

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UX 31

In the Matter of the Petition of Qwest)
Corporation to Exempt from Regulation) ORDER
Qwest’s Trouble Isolation Charge.)

DISPOSITION: PETITION GRANTED WITH CONDITIONS

On February 9, 2007, Qwest Corporation (Qwest or the Company) petitioned the Commission to Exempt from Regulation its Trouble Isolation Charge (TIC) pursuant to ORS 759.052 and OAR 860-032-0025. Based upon the Staff Report of March 19, 2007, incorporated herein by reference and affixed hereto as Attachment A, we grant the Qwest petition with conditions.

Introduction. In 1987, the Commission deregulated inside wiring and customer premises equipment (CPE).¹ Prior to that time, the incumbent local exchange carrier was responsible for the maintenance of the entire system. With our deregulatory action in 1987 came the need to identify the cause of any trouble and, with it, a means to assign responsibility for the trouble and for the cost of isolating the problem. According to its tariff, after Qwest tests the Company’s facilities up to the customer’s point-of-presence and the facilities test clear, the TIC is only charged if the customer does not subscribe to a Qwest wire maintenance plan.² In 1991, the Commission approved a change in Qwest’s tariff that established a flat fee for the TIC.

The Qwest Petition. Qwest asks the Commission to exempt the TIC from regulation. Because it is not a “basic service,” it is price capped at its current rate, a nonrecurring charge of \$35.00 per premises visit for residential customers and \$50.00 for business customers. If the Commission grants the petition and Qwest files its advice removing the TIC from its tariff, the service will no longer be subject to Commission rules or regulations.

¹ See Docket UM 142, Order No. 87-778 and Docket UM 143, Order No. 87-1316.

² When the line tests clear on the central office side of the point-of-presence, it is the customer’s inside wiring or CPE that is the cause of the trouble.

Staff Analysis. In its Report, Staff analyzes the petition and recommends that, if certain conditions are adopted, the public interest no longer requires full regulation of the TIC. In reaching that conclusion, Staff addressed issues of Price and Service Competition, Economic or Regulatory Barriers to Entry, the Cost of Service and Rates and Other Factors.³ Staff discussed the Qwest petition with a number of organizations who provided information to Staff regarding their concerns, but no persons sought to become interested parties or to intervene in this proceeding.⁴

Decision. The Commission has reviewed the petition and the Staff Report and adopts the Staff Report and its recommendations. The Commission therefore concludes that Qwest's petition meets the requirements of the law and should be granted.

ORDER

IT IS ORDERED that Qwest's petition to exempt the Trouble Isolation Charge from regulation is granted with the following conditions:

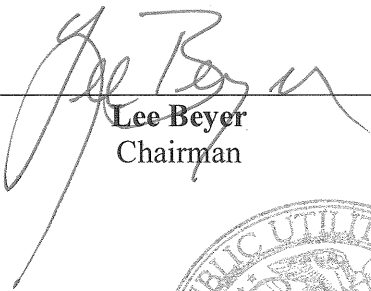
1. Qwest shall continue to make available to customers and to all providers of trouble isolation service, at no charge, access to company facilities necessary to accurately isolate a customer service problem between the Company's facilities and the customer owned facilities.
2. Qwest shall continue its current practices, including training of its customer representatives, related to informing customers who report trouble with their communications services of how they can perform the trouble isolation test themselves and avoid the Trouble Isolation Charge. Qwest will continue to notify customers of the amount of any Trouble Isolation Charge prior to performing a trouble isolation service.
3. Qwest shall continue its current practice of publishing clear and concise instructions in the Dex phone books and on its website for a customer to conduct its own trouble isolation test and avoid the Trouble Isolation Charge.
4. Qwest will not abandon trouble isolation service for any, or all, of its customers without Commission approval.

³ Staff Report, pp. 4-7.

⁴ *Id.*, p. 4.

5. Qwest will continue its practice of not charging a customer a Trouble Isolation Charge if the customer is subscribing to a Qwest Wire Maintenance Plan.

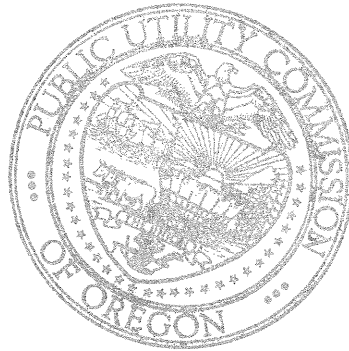
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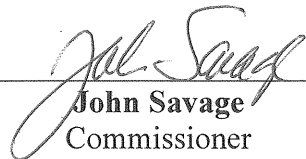


Lee Beyer
Chairman



Ray Baum
Commissioner





John Savage
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). 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.

ITEM NO. 4

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 27, 2007

REGULAR X CONSENT _____ EFFECTIVE DATE April 10, 2007

DATE: March 19, 2007

TO: Public Utility Commission

FROM: David Sloan *DS*

THROUGH: *in* Lee Sparling, *H* Marc Hellman, *BC* Bryan Conway, *DB* Dave Booth, and *LB* Lance Ball

SUBJECT: QWEST CORPORATION: (Docket No. UX 31) Petition to exempt the Trouble Isolation Charge (TIC) from regulation.

STAFF RECOMMENDATION:

Staff recommends Qwest's petition to exempt its TIC from regulation be granted, with conditions.

DISCUSSION:

On February 9, 2007, Qwest Corporation (Qwest) filed a petition to exempt its TIC from regulation (Petition). The Petition is filed pursuant to Oregon Revised Statute (ORS) 759.052, *Commission authority to exempt telecommunications services from regulation*, and Oregon Administrative Rule (OAR) 860-032-0025, *Petition to Exempt Services from Regulation*. The Petition is designated Docket No. UX 31.

ORS 759.058, *Commission action on petition under ORS 759.052, 759.054 or 759.056*, requires the Commission to, within 60 days of the filing, determine the appropriateness of the filing or determine that further investigation is necessary. For this filing, the 60-day statutory deadline is April 10, 2007.

Oregon Administrative Rule (OAR) 860-032-0025, *Petition to Exempt Services from Regulation*, allows the Commission, upon notice and hearing, to exempt a service from regulation. OAR 860-032-0025(7) allows the Commission to waive the requirement for hearing, if no objections are filed to the Petition, or with agreement of the parties.

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In its Petition, the company provides evidence that the public interest no longer requires full regulation of the TIC. That evidence includes descriptions of Qwest's current practices in administering the TIC.

Here, the Commission must consider whether the evidence is convincing that the public interest no longer requires full regulation of the TIC. The Commission may also want to consider whether there is sufficient assurance that, if the TIC is deregulated, the company would continue its current practices for administering the TIC, especially current company practices that were considered as part of the convincing evidence in the Petition.

Description of the Service Proposed for Exemption

Qwest's TIC is described in Section 3, *Service Charges*, of the company's Exchange and Network Services tariff, PUC OR No. 33. A TIC applies to customers when the company makes a repair or trouble isolation visit to the customer's premises to test the central office line, up to the main point of presence, and the line tests clear, i.e., trouble is not found in the company's facilities (on the central office side of the main point of presence). Qwest's current TIC is a nonrecurring charge of \$35.00 per premises visit for residential customers and \$50.00 for business customers. Residential customers may request installment billing of the TIC.

The TIC does not apply if the trouble is found to be in the company's facilities. Also, the TIC does not apply to customers who subscribe to a Qwest Wire Maintenance Plan (i.e. Line-Backer or Unistar).¹ Customers can also avoid a TIC by isolating the trouble themselves.

The TIC covers only the cost to isolate the trouble and does not cover any costs of repairing the customer's inside wire. Deregulated Time and Material charges are applicable in addition to the TIC if the customer has Qwest repair their inside wire trouble.

Regulatory Background

In 1987, the Commission deregulated inside wiring and customer premises equipment (CPE), both of which are closely associated with the TIC. See Orders No. 87-778,

¹ Line-Backer Service is Qwest's residence premises wire maintenance plan that provides customers with inside wire and jack repair, and isolation of trouble for a monthly recurring rate of \$4.75 per line. Unistar Service provides for inside wire maintenance, trouble isolation and repair services for business customers for a monthly recurring rate of \$5.75 per line, PBX trunk or Centrex line.

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Docket UM 142 and Order No. 87-1316, Docket UM 143. In 1991, the Commission approved a tariff change (and name change from "Maintenance of Service Charge" to "Trouble Isolation Charge") that (1) restructured the rates of Qwest's TIC from the then-existing time-sensitive amounts to a flat fee for the services performed, (2) differentiated rates for residential and business service, and (3) provided customers with the ability to utilize installment billing for trouble isolation charges. The TIC has remained regulated since.

Description of the Petition

Qwest's Petition requests the Commission to Exempt from Regulation Qwest's TIC. Because the TIC is not a "basic service" pursuant to ORS 759.410, it is price capped at its current rate. If the Commission grants the Petition and Qwest files its advice to effect the removal of the TIC from its tariff, the service will be deregulated and no longer subject to Commission rules or regulations.

Procedures for Reviewing Service Exemptions

ORS 759.052(1)(a) gives the Commission the discretion to exempt from regulation any telecommunications service for which the Commission finds: 1) price or service competition exists; 2) the service is subject to competition; or 3) *the public interest no longer requires full regulation*. To determine whether the criteria of ORS 759.052 are satisfied, the Commission shall consider:

1. The extent to which services are available from alternative providers in the relevant market;
2. The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;
3. Existing economic or regulatory barriers to entry; and
4. Any other factors deemed relevant by the Commission.

ORS 759.052 also allows the Commission to attach reasonable conditions to any exemption from regulation pursuant to ORS 759.052(1)(a). Also, pursuant to ORS 759.568, the Commission is may amend or revoke any order exempting a service from regulation.

Staff Analysis

- Summary

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Staff has analyzed the Petition and has held discussions with the company. Staff provided the Citizens Utility Board (CUB) and the Oregon Telecommunications Association (OTA) with a written summary of the Petition and followed up with a telephone call to discuss any concerns with the Petition. Staff also contacted Telecommunications Ratepayers Association for Cost-based and Equitable Rates (TRACER) and discussed the Petition. CUB and OTA represent that their only concern is whether the company would continue its current practices of: making their facilities available to competitive trouble isolation service providers; continuing to inform the customers how to isolate their trouble themselves; and continuing to inform customers of the amount of the TIC *before* the customer incurs any cost. TRACER represents that it does not oppose the deregulation of Qwest's TIC.

Staff is convinced that, assuming staff's conditions are adopted, the public interest no longer requires full regulation of the TIC.

- Price and Service Competition

Pursuant to ORS 759.052 and OAR 860-032-0025, the Commission is required to consider the extent to which services are available from alternate providers in the relevant market and the extent to which the services of alternate providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

In its Petition, the company points out that there are a number of private companies that perform telecommunications trouble isolation and repair services. The company illustrates the availability by referring to ads in the Portland Dex Yellow Pages, pp. 1321- 1322, *Telecommunications Equipment & Systems – Service and Repair*, which lists more than 40 providers, including electrical contractors and companies that repair telephone wiring. The filing includes pages from the telephone directory.

Given staff's recommendation, staff has not reviewed whether these alternative providers offer TIC-like services at comparable terms and conditions.

- Economic or Regulatory Barriers to Entry

Qwest has not identified any regulatory or economic barriers to entry. The trouble isolation service is generally provided by electrical contractors, electricians and hardware businesses that also install and repair telecommunications wiring.

As long as Qwest provides access to its network interface on the customer's location, at no cost, staff has not identified any regulatory or economic barrier to entry. The fact

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that Qwest does not charge for TIC if the fault arises from facilities between the network interface and the central office (i.e., the fault is not from the customer owned inside wire or CPE) is not by itself a barrier to entry. This is because the customer can also test the line at the network interface to identify whether dial tone is present and thus the issue is likely an inside wiring or CPE problem.

- The Cost of Service and Rates

Effective December 30, 1999, Qwest opted into "price cap" regulation pursuant to ORS 759.405 – 759.410.

- Other Factors

Another factor that is relevant to deregulation of Qwest's TIC is the prospect for the company to abandon trouble isolation service for any, or all of its customers, and cause a hardship for some customers. This factor is an additional reason for the Commission to attach conditions to the deregulation, if it is granted.

- The Public Interest No Longer Requires Regulation of the Petition Services

Under ORS 759.030(2), the Commission "*may exempt*" a telecommunications service from regulation if "*the public interest no longer requires full regulation thereof.*" Thus, under this section, Qwest does not need to make a showing that price and service competition exist for Qwest's petitioned service to be exempted from regulation.

My analysis and discussions with the company included a review of who, typically, are the customers to which the company applies the TIC, and an analysis of a customer's alternatives to paying a TIC.

The majority of trouble calls received by the company involve trouble on the company's facilities and the customers do not incur a TIC. Some examples of these trouble calls are - tree limb falling on telecommunications plant, traffic accident disabling some telecommunications plant, problems with a switch at the central office, etc. For most other trouble calls, customers are able to isolate the trouble by themselves (mostly by following troubleshooting guidelines provided by the company). Customers can also avoid the TIC by purchasing a wire maintenance plan, called "Line-Backer" for residential customers or "Unistar" for business customers.

The TIC is only applied when: (1) the trouble is not readily isolated to company facilities, (storm, auto accident, etc.), (2) the customer does not subscribe to a wire maintenance

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plan, (3) the customer does not want to, or can not, either by hiring someone or conducting the test by themselves, isolate the trouble, and (4) the company visits the customer's premise and finds that the reported trouble is not in the company facilities. Qwest's annual revenue from the TIC is not significant.

At the time this memo is prepared, no other party has expressed a desire to suspend this Petition or enter testimony opposing this Petition in the record. Staff has provided a draft of this memo, including staff's proposed conditions, to Qwest, CUB, OTA and TRACER and none have voiced opposition to the memo or to the proposed conditions. Staff believes this is a compelling indication of the reasonableness of the request, and no hearing is required, pursuant to OAR 860-032-0025(7).

Staff does not anticipate any objections, and is basing its Proposed Commission Motion on no objections being filed prior to this public meeting. If objections are filed prior to the public meeting, or objections are raised by the public at the public meeting, staff believes that the Commission must follow Commission Decision Alternative "3)", below, and suspend and investigate further Qwest's Petition to exempt its TIC from regulation.

Commission's Decision Alternatives

The Commission has the following decision alternatives:

- 1) Grant Qwest's Petition, with conditions, and allow Qwest to file to remove the Trouble Isolation Charge from its regulated tariff.
- 2) Grant Qwest's Petition, without conditions, and allow Qwest to file to remove the Trouble Isolation Charge from its regulated tariff.
- 3) Suspend and further investigate Qwest's Petition to exempt its Trouble Isolation Charge from regulation.

PROPOSED COMMISSION MOTION:

The Commission grant Qwest's petition to exempt its Trouble Isolation Charge from regulation, with the following conditions:

- (1) Qwest shall continue to make available to customers and to all providers of trouble isolation service, at no charge, access to company facilities necessary to

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accurately isolate a customer service problem between the company's facilities and the customer owned facilities.

- (2) Qwest shall continue its current practices, including training of its customer representatives, related to informing customers, who report trouble with their communications services, of how they can perform the trouble isolation test themselves and avoid the Trouble Isolation Charge. Qwest will continue to notify customers of the amount of any Trouble Isolation Charge prior to performing a trouble isolation service.
- (3) Qwest shall continue its current practice of publishing clear and concise instructions in the Dex phone books and on its website for a customer to conduct their own trouble isolation test and avoid the Trouble Isolation Charge.
- (4) Qwest will not abandon trouble isolation service for any, or all, of its customers without Commission Approval.
- (5) Qwest will continue its practice of not charging a customer a Trouble Isolation Charge if the customer is subscribing to a Qwest Wire Maintenance Plan.

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