

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

CITIZENS OF SOLDIERS MEADOW AREA)
) **CASE NO. GNR-T-04-2**
 Complainants,)
)
 vs.)
)
 QWEST CORPORATION) **ORDER NO. 29597**
)
 Respondent.)

This docket was opened in February 2004, when citizens in the Soldiers Meadow area located in Nez Perce County, Idaho asked the Commission to consider a formal complaint for the extension of landline telecommunications service to their properties. The Commission issued a summons to Qwest Corporation requiring Qwest to respond to the complaint filed by the citizens. Qwest filed its Answer on May 4, 2004. In its Answer, Qwest asserted it has no legal obligation to serve the Soldiers Meadow area because it lies outside its designated service area, that changing its service area boundary to include the area would be unreasonable and contrary to the public interest, and that the costs to install facilities to the area “demonstrate that serving Soldiers Meadow is not reasonable or in the public interest.” Qwest’s Answer p.4. Qwest estimated it would cost, at minimum, \$180,000 to extend service to Soldiers Meadow. Qwest’s Answer p. 2.

On August 5, 2004, Qwest filed a Motion to Dismiss the Complaint. Qwest’s Motion was prompted in part by the results of a survey the Commission Staff sent to prospective customers in the Soldiers Meadow area. Although 19 respondents indicated an interest in obtaining landline telephone service, only 7 stated they were full-time residents in the area. Ten of those responding stated they were not willing to pay any of the costs to receive the service, six indicated they would pay up to \$200, and another six stated they were willing to pay up to \$1,000 to get the necessary facilities installed. In its Motion to Dismiss, Qwest reiterated it is not required to provide service to the Soldiers Meadow area because it is not within its certificated service area. Qwest’s Motion asserts it can be required to install facilities to serve Soldiers Meadow only if the potential customers pay for the installation of the necessary facilities. Because the Complainants stated an unwillingness to pay for the necessary facilities, Qwest

asked the Commission to dismiss the Complaint. The Soldiers Meadow citizens filed a response to Qwest's Motion, and the Commission heard oral arguments on the Motion on September 13, 2004.

The Commission has determined, under the law and facts in this case, it is appropriate to grant Qwest's Motion to Dismiss. During the oral argument, the citizens confirmed that only six or seven property owners are full-time residents of Soldiers Meadow and that they were aware landline telephone service was not available when they purchased their properties. The citizens also confirmed that the survey results accurately reflect the unwillingness of the citizens to pay for the installation of facilities, and that most citizens currently have cellular telephone service, although it may be somewhat inconsistent. Qwest also indicated that its initial estimate of costs to install the necessary facilities may be significantly understated.

Idaho Code § 61-508 authorizes the Commission to require a public utility to make additions, extensions and improvements to its facilities that "ought reasonably to be made," or to require new facilities "to promote the security or convenience of its employees or the public." The Idaho Supreme Court concluded this section applies to areas within a utility's established service area, and it also requires evidence showing that the public utility will be insured a fair return on its investment. *Murray v. Public Utilities Commission*, 27 Idaho 603, 150 P. 47 (1915). If the Soldiers Meadow area were within Qwest's service area, the customers' responsibility to contribute to necessary facilities costs would be determined pursuant to Qwest's line extension tariff. Qwest's North Idaho Exchange and Network Services Tariff, Section 4.2.2, provides that customers seeking services where facilities have not been installed are entitled to a \$1,600 credit toward installation costs, but must pay all costs above the credit amount. It is undisputed that, even if Soldiers Meadow were part of Qwest's service area, making the line extension tariff applicable, the citizens are not willing to pay the construction costs above the \$1,600 customer credit.

The Soldiers Meadow citizens expressed frustration that service was not extended to them as it was to property in the Forest, Idaho area. Forest is located less than four miles from the Soldiers Meadow area, but Forest has always been within Qwest's certificated service area. When the Forest customers requested service, Qwest and the Commission Staff had differing interpretations of Qwest's line extension tariff. Qwest then changed its tariff, eliminating the

ambiguity and making it consistent with its existing Southern Idaho line extension tariff. Qwest was legally required, however, to provide service to Forest according to the terms of the line extension tariff that was in effect at the time of the customers' application. Accordingly, following discussions regarding the ambiguity in that tariff, Qwest extended facilities to Forest without capital contributions from the customers.

It is undisputed that the Soldiers Meadow area is not within Qwest's assigned service area. The residents indicated that they are not willing to bear the costs to construct the necessary facilities as required by the line extension tariff. The facts do not demonstrate that extension of Qwest's facilities is necessary in the general interest of the public. The Commission finds it would be unreasonable to require Qwest to change its service area boundaries and install landline facilities to the Soldiers Meadow area. The Commission accordingly grants Qwest's Motion to Dismiss.

ORDER

IT IS HEREBY ORDERED that the Motion to Dismiss filed by Qwest is granted. This case is hereby dismissed and will be closed.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 21st
day of September 2004.



PAUL KJELLANDER, PRESIDENT

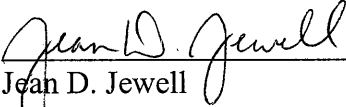


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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