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DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
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QWE-T-03-01

FROM: WAYNE HART

DATE: JANUARY 3, 2002

RE: HORNER COMPLAINT ABOUT QWEST SPECIAL FACILITIES CHARGES.

BACKGROUND

On October 30, 2002, Richard Horner contacted the Commission Consumer Staff complaining about a special facilities charge that Qwest Corporation had indicated he must pay in order to provide telephone service to an apartment complex he was constructing in Rexburg. Upon the inquiry of the Consumer Staff, Qwest's executive office complaint staff sustained the charges, indicating they were imposed in accordance with its Basic Local Exchange Tariff, Section 4, page 4, paragraph 4.5.1.

At this point, the complaint was referred to the Telecom Section, who made further inquiry of Qwest's Idaho Regulatory Staff, as this appeared to be a new application of the language of the tariff and inconsistent with Staff's understanding of the Commission's policies in regards to a company's responsibilities for upgrading its facilities inside its network.

On November 13, 2002, Qwest's Manager of Regulatory Affairs for Idaho, John Souba, provided a written response to Staff's inquiry explaining the Company's position and indicating the Company believed the charges were consistent with the language of the tariff, and requesting that the complaint be brought before the Commission if Staff does not agree that the charges are valid.

In his response, Mr. Souba indicated the area in question was originally cabled for single-family residential service and, as Mr. Horner's development was for seven 6-plex apartment complexes, it required "special" facilities and the imposition of such charges was consistent with the language of the tariff. Qwest had to install 1400 feet of new 100-pair aerial cable at a cost of \$6,303 in order to provide service to these apartments. Horner was charged \$3,528 (\$6,303 minus the cost of the actual cable, which Qwest indicated is re-useable.) A copy of Mr. Souba's response is attached.

The specific language of the tariff is as follows:

4.5 SPECIAL SERVICE ARRANGEMENTS

4.5.1 SPECIAL ASSEMBLIES, FACILITIES AND FINISHES OF EQUIPMENT

Rates and charges in connection with special assemblies, special facilities and special finishes of equipment will be based on the costs involved in each individual case.

STAFF POSITION

Staff maintains that the tariff language cited by Qwest in supporting these charges does not apply in these circumstances. The facilities Qwest proposes to use to provide the service to the apartments are not "special", but are very typical of the facilities normally used by the Company to provide service to this type of a development.

Qwest argues that the development of multi-family units in an area originally cabled as residential makes these facilities "special". Staff disagrees. There is nothing uncommon or special about single-family residential areas that are next to other commercial and/or multi-family areas being converted to commercial or multifamily use. This is a natural progression as a community grows, and is exactly the type of development that a company should plan for and expect. The costs for keeping up with such natural growth within a company's existing network are a normal cost of doing business and as such are already built into the rate base of the

company. If the pace of growth increases, Staff believes the proper response is to seek a change in rates, not to selectively place the burden of that increased growth on some of those responding to that growth.

The Company also infers in Mr. Souba's response that the current rapid growth in the Rexburg area, which is due to the changes brought on by the change from Ricks College to BYU-Idaho, somehow makes this a "special" development and eligible for different treatment. The pace of development is seldom constant. It is very normal for this pace to vary from year to year and from location to location. This is also a common occurrence for which companies, especially one the size of Qwest, should expect and plan.

This specific instance is a clear example of the normal growth for which a company should expect and plan. The property in question is situated approximately ½ block north of the intersection of 4th West and 4th South in Rexburg, on the east side of 4th West. This section of 4th South is a major arterial through the City of Rexburg. This street used to be Highway 20 (Yellowstone Highway) and one of the busiest highways in the state until the construction of the new bypass around town. It is still one of the most highly traveled streets in the area. 4th South remains one of the primary routes to the campus of BYU-Idaho.

One of the area's nicer motels, the Best Western Cottontree, is located at the northwest corner of 4th South and 4th West, directly across the street from the property being developed. The area along 4th South is clearly commercial with multiple businesses, including a Les Schwab tire store, a used car lot, an auto body shop, a skating rink, and a church, storage units, as well as other multi-family housing developments. There are other apartment units located on 4th West south of 4th South, and on the south side of 4th South, between 4th West and 3rd West. (See map and aerial photo.)

Mr. Horner informed Staff that the property was zoned commercial before the development was proposed, and he had to get it changed to high density residential before proceeding with his apartment complex. The upper half of the block of the east side of 4th West between 3rd South and 4th South, the property to the immediate north of the Horner project, is zoned medium density residential.

In response to questions from Staff, Qwest identified two other developers in the Rexburg area that had paid charges under similar circumstances in accordance with its interpretation of

the tariff. Qwest has yet to respond to questions regarding any other such charges in other parts of its exchange.

Staff believes the imposition of charges in circumstances such as this reflects a change in Qwest's policy. This opinion is supported by Mr. Horner, who indicated he had not been charged any amount for providing service to a similar project developed in early 2001. Horner indicated Qwest had to reinforce the facilities available in that area in order to serve those units, yet he was not charged for that service.

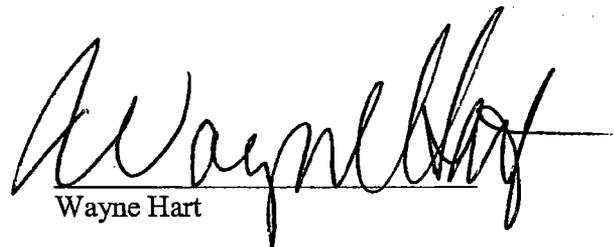
STAFF RECOMMENDATION

Staff recommends the Commission find Qwest's application of its tariff to be in error and order the charges collected from Mr. Horner in accordance with this interpretation to be refunded.

Staff also recommends the Company be directed to refund all such charges collected from any other applicants involving similar interpretations of this tariff section.

COMMISSION DECISION

Does the Commission agree?



Wayne Hart

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