



**OREGON PUBLIC UTILITY COMMISSION
INTEROFFICE CORRESPONDENCE**

DATE: August 25, 2014

TO: File through Bruce Hellebuyck 

FROM: Jim Stanage 

SUBJECT: Qwest Corporation, Advice No. C38-2014
Establishes a Special Contract submitted pursuant to ORS 759.250(5).

I have reviewed this filing and recommend that an acknowledgement letter be sent. Qwest Corporation d/b/a CenturyLink QC (Qwest) proposes approval of a thirty-six month special contract with a confidential customer for Integrated Services Digital Network Primary Rate Service (ISDN-PRS). The contract went into effect on June 23, 2014, and was filed on August 4, 2014. Because there is a current Qwest special contract that provides the same services with the same rates, terms, and conditions as the services in this contract, this filing will not be placed on a public meeting agenda for Commission consideration under advice of counsel. 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 would be November 2, 2014.

Description of Contract

Qwest is proposing a thirty-six month, discount arrangement between itself and a confidential customer for ISDN-PRS. The ISDN-PRS is being provided under the contract at a monthly rate of \$475.00 per unit, which represents a 24 percent discount off the regularly tariffed rate of \$625.00. The filing states that the company will give the discounted prices to any similarly situated customer requesting it. The same services with the same rates, terms, and conditions as the services in this contract are currently being provided under Qwest Advice No. C43-2013.

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

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.

¹ Commission Order No. 96-021 gave the company pricing flexibility, pursuant to ORS 759.050, in exchanges that comprise competitive zones.

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

ISDN Primary Rate Service consists of 23 bearer (B)-channels and one data (D)-channel, for a total transmission rate of 1.544 Megabits per second (Mbps). It is designed for transmission through a T1 facility. Each 64 Kilobits per second (Kbps) B-channel carries user information such as voice calls, circuit-switched data, or video. The D-channel is a 64 Kbps channel that is used to carry the control or signaling information.

Staff Procedures for Reviewing Special Contracts

Although the form of regulation that applies to Qwest changed pursuant to ORS 759.255 on November 12, 2008, and the regulatory plan allowed by the Commission under Order 08-408 (UM 1354), its services offered through special contracts remain fully regulated. Thus, Qwest special contracts for its regulated services are 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 PUC approval of telecommunications special contracts, which are as follows:

1. The contract service must be a new service with 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 ninety 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 ninety days of the filing. If the Commission does not act within ninety 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 that considered procedures and guidelines for special contract filings, as well as in the Memorandum of Understanding (MOU) that is incorporated in the order. The two areas of focus 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.

The company submitted a financial analysis that shows the proposed rates cover the company's long-run, incremental cost of service (LRIC) for the contract service(s).

Conclusions

Staff has investigated the contract and finds that it complies with Oregon law, Order No. 92-651 (UM 254) and the Memorandum of Understanding between staff and the company that is 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.