications utilities to enter into special contracts with customers without being subject to standard tariff filing procedures under ORS 759.175. In addition, these contracts are not subject to hearings (ORS 759.180) or suspension (ORS 759.185).

ORS 759.250 outlines the requirements for PUC approval of telecommunications special contracts, which are as follows:

1. The contract service must have limited availability, respond to a unique customer requirement, or be subject to competition.
2. Prices must exceed the long-run incremental cost of providing the service.
3. 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.
4. 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 provide 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 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 (i.e., a "prudency review").

To determine conformance with ORS 759.260, staff determines if the special contract avoids unjust discrimination and is dependent upon the outcome of the analyses outlined above. The statute does not restrict the Commission from subsequent scrutiny of the reasonableness of special contracts for ratemaking purposes.

## **Conclusions**

Staff has investigated the filing and finds that filing complies with Order No. 92-651 (UM 254) and the MOU between staff and the company that is referenced in the order, the contracted services are subject to competition, the contract price(s) is above the company's cost of service, and the company would offer the discounted contract price(s) to any similarly situated customer requesting it.

## **PROPOSED COMMISSION MOTION:**

The Commission take no action with regard to this filing. Pursuant to ORS 759.250, if the Commission does not act within ninety days of the filing, the special contract is deemed approved.