



Qwest
421 Southwest Oak Street
Suite 810
Portland, Oregon 97204
Telephone: 503-242-5420
Facsimile: 503-242-8589
e-mail: carla.butler@qwest.com

Carla M. Butler
Lead Paralegal

February 7, 2008

Frances Nichols Anglin
Oregon Public Utility Commission
550 Capitol St., NE
Suite 215
Salem, OR 97301

Re: UM 1354

Dear Ms. Nichols Anglin:

Enclosed for filing in the above entitled matter please find an original and (5) copies of Qwest Corporation's Reply to Staff's Response to Joint Motion to Dismiss, along with a certificate of service.

If you have any questions, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink that reads "Carla". The signature is written in a cursive, flowing style.

Carla M. Butler

CMB:
Enclosure
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1354

In the Matter of the Petition of QWEST CORPORATION for Approval of a Price Plan Pursuant to ORS 759.255

QWEST CORPORATION'S REPLY TO STAFF'S RESPONSE TO JOINT MOTION TO DISMISS

Pursuant to Administrative Law Judge Allan Arlow's Prehearing Conference Report of December 17, 2007, petitioner Qwest Corporation ("Qwest") respectfully replies to Staff's January 31, 2008 Response to the Joint Motion to Dismiss filed on January 10, 2008.

REPLY

First, Qwest agrees with Staff that Qwest has the authority to opt out of price cap regulation under ORS 759.410 if the Commission approves another price plan under ORS 759.255. As Staff noted, a plain reading of ORS 759.405 *et seq.* allows Qwest to opt out of price cap regulation under ORS 759.410 if the Commission approves a different plan under ORS 759.255. Thus, as Staff noted, the Intervenors' attempts to insert a provision into the statutory scheme that states that once a carrier elects price cap regulation under ORS 759.410, it can never opt out, is without support. As Qwest has noted, and Staff agrees, the statutes at issue only provide that once Qwest has elected price cap regulation under ORS 759.410, it is subject to other provisions of that same statutory scheme, but any attempt to insert a provision making that election unchangeable or irrevocable would impermissibly insert terms that are not included.

Qwest also agrees with Staff that the unambiguous terms of ORS 759.410(7) make clear that, while Qwest may seek deregulation of any telecommunications service, nothing in that subsection implies or suggests deregulation is the only alternative for Qwest to be relieved of the price caps under ORS 759.410. Qwest further agrees with Staff that nothing in the Commission orders that the Intervenors cited support their argument that Qwest cannot opt out of price cap regulation under ORS 759.410 if the Commission approves a price plan under ORS 759.255.

1 In addition, with respect to the Intervenors’ argument that what Qwest is really seeking in
2 this docket is “deregulation,” Qwest agrees with Staff that any consideration about whether some
3 of the services at issue in Qwest’s proposed plan would somehow be the equivalent of
4 deregulation is a matter best resolved on the merits within the docket, and not by a motion to
5 dismiss. However, Qwest does not agree with any suggestion that any aspect of its Price Plan
6 proposal crosses the line into impermissible deregulation, and believes that this will be borne out
7 by the facts in the docket.

8 Further still, to the extent Staff suggests that the statutes at issue may be read as requiring
9 the Commission to set price caps for a price plan under ORS 759.255 (because of the statutory
10 language referencing ORS 759.195), Qwest disagrees. Instead, while the Commission may have
11 the power to set price caps in an ORS 759.255 price plan, there is nothing in the statute that
12 *requires* the Commission to set price caps. This is especially so because ORS 759.195, which is
13 referenced in ORS 759.255(1), makes clear the Commission “may” (but is not required) to set
14 price caps for price-listed services. ORS 759.195(5). Moreover, ORS 759.255(5) itself provides
15 that the Commission, in approving a price plan under ORS 759.255(1), may waive numerous
16 statutes, including ORS 759.195. Thus, while Qwest does not necessarily agree with Staff’s
17 suggestion that ORS 759.255 somehow incorporates ORS 759.195, again, this is an issue that may
18 be explored in this docket. The Commission is not required to address this question at this time,
19 nor does Staff suggest it must do so.

20 Finally, Staff makes several interesting points about whether the concept of “essential
21 services” under ORS 759.195 must be carried forward into a price plan under ORS 759.255.
22 Although Qwest does not necessarily agree with all of Staff’s logic or arguments on this issue,
23 ultimately, Qwest agrees with Staff that the concept of “essential services” found in ORS
24 759.195 is *not* a required part of a price plan under ORS 759.255. Once again, the Commission
25 is not required to address this question at this time, nor does Staff suggest it must do so. And, as
26 stated above, the Commission has the authority under ORS 759.255(5) to waive ORS 759.195.

CONCLUSION

1 For the foregoing reasons, and as Staff recommends, Qwest respectfully requests that the
2 Commission deny the Intervenor's motion to dismiss in its entirety.

3 DATED: February 7, 2008

QWEST CORPORATION

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5
6 By:



Alex M. Duarte, OSB No. 02045
Qwest Corporation
421 S.W. Oak Street, Suite 810
Portland, OR 97204

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8
9
10 and

11 Lawrence H. Reichman, OSB No. 86083
12 Perkins Coie LLP
13 1120 N.W. Couch Street, Tenth Floor
14 Portland, OR 97209-4128

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16
17
18
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20
21
22
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24
25
26 Attorneys for Petitioner Qwest Corporation

CERTIFICATE OF SERVICE

UM 1354

I hereby certify that on the 7th day of February 2008, I served the foregoing **QWEST CORPORATION'S REPLY TO STAFF'S RESPONSE TO JOINT MOTION TO DISMISS** in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

Jason Eisdorfer
Robert Jenks
Lowrey Brown
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
** paper service waived*

Lawrence Reichman
Perkins Coie
1120 N.W. Couch Street
10th Floor
Portland, OR 97209-4128

Arthur A. Butler
Riger Dunaway
Ater Wynne LLP
601 Union Street
Suite 1501
Seattle, WA 98101
** paper service waived*

William Haas
McLeodUSA Telecommunications
Services, Inc.
1 Martha's Way
Hiawatha, IA 52233

Mark P. Trincherro
Davis Wright Tremaine LLP
1300 SW Fifth Avenue
Suite 2300
Portland, OR 97201

Richard A. Finnigan
Law Office of Richard A. Finnigan
2112 Black Lake Blvd., SW
Olympia, WA 98512

Jason W. Jones
Michael T. Weirich
Department of Justice
1162 Court Street NE
Salem, OR 97301

Brant Wolf
Oregon Telecommunications
Assn.
777 13th Street SE, Suite 120
Salem, OR 97301

James E. Green
Verizon Northwest Inc.
Suite 150
20575 NW Von Neumann Dr.
Beaverton, OR 97006

DATED this 7th day of February, 2008.

QWEST CORPORATION



By: _____

ALEX M. DUARTE, OSB No. 02045
421 SW Oak Street, Suite 810
Portland, OR 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
e-mail: alex.duarte@qwest.com

Attorney for Qwest Corporation