OREGON PUBLIC UTILITY COMMISSION
INTEROFFICE CORRESPONDENCE

DATE: January 14, 2016

TO: File through Bryan Conway and Bruce Hellebuyck

FROM: Jim Stanage

SUBJECT: QWEST CORPORATION: (Docket No. ADV 139/Advice No. C43-2015) Establishes a Special Contract submitted pursuant to ORS 759.250(5).

BACKGROUND

This filing will appear on the Commission's January 26, 2016, public meeting agenda.

Qwest Corporation dba CenturyLink QC (Qwest) proposes approval of a thirty-six month special contract with a confidential customer for Metro Optical Ethernet Service (MOE). The contract went into effect on October 27, 2015, and was filed on November 18, 2015. 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 February 16, 2016.

Description of Contract

The contract is a thirty-six month, discount arrangement between Qwest and a confidential customer for MOE in the 10 Megabits per second Bandwidth. The MOE is being provided under the contract at a monthly rate of $455.00 per unit, which represents a 27 percent discount off the regularly tariffed rate of $621.00. The filing states that the company will give the discounted prices to any similarly situated customer requesting it.

Qwest's tariff does not offer discounts that are as large as those proposed in this special contract, and thus, the contract provides the customer unique rates for the contract services. The company also 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.

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.

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

Description of Services

MOE is a flexible, "easy-to-use" transport service that uses established Ethernet transport technology. MOE allows customers to connect multiple enterprise locations within a service area using Ethernet protocol. MOE supports transmission speeds ranging from 5 Mbps (Megabits per second) to 1 Gbps (Gigabits per second) in increments of 10 Mbps (between 10 to 100 Mbps) and in increments of 100 Mbps (between 100 to 1,000 Mbps/1 Gbps).

STAFF ANALYSIS

Review Procedures

Although the form of regulation that applies to Qwest changed November 12, 2008, pursuant to ORS 759.255 and the regulatory plan allowed by the Commission under Order Nos. 08-408 and 14-346 (UM 1354), its services offered through special contracts remain fully regulated. Thus, Qwest special contracts for its regulated services are still 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 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 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.

4. 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 provide sufficient evidence to support the contract under ORS 759.250, the staff may recommend that the Commission reject the contract.

Classification and Unjust Discrimination Criteria

PUC Order No. 92-651 (UM 254), issued May 1, 1992, adopted procedures and guidelines for telecommunications special contract filings. The order specifies that in assessing special contracts the Commission must consider the reasonableness of the contract rates and whether the rates result in unjust discrimination. The statutes that underlie these areas of concern 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 that the proposed rates cover the company's estimated long-run, incremental cost of service (LRIC) for the contract service(s).

Conclusions

Staff has investigated the filing and finds that it complies with Order No. 92-651 (UM 254) and the memorandum of understanding between staff and the company 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.