

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UX 29

In the Matter of)	
)	
QWEST CORPORATION)	ORDER ON
)	RECONSIDERATION
Petition to Exempt from Regulation)	
Qwest's Switched Business Services.)	

DISPOSITION: RECONSIDERATION GRANTED IN PART AND DENIED IN PART

Procedural History

On June 21, 2004, pursuant to ORS 759.052 and OAR 860-032-0025, Qwest Corporation (Qwest) filed a Petition to Exempt from Regulation Qwest's Switched Business Services (Petition). The Petition covered all exchanges in Qwest's ILEC service territory in Oregon. The services subject to the Petition fell into three general categories: (1) Services that provide access to the network, such as flat-rated and measured lines, private branch exchange (PBX) trunks and Centrex services, including feature packages; (2) Discretionary business features that are software enhancements available as access line or trunk options; and (3) Frame Relay and Asynchronous Transfer Mode (ATM) services (packet-switched services in Qwest's Advanced Communications Services Tariff).¹

On July 12, 2006, we issued Order No. 06-399, in which we granted, in part, Qwest's petition. Despite the difficulties in gathering data necessary to determine whether the petitioned services should be exempt from regulation, we made numerous findings of fact, including the adoption of the general proposition that smaller companies, *i.e.*, those with fewer employees, pay disproportionately more for telecommunications services than larger firms.² We also included in our findings the following:

[W]e take official notice of the Qwest website with respect to the way that Qwest defines "small business" and "large business" customers. Qwest's Small Business web pages offer Voice

¹ *Petition*, p. 1. The numerous services encompassed by the Petition are set forth in and with references to the Qwest Tariff PUC Oregon No. 29: Exchange and Network Services, Sections 5, 7, 9, 10, 14, 15, 105, 107, 109 and 115; Qwest Exchange and Network Services Price List, Sections 5 and 105, and Qwest Advanced Communications Services Tariff, PUC Oregon No. 27, Sections 5 and 107, Exhibits Qwest/1, Brigham/14, and Qwest/2, Brigham/1-3.

² Order, p. 6.

Solutions packages of Qwest Choice Business™ and Qwest Choice Business Plus™, which bundle a voice line with a choice of either three or fifteen calling features. With either service, the customer may purchase the Add-a-Line feature for up to two additional lines; i.e., a total of three local voice lines.³ Furthermore, while the Qwest Small Business web pages provide specific pricing information, the Qwest Large Business web pages do not.⁴

Based on these findings and other evidence in the record that the Portland/Clackamas rate centers were subject to more competition for basic business services than other markets, we concluded that the prices for analog and digital basic business services and their associated features should be deregulated for customers whose accounts include four or more lines.⁵ We otherwise denied Qwest's petition.

Motion for Reconsideration

On August 31, 2006, Qwest filed a Motion for Reconsideration of Order No. 06-399 (Motion). The Motion asks that we reconsider our Order solely with respect to our decision to maintain price caps for basic business services in the Portland/Clackamas wire centers for customers with fewer than four business lines. Qwest makes extensive argument as to the impropriety of our taking official notice of its websites' public representations and making conclusions and decisions in reliance on such information after the record had been closed and without providing it with the opportunity to rebut. It seeks the opportunity to comment upon the information contained in its website and the public's perceptions as to whether small business customers had pricing choices not evident from the websites themselves.

Without considering the propriety of our actions, we hereby grant Qwest's Motion to the extent that we modify our Order to delete any reference to information contained on Qwest's websites or any other information exogenous to the record. In its place, we rely on the TRACER study⁶ cited in our Order, which provides substantial evidence to support our conclusion that basic business services offered to the smallest businesses, even in major metropolitan areas, are not sufficiently subject to competition. The study also supports the finding that the breakpoint between a "small business" and "large business" customer is three and four lines. Specifically, the evidence contained in the TRACER study establishes that the smallest businesses have, on average, fewer than four business lines and are far less likely to be served by a CLEC than larger businesses.

³ Order p. 7, citing <http://pcat.qwest.com/pcat/productDetail.do?salesChannel=SmallBusiness&offerId=6683>.

⁴ Order p. 7, citing http://www.qwest.com/pcat/large_business/product/1,1016,954_4_25,00.html (large business voice lines) and <http://www.qwest.com/smallbusiness/productsandservices/local/index.html> (small business voice lines).

⁵ Order, p. 19.

⁶ TRACER Exhibit 105. We adopt the author Stephen B. Pociask's professional opinion, Exhibit p. 13, that "the survey's sample size is sufficiently large to provide a desirable level of confidence, making the results a reasonably accurate representation of small businesses' use of telecommunications services."

The study shows that 47 percent of businesses had less than \$200,000 in revenues and averaged fewer than two business lines, while most firms with revenues approaching \$1 million had fewer than four business lines on average. The small businesses served by ILECs averaged fewer than four business lines while those served by CLECs averaged more than four business lines and were likely to be far larger.

These general conclusions about the market for telecommunications are consistent with our other findings in the Order regarding Qwest's marketplace behavior; price increases for basic business services at the small end of the market have been constrained solely by state regulation and not by competitive forces. We adhere to our earlier conclusion that Qwest has failed to meet its burden to remove from regulation those basic business services that it provides to customers with fewer than four lines.


ORDER

Qwest's Motion for Reconsideration of Order No. 06-399 is GRANTED to the extent indicated above and is DENIED in all other respects.


Made, entered, and effective SEP 26 2006.



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.