

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: February 2, 2010**

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: January 21, 2010

TO: Public Utility Commission

FROM: David Sloan

THROUGH: Lee Sparling, Bryan Conway, and Irv Emmons

SUBJECT: QWEST CORPORATION: (Advice No. C45-2009) 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, at the end of 90 days after the filing the special contract is deemed approved.

DISCUSSION:

Qwest Corporation (Qwest) filed Advice No. C45-2009 on November 25, 2009. The filing establishes special contract arrangements between Qwest and a confidential customer for Integrated Services Digital Network – Primary Rate Service (ISDN-PRS) and Digital Switched Service (DSS).

Section III. S. of *Qwest's Price Plan under ORS 759.255*¹ allows the company to offer primary line basic service and other regulated services under special contracts pursuant to ORS 759.250. Pursuant to the statute, 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 would be February 22, 2010.

The filing is a 36-month, multi-state contract between Qwest and a confidential customer for ISDN-PRS and DSS. Similar services are offered by most Competitive Local Exchange Companies. The Oregon discounted monthly recurring contract price is \$610 for ISDN-PRS and \$525 for DSS Advanced, riding on a DS3. Both prices are above the company's cost of providing the services. The company believes that the

¹ See Order No. 08-408, Docket UM 1354.

overall volume of facilities being ordered by the confidential customer justifies discounting below the standard terms offered in the tariff for the same or similar services. The company will give the contract prices to any similarly situated customer requesting it.

Charges for any other services or features required by the customer are charged at rates prescribed in the applicable tariffs. 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 the services: ISDN-PRS is a digital four-wire full duplex transmission path between ISDN compatible customer premises equipment 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.

Advanced DSS is a digital transmission facility (DS1) at the speed of 1.544 Mbps between the customer's premises and the company's central office switch. Multiplexing of the DSS facility in the company's central office accommodates up to a maximum of 24 voice grade and/or 24 data channels into the central office switch.

ORS 759.250 and Staff Procedures for Reviewing Special Contracts: ORS 759.250 allows telecommunications utilities to enter into special contracts with customers without being subject to standard tariff filing procedures under ORS 759.175. Special 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. The contract's 36-month term is within the statutory limitation.

Furthermore, the statute 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 Commission 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 759.250 and ORS 759.260 do 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 for provision of ISDN-PRS and DSS is timely filed and responds to a unique customer requirement in a competitive atmosphere. The contract rates exceed the long-run incremental cost of providing the respective services to the customer. Other customers are adequately protected from loss should the customer terminate the contract early. The contract service is available to other similarly situated customers at the same prices stated in the contract. 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 90 days after the filing the special contract is deemed approved.