

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
LEGAL
WORKING FILE**

FROM: CAROLEE HALL AND WAYNE HART

QWE-T-04-06

DATE: APRIL 13, 2004

**RE: QWEST COMPETITIVE RESPONSE TARIFFS, ADVICE NOS. 04-02-N
AND 04-01-S.**

On March 31, 2004, Qwest filed tariff advices for both North and South Idaho introducing promotional programs for both new and existing customers. The offerings would be included as tariffed items, and available until cancelled. Qwest requested an effective date of May 3, 2004.

The promotions for new customers would allow a sales representative to offer a potential new basic local exchange customer either: 1) a waiver of nonrecurring fees, 2) a waiver of as much as two months recurring charges, 3) a waiver of an amount up to the total of both nonrecurring charges and two months recurring charges, or 4) merchandise, gift certificates or other benefits with a retail value not to exceed the value of option three. The Company may condition its offer on the residential customer remaining with the Company for a minimum period of time, which time period is not specified in the tariff. If the customer terminates early, he would be billed all the charges waived under the program. Business customers would be required to remain with the Company for a period of one year.

Sales representatives would be allowed to offer an existing local exchange customer seeking to disconnect any service either: 1) a waiver of an amount up to the nonrecurring charges, 2) a waiver up to one month of the recurring rate, 3) a waiver of an amount up to the total of both nonrecurring charges and one months recurring charges, or 4) merchandise or other benefits with a retail value not to exceed the value of option three. Waivers would be provided in the form of credits on the bill. Customers would be limited to receiving the waivers only one time per product.

One other provision of the Tariff Advice allows the Company to discontinue the offer with only 14 days notice.

STAFF ANALYSIS

Staff views this filing as a progressive offering and makes a couple of recommendations to make the tariff consistent with legal requirements. First, with respect to offering discounts and one-time credits, the Company must make every effort to ensure that similarly situated customers are offered similar incentive credits, according to the terms of *Idaho Code* § 61-313:

Except as in this act otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation from any product or commodity furnished or to be furnished or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates tolls, rentals and charges so specific nor extended to any corporation or person any form of contract or agreement or any rule or regulation of any facility or privilege except such as are specified in such schedules and as are regularly and uniformly extended to all corporations and persons: provided, that messages by telephone or cable, subject to the provisions of this act, may be classified by the utility into day, night, repeated, unrepeated, letter, commercial, press, government and such other classes of messages: provided further, that nothing in this chapter shall be construed to prevent telephone and cable companies from entering into contract with common carriers for the exchange of service at rates common to all common carriers of like class. (Emphasis added).

Likewise, *Idaho Code* § 61-315 states:

No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section. (Emphasis added.)

Staff queried other state commissions regarding this filing and learned that Qwest had filed similar tariff advices in other states. The Washington Commission received a similar filing last February and will be meeting and deciding this filing on April 28, 2004. The Washington staff and Qwest agreed upon a language change that this Staff would like to see added to the Idaho tariffs. It is as follows:

The Company shall use reasonable business efforts so that similarly situated customers are offered similar incentive credits in similar circumstances.

Staff also believes the provision of the Tariff Advices that allows the Company to terminate the offer with just a 14-day notice does not comport with the provisions of *Idaho Code* § 61-307. That section does not allow changes, “to any rate, fare, toll, rental, charge or classification, or in any rule, regulation or contract relating to or affecting any rate, fare, toll, rental charge, classification or service, or in any privilege or facility *except after thirty (30) days’ notice* to the commission and to the public.” The 30-day change restriction is also stated in the Commission’s Rules of Procedure, IDAPA 31.01.01.134.02.

Staff notes that the Company has a readily available option to simplify similar tariff changes in the future, and relieve it of some of the legal requirements for such changes. Pursuant to *Idaho Code* § 62-622(1)(a), Qwest can easily obtain approval of a maximum basic local exchange rate at the current rate, which would make similar tariff changes controlled by Section 62-622 (1)(e). That paragraph provides as follows:

After the commission has established maximum basic local exchange rates, an incumbent telephone corporation may change its tariffs or price lists reflecting the availability, price, terms and conditions for a local exchange service effective not less than ten (10) days after filing with the commission and giving notice to affected customers. Changes to tariffs or price lists that are for nonrecurring services and that are quoted directly to the customer when an order for service is placed, or changes that result in price reductions or new service offerings, shall be effective immediately upon filing with the commission and no other notice shall be required.

STAFF RECOMMENDATION

Staff recommends that the Commission approve these tariff advices with the following changes to comply with current statutory requirements:

1. That the Company add the language discussed above, which will ensure that similarly situated customers are offered similar incentive credits in similar circumstances in accordance with *Idaho Code* § 61-313 and 61-315.
2. The Company changes the 14-day termination to 30 days consistent with *Idaho Code* § 61-307 and the Commission's Rules of Procedure IDAPA 31.01.01.134.02.

COMMISSION DECISION

Does the Commission wish to approve these Tariff Advices as submitted with Staff's recommended changes?

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