

ITEM NO. CA5

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: November 3, 2009**

REGULAR _____ CONSENT X EFFECTIVE DATE July 24, 2009

DATE: October 23, 2009

TO: Public Utility Commission

FROM: David Sloan

THROUGH: Lee Sparling, Bryan Conway, and Irv Emmons

SUBJECT: QWEST CORPORATION: (Advice No. C29-2009) Establishes special contract arrangements between Qwest and a confidential customer.

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 ninety (90) days of the filing, the special contract is deemed approved.

DISCUSSION:

Qwest Corporation (Qwest) filed Advice No. C29-2009 on August 10, 2009. The filing makes special contract arrangements between Qwest and a confidential customer for integrated services digital network - primary rate service (ISDN-PRS). 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 is November 8, 2009.

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

The initial multi-state service contract (MSA), executed in March 2003, did not include any services for the confidential customer's Oregon operations and thus was not filed with the Commission. However, the 10th amendment, effective July 24, 2009, includes ISDN-PRS for the confidential customer's Oregon operating unit.

¹ 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 the service: ISDN-PRS is a digital four-wire full duplex transmission path between ISDN compatible customer premises equipment (CPE) and an ISDN-equipped central office. ISDN-PRS operates at 1.544 Megabits per second (Mbps) and may be configured as 23 B channels and one D channel, 24 B channels only, or 23 B channels and one back-up D channel. Each B channel transmits voice or data at 64 kilobits per second (Kbps). The D channel carries signaling information at 64 Kbps.

Description of the contract: The contract is a 12-month, multi-state, volume discount arrangement between Qwest and a confidential customer. The contract monthly recurring rate for ISDN-PRI is \$650. The monthly rate exceeds the company's long run incremental cost of providing the service. Charges for any other services or features required are at tariffed rates.

Oregon Revised Statute (ORS) 759.250 and Staff Procedures for Reviewing Special Contracts: Section III. S. of *Qwest's Price Plan under ORS 759.255*² allows the company to offer primary line basic service and other regulated services under special contracts pursuant 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 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.

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 for special contract filings. These are the reasonableness of the contract rates and

² See Order No. 08-408, Docket UM 1354.

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 (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 759.250 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.

Conclusions: Staff has investigated the filing. Staff concludes that the contract is timely filed and responds to a unique customer requirement in a competitive service situation. The contract's 12-month term is within the statutory five year limitation. The contract rate exceeds the long run incremental cost of providing the service to the customer. Other customers are adequately protected from loss should the special contract customer terminate the contract early. The contract service is available to other similarly situated customers at the same prices stated in the contract.

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 ninety (90) days from the filing the special contract is deemed approved.