

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

REGULAR _____ CONSENT X EFFECTIVE DATE November 5, 2009

DATE: October 21, 2009

TO: Public Utility Commission

FROM: Jim Stanage

THROUGH: Lee Sparling, Bryan Conway, and Irv Emmons

SUBJECT: QWEST CORPORATION: (Advice No. C28-2009) Establishes special contract arrangements between Qwest and a confidential customer for Qwest business line services.

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 to establish a twenty-four month special contract with a confidential customer for discounts from the company's business access line service rates that appear in Qwest's Line Volume tariff for One-party Flat Rate Business (1FB) Lines with Hunting, Choice Business, Choice Business Plus, Add-A-Line, and Choice Business Prime. The contract includes services provided to the customer in Oregon as well as several other states. The contract went into effect on June 17, 2009, and will extend to June 17, 2011. It was filed on August 10, 2009. Pursuant to ORS 759.250, the Commission has ninety (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 November 5, 2009.

Description of Contract

The purpose of the filing is to seek approval of a twenty-four month, multi-state, volume discount special contract with a confidential customer for Flat Rate Business Line (1FB)

with Hunting, Choice Business, Choice Business Plus, Add-A-Line, and Choice Business Prime. The contract includes services provided to the customer in Oregon as well as several other states. The services are being provided under the contract at the following monthly unit rates (compared to the tariffed rates):

	<u>Contract Rate</u>	<u>Tariff Rate</u>	<u>Discount</u>
1FB with Hunting, Rate Group 1	\$21.84	\$22.36	5%
Rate Group 2	\$23.94	\$24.51	5%
Rate Group 3	\$25.62	\$26.23	5%
Choice Business	\$27.59	\$28.39	5%
Choice Business Plus	\$35.49	\$36.49	5%
Add-A-Line	\$23.25	\$23.50	2%
Choice Business Prime	\$23.46	\$24.14	5%

The filing states that the company will give the discounted prices to any similarly situated customer requesting it.

The company's tariff does not offer discounts that are as large as those proposed in this special contract, and thus, the contract provides the customer unique rates for the contract services. Qwest also 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.

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.

Description of Services

Qwest Line Volume is a volume and term discount plan that encompasses several business access line services and includes the services covered by this contract.

One-party Flat Rate Business Line service provides a flat rate local exchange access line available to business customers. Service is furnished at a fixed monthly rate which provides unlimited calling within a customer's local calling area. Rates for 1FB service with Hunting vary among Qwest's three rate groups.

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.

Hunting is an optional feature available to customers with two or more individual access lines. The access lines are arranged so that incoming calls to a busy line will overflow to other available lines.

Choice Business is a package of features available to business customers in conjunction with a simple flat rate access line. Business customers subscribing to the package are entitled to unlimited use of *any three* of the fifteen package features.

Choice Business Plus is a package of features available to business customers in conjunction with a simple flat rate access line. Business customers subscribing to the package are entitled to unlimited use of *all* of the fifteen package features.

Add-A-Line allows a customer to select up to two optional Add-A-Line packages per location for every Choice Business Prime package. For each Add-A-Line package the customer may select one feature listed below:

- Series Hunting or,
- Call Forwarding Busy or,
- Call Forwarding Don't Answer or
- Call Forwarding Busy/Don't Answer.

Choice Business Prime is a package of features available to business customers in conjunction with an individual flat rate or additional flat rate access line. Business customers subscribing to the package are entitled to choose three services/features from a list of twenty-two services/features.

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 No. 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 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 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 it complies with Order No. 92-651 (UM 254) and the memorandum of understanding between staff and the company 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 90 days of the filing, the special contract is deemed approved.