

ITEM NO. CA6

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

REGULAR _____ CONSENT X EFFECTIVE DATE October 22, 2008

DATE: October 23, 2009

TO: Public Utility Commission

FROM: David Sloan

THROUGH: Lee Sparling, Bryan Conway, and Irv Emmons

SUBJECT: QWEST CORPORATION: (Advice No. C30-2009) 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 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. C30-2009 on August 19, 2009. The filing is a Multi-state Master Service Agreement between Qwest and a confidential customer for Flat Rate Business Line (1FB) with Hunting; Qwest Choice Business; Integrated Services Digital Network – Primary Rate Service (ISDN-PRS); and Digital Switched Service (DSS). 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 is November 6, 2009.

Qwest's tariff does not include pricing for volume purchasing coupled with a 48-month rate stabilization commitment for the contract services. Also, the confidential customer requires unique terms and conditions for the handling of its multi-state telecommunication services. Thus, the contract is necessary, and is designed to respond to the confidential customer's unique requirements. 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.

The initial multi-state service contract (MSA) was executed on October 22, 2008, but Qwest did not file the MSA at that time because it was negotiating amendments with the confidential customer to update/correct various portions of the agreement. Qwest expected to have the amended agreement completed and filed with the Commission within the 90-day statutory period allowed in Oregon Revised Statute (ORS) 759.250(2). The required filing date was January 9, 2009. However, the amendment process was not completed until July 14, 2009. Both the original MSA and Amendment One are included in the filing. The original contract is filed 211 days after the statutory deadline and Amendment One is timely filed. The cover letter states that Qwest continues to review and modify its processes to ensure contracts are received and filed as required and in a timely manner. From my review, I conclude that no party is harmed by the late filing.

Description of the services: The filing provides an individual case basis arrangement and discounts for 1FB with Hunting; Qwest Choice Business; ISDN-PRS; and DSS.

Flat Rate Business Line service provides access to the local exchange and toll networks at a fixed monthly rate, with unlimited calling within the local calling area. Hunting service allows incoming calls to a busy line/trunk to overflow to other available lines/trunks.

Qwest Choice Business is a package of services that includes a Flat Rate Business Line plus a customer's choice of certain popular service features from prescribed lists.

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.

DSS provides digital exchange service for PBX customers. DSS includes a DSS facility, common equipment, local exchange switching, and flat usage trunks for access to the local exchange and toll networks. Each DSS facility utilizes 24 channels which may be configured

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.

as either basic or advanced trunks, as defined below, or a combination of both types of trunks.

Description of the contract: The contract is a 48-month, multi-state, volume discount arrangement between Qwest and a confidential customer. The contract has an initial term of two years and automatically extends annually thereafter for two one-year periods. The contract rate for Flat Rate Business Lines with Hunting and Qwest Choice Business, in all three rate groups, is discounted by 12 percent and 27 percent, respectively, from the tariffed rate.² The contract monthly recurring rates for ISDN-PRI and DSS are \$576 and \$492 for 71 to 149 spans and \$536 and \$462 for 150+ spans, respectively. The proposed monthly rates exceed the company's long run incremental cost of providing the services. Charges for any other services or features required are at tariffed rates.

The contract contains numerous interstate services that are regulated by the Federal Communications Commission and numerous intrastate services that are regulated by other state commissions. However, for the one operating unit in Oregon, the contract contains only 1FB with Hunting; Qwest Choice Business; ISDN-PRS; and DSS. The contract contains minimum service unit quantities and minimum monthly revenue levels that the confidential customer must meet on a national basis.

ORS 759.250 and Staff Procedures for Reviewing Special Contracts: Section III. S. of *Qwest's Price Plan under ORS 759.255*³ 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.

² Although rates are prescribed in the contract for all three rate groups, all services provided by the filing are in rate group one (RG 1).

³ See Order No. 08-408, Docket UM 1354.

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 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 759.260 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 amendment is timely filed and that no party was harmed by the company's late filing of the original contract. The filing responds to a unique customer requirement in a competitive service situation. The contract's 48-month term is within the statutory five year limitation. The contract rate exceeds the long run incremental cost of providing the services 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.

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.

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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.