



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

July 27, 2006

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

Re: UX-29

Dear Ms. Nichols Anglin:

Enclosed for filing in the above entitled matter please find an Qwest's Objection to the Commission Taking Official Notice in Order No. 06-399, 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:
Enclosures
cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UX 29

In the Matter of the Petition of Qwest
Corporation to Exempt from Regulation
Qwest's Switched Business Services

QWEST'S OBJECTIONS TO THE
COMMISSION TAKING OFFICIAL
NOTICE IN ORDER NO. 06-399

Pursuant to OAR 860-014-0050(2), Qwest Corporation ("Qwest") respectfully objects to the facts that the Commission officially noticed in Order No. 06-399. The basis for Qwest's objections is that the Commission made certain assumptions and reached certain conclusions based on its review of Qwest's website regarding what the Commission concluded were differences in the way Qwest defines and treats "small business" and "large business" customers. Further, and as Qwest mentions below, Qwest intends to file a motion for reconsideration within the time period of ORS 756.561 and OAR 860-14-0095 in which it will set forth in more detail all of the reasons the Commission erred in making its assumptions and reaching its conclusions in reviewing Qwest's website without allowing Qwest to respond to the facts officially noticed and to rebut the assumptions made and conclusions reached by the Commission.

PERTINENT BACKGROUND

On July 12, 2006, the Commission issued its order in response to Qwest's June 2004 petition to deregulate Qwest's switched business services under ORS 759.052 (formerly ORS 759.030). See Order No. 06-399 (issued July 12, 2006) (hereafter "the Order"). In the Order, the Commission granted in part and denied in part Qwest's petition. Specifically, the Commission granted Qwest's petition with respect to Qwest's 800 Service/OutWATS service, its Frame Relay service and its Asynchronous Transfer Mode (ATM) service, in all rate centers in Oregon (i.e., statewide), pursuant to ORS 759.052(1). See Order, pp. 3, 20. The Commission also granted Qwest's petition with respect to its basic business service and associated features

(both digital and analog, and for both flat-rated (1FB) and measured service), but only for customers with *four lines or more*, and only for such four-line and greater customers in the *Portland and Clackamas rate centers*. *Id.*, pp. 3, 19. The Commission denied Qwest’s petition for all other services. *Id.*, pp. 3, 19, 20.

In its decision to deregulate Qwest’s basic business service and associated features, but only for customers with four lines or more, and only for such four-line and greater customers in the Portland and Clackamas rate centers, the Commission relied on its *sua sponte* review of several of Qwest’s websites, and thus took official notice of what it deemed to be “the Qwest website with respect to the way Qwest defines ‘small business’ and ‘large business’ customers.” Order, p. 7. This was not evidence that was in the evidentiary record when the record closed at the end of the evidentiary hearing on October 20, 2005, however. Rather, it was evidence of which the Commission took “official notice” from its review of several Qwest websites. See Order, p. 7, and fns. 14 and 15. In addition, this decision was based on evidence and conclusions that no party had raised or entered into the record, or that any party had advocated.¹

Further, the Commission then made certain assumptions and reached certain conclusions based on its review of these Qwest websites, including its conclusion that with certain Qwest Voice Solution packages, the customer may purchase the “Add-a-Line” feature for up to two additional lines, and that the “Qwest Small Business web pages” provide specific pricing information, while the “Qwest Large Business web pages” do not. See Order, p. 7.

¹ Indeed, no party raised a distinction between “small business customers” and “large business customers,” and more precisely, no party made a distinction, presented evidence, or advocated for a distinction between customers with three or fewer business lines and customers with four or more lines. For example, Staff advocated and recommended that the Commission deregulate all basic business services (including 1FB lines) in the *Portland rate center*, but not statewide. Qwest, on the other hand, advocated, among other things, that the Commission deregulate all basic business services (including 1FB lines) throughout the entire state of Oregon. The intervenor CLECs and TRACER advocated for a denial of Qwest’s petition for all services. However, no party advocated, much less presented evidence, regarding a number of line distinction.

From these assumptions, the Commission concluded, but without specifically explaining the particular facts relied upon, that “[a]ccording to the websites through which Qwest markets its business services, Qwest *appears* to currently offer pricing flexibility— i.e., no published, set price for basic business voice grade service— only to businesses that fall into their ‘Large Business’ category.” Order p. 16. (Emphasis added.) In addition, the Commission concluded, again without specifically explaining the particular facts relied upon, that “[s]mall businesses are limited in the feature packages in feature packages and number of lines to specific offerings at specific prices.” *Id.* The Commission further concluded, on the same basis, that “[l]arge businesses are not restricted to service offerings of one, two or three voice grade service lines and prices are subject to negotiation.” *Id.* Finally, the Commission concluded its rationale for deregulating only customer accounts with four or more lines only, in the Portland and Clackamas rate centers, as follows: “We therefore find that, by Qwest’s own public representations, price competition is not present for voice grade line integrated service offerings for customers with three or fewer lines,” and thus that price and service competition exists in the Portland and Clackamas rate centers for basic business services “for customers whose accounts include four or more lines.” *Id.*, pp. 13, 19.

APPLICABLE RULE

OAR 860-014-0050 provides as follows:

(1) The Commission or Administrative Law Judge (ALJ) may take official notice of the following matters:

- (a) All matters of which the courts of the State of Oregon take judicial notice;
- (b) Rules, regulations, administrative rulings and reports of the Commission and other governmental agencies;
- (c) Orders of the Commission;
- (d) Permits, certificates, and licenses issued by the Commission;

- (e) Documents and records in the files of the Commission which have been made a part of the file in the regular course of performing the Commission's duties;
- (f) General, technical or scientific facts within the specialized knowledge of the agency;
- (g) The results of the Commission's or ALJ's own inspection of the physical conditions involved after notice to the parties.

(2) *The Commission or the ALJ shall notify the parties when official notice is taken.* The notice may be given on the record during the hearing or in findings of fact in a proposed or final order. A party may *object* to the fact noticed *within 15 days* of that notification. The objecting party *may* explain or rebut the noticed fact. (Emphasis added.)

OBJECTION TO OFFICIAL NOTICE

Pursuant to OAR 860-014-0050(2), Qwest objects to the Commission's taking official notice of certain facts in the Order. First, these facts do not appear, on preliminary review, to be one of the types of which the Commission may take official notice under OAR 860-014-0050(1). Moreover, even if they are, and while Qwest does not dispute the accuracy of the facts that appear on its own websites, the Commission has drawn incorrect and unwarranted inferences and reached certain conclusions based upon those facts; in fact, the Commission based its ultimate decision in large part on those unwarranted inferences and conclusions.

Qwest also intends to explain and/or rebut the officially noticed facts and the inferences and conclusions the Commission has drawn from those facts, as permitted in OAR 860-014-0050(2). Qwest intends to address these issues more fully in the motion for reconsideration that it intends to file pursuant to ORS 759.561 and OAR 860-14-0095, and respectfully requests permission to fully explain and/or rebut the noticed facts and the inferences and conclusions drawn therefrom in connection with that motion. Qwest believes that its motion for reconsideration will provide the proper context for such explanation and related argument. Without waiving its right to provide a fuller explanation, Qwest provides a brief explanation in this objection.

For example, the Commission concludes from the fact that one of Qwest's websites lists specific offerings and prices for "Small Business" customers, but does not list offerings and prices for "Large Business" customers, that (1) Small Business customers are limited to purchasing specific offerings at specific prices, but (2) Large Business customers are not limited to specific offerings, *and* prices for Large Business customers are "subject to negotiation." Order, p. 16. This is not true, however. Any customer may purchase any service or combination of services that Qwest offers and for which that customer qualifies at the prices set forth in Qwest's price lists. Thus, neither set of customers is restricted to any specific product offerings.

More significantly, prices for Large Business customers are *not* negotiable except under circumstance that qualify for a special contract under applicable law. All of the prices for Qwest's regulated services are set forth in *price lists* filed with the Commission. If Qwest were to offer Large Business customers (which the Commission defines as those purchasing four or more voice lines) lower prices for their lines, features, or feature packages, those lower prices must, by law, be filed with the Commission, either in a price list or as a special contract. Qwest may not offer lower prices to Large Business customers if the lower prices or special contracts are not filed with the Commission. Thus, Qwest can and will rebut and explain the facts of which the Commission has taken official notice, as well as the incorrect and unsupported inferences and conclusions that the Commission draws from such facts.

CONCLUSION

Accordingly, Qwest respectfully objects to the facts that the Commission officially noticed in Order No. 06-399, without prejudice to its more fully setting forth the Commission's errors in Qwest's motion for reconsideration that it intends to file next month.

DATED: July 27, 2006

Respectfully submitted,

QWEST



By: _____

Alex M. Duarte, OSB No. 02045
421 SW Oak Street, Suite 810
Portland, OR 97204
503-242-5623
503-242-8589 (facsimile)
Alex.Duarte@qwest.com

Lawrence H. Reichman, OSB No. 86083
PERKINS COIE LLP
1120 NW Couch Street, 10th Floor
503-727-2019
503-346-2019 (facsimile)
LReichman@perkinscoie.com

Attorney for Qwest Corporation

CERTIFICATE OF SERVICE

UX-29

I hereby certify that on the 27th day of July, 2006, I served the foregoing **QWEST'S OBJECTION TO THE COMMISSION TAKING OFFICIAL NOTICE IN ORDER NO. 06-399** in the above entitled docket on the following persons via U.S. Mail (or via e-mail if so indicated), 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.

*Gregory J. Kopta
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

*Stephanie Andrus
Department of Justice
1162 Court St., NE
Salem, OR 97301-4096

*Alex M Duarte
Qwest Corporation
421 SW Oak St., Ste. 810
Portland Or 97204

Dennis Gabriel
Oregon Telecom Inc
PO Box 4333
Salem, OR 97302-8333

*Jay Nusbaum
Integra Telecom Of Oregon Inc
1201 NE Lloyd Blvd.
Suite 500
Portland, OR 97232

*Rex Knowles
XO Communications, Inc.
111 E Broadway, Ste. 1000
Salt Lake City, UT 84111

*Lisa F Rackner
Ater Wynne LLP
222 SW Columbia St.
Suite 1800
Portland, OR 97201-6618
e-mail: lfr@aterwynne.com

Lawrence Reichman
Perkins Coie LLP
1120 NW Couch St.
10th Floor
Portland, OR 97209-4128

Brad Schaffer
Rio Communications Inc
2360 NE Stephens
Roseburg, OR 97470

*Greg Diamond
Covad Communications Co.
7901 E. Lowry Blvd.
Denver, CO 80230

*Douglas K. Denney
Eschelon Telecom of Oregon, Inc.
730 Second Avenue S.
Suite 900
Minneapolis, MN 55402-2489

Brian Thomas
Time Warner Telecom Of Oregon LLC
223 Taylor Ave. N.
Seattle, WA 98109-5017

*Richard Cabe (Via e-mail only)
TRACER
Richard@salidamillwork.com

Jessica A. Gorham
Ater Wynne, LLP
222 SW Columbia St., Suite 1800
Portland, OR 97201
jac@aterwynne.com

DATED this 27th day of July, 2006.

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