

ITEM NO. CA7

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

REGULAR _____ CONSENT X EFFECTIVE DATE July 7, 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. C31-2009) 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. C31-2009 on August 26, 2009. The filing makes special contract arrangements between Qwest and a confidential customer for flat rate business lines and for service packages that include flat rate business lines. 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 24, 2009.

The company's tariff does not include pricing for volume purchasing¹ coupled with a 36-month rate stabilization commitment for all of the contract services. Thus, the contract is necessary, and is designed to respond to the confidential customer's unique requirement. Qwest also considers the contract services to be competitive.² If Qwest

¹ The contract requires the customer to maintain a minimum line requirement of 2,888 Qwest Business Access Lines across Qwest's 14-state region.

² 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.

does not provide the contract services, a number of competitors would be able to provide the services.

Description of the services: The filing provides an individual case basis arrangement and discounts for the company's Qwest Line Volume offering, which includes Flat Rate Business Line (1FB) with Hunting; Qwest Choice Business; Qwest Choice Business Plus; and Qwest Choice Business Add-a-line.

Description of the contract: The contract is a 36-month, multi-state, volume discount arrangement between Qwest and a confidential customer. The contract rate for Flat Rate Business Lines, in all three rate groups, is discounted by 20 percent from the tariffed rate.³ The contract discounts for service packages are: Qwest Choice Business, 35 percent; Qwest Choice Business Plus, 33 percent; and Qwest Choice Business Add-A-Line, 8 percent. The proposed monthly rates exceed 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*⁴ 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, 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.

³ 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).

⁴ See Order No. 08-408, Docket UM 1354.

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 "prudence 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 is timely filed and responds to a unique customer requirement in a competitive service situation. The contract's 36-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.

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.

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.