

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT)	
CONCERNING QWEST CORPORATION'S)	CASE NO. QWE-T-03-1
APPLICATION AND INTERPRETATION OF)	
ITS SPECIAL FACILITIES CHARGE)	
CONTAINED IN ITS BASIC LOCAL)	ORDER NO. 29188
EXCHANGE TARIFF)	

On October 30, 2002, Richard Horner filed an informal complaint against Qwest Corporation regarding the utility's assessment of a "special facilities" charge. Mr. Horner is constructing seven apartment buildings, each containing six units, in Rexburg, Idaho. Qwest charged Mr. Horner \$3,528 to install new facilities to serve the apartments. In response to the complaint, Qwest indicated that it had imposed the special facilities charge in accordance with its Basic Local Exchange Tariff, Section 4, page 4, ¶ 4.5.1. Given the parties' inability to resolve the complaint, the Commission issues this Order.

THE COMPLAINT

As previously mentioned, Mr. Horner is constructing seven apartment buildings in Rexburg. He requested that Qwest provide the necessary facilities to serve the 42 apartment units. The apartments are located in an area that was previously zoned for single-family residential dwellings. Consequently, the capacity of the existing telephone cable was deemed insufficient. To serve these apartments, Qwest installed 1400 feet of new 100-pair cable. Relying upon its "special facilities tariff," Qwest charged Mr. Horner \$3,528 for installing the new facilities. Qwest maintained that the tariff allows it to recoup the cost of the 100-pair area cable because the area in question was originally cabled for single-family residential units. Mr. Horner paid the charge and subsequently complained that the charge was inappropriate.

QWEST'S ANSWER

In response to Mr. Horner's complaint, Qwest argued that the development of multi-unit apartment buildings in an area originally cabled for residential use makes the upgraded facilities "special." In particular, Qwest relied upon the special facilities charge language in its Basic Local Exchange Tariff. Section 4 of the tariff (Special Assemblies, Facilities and Finishes of Equipment) provides that "Rates and charges in connection with special assemblies, special

facilities and special finishes of equipment will be based on the cost involved in each individual case.” Page 4, ¶ 4.5.1. Qwest maintained that constructing apartment buildings in an area originally cabled for single-family service requires the installation of “special facilities” to meet the unique demands of Mr. Horner. The Company stated that its current practice is to rely on the special facilities tariff when Qwest is required to increase its cabling capacity caused by above-average growth in Rexburg, especially in areas adjacent to Brigham Young University-Idaho (formerly Ricks College). In reviewing this complaint, Qwest replied that “nearly all” of the new apartment complexes in “this area of Rexburg. . .were billed for special facility charges calculated the same way the charges for Mr. Horner were prepared.” Qwest Response at 1.

Staff disagreed with Qwest’s application of the “special facilities” tariff in this instance. Given this dispute, the Staff and the Company requested that the complaint be brought before the Commission for resolution. Staff also recommended that Qwest identify and refund the “special facility” charges for other similarly situated customers in Rexburg.

DISCUSSION

Having reviewed the complaint, Qwest’s response and the tariff language in question, we agree with the Commission Staff that the facts of this case do not warrant the imposition of special facilities charges. We find that there is nothing “uncommon” or “special” about the need to increase cable capacity for areas experiencing above-average growth. Although such conversions may not be expected, we do not believe that this circumstance warrants a special facilities charge. The need to update or increase facilities is a normal cost of doing business and necessary to accommodate growing communities. Consequently, we find it is inappropriate to assess special facility charges to Mr. Horner in this instance.

The Staff also recommended that the Company be directed to refund other special facilities charges to other builders in the Rexburg area that are similarly situated. Qwest did not object and subsequently notified the Staff of two other instances where refunds were appropriate. Taken together, Qwest shall provide refunds to: Mr. Horner in the amount of \$3,528 for job No. C230204; to Westates Holding, LLC in the amount of \$8,608 for job No. C130236; and Main Street Station, LP in the amount of \$3,648 for job No. C230178. All these projects are located in Rexburg.

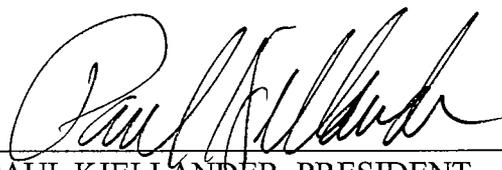
ORDER

IT IS HEREBY ORDERED that the complaint and request for refund filed by Richard Horner against Qwest Corporation is granted. Qwest shall provide refunds to the three builders as identified in the body of this Order.

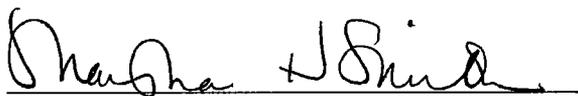
IT IS FURTHER ORDERED that Qwest's application of special facility charges set out in its Basic Local Exchange Tariff, Section 4, page 4, ¶ 4.5.1 conform to the Commission's holding in this Order.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. QWE-T-03-1 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. QWE-T-03-1. 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 31st day of January 2003.



PAUL KJELLANDER, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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