

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE JOINT APPLICATION)
 OF QWEST CORPORATION AND THE)
 COMMISSION STAFF FOR APPROVAL OF THE)
 PARTIES' AGREEMENT REGARDING TOLL)
 RESTRICTION SERVICE IN QWEST'S)
 SOUTHERN AND NORTHERN IDAHO SERVICE)
 AREAS.)**

CASE NO. QWE-T-03-15**ORDER NO. 29337**

On July 30, 2003, Qwest Corporation and the Commission Staff (the parties) filed a Joint Application to approve their agreement concerning toll restriction service. "Toll restriction" service prohibits a Qwest customer from accessing a long-distance carrier on any line on which the service is installed. As set out in greater detail below, the parties proposed that toll restriction in Qwest's southern Idaho operating territory be removed as a Title 62 service and placed under the Commission's Title 61 jurisdiction. In addition, the parties proposed that the monthly rates for toll restriction be increased but these rate increases would be mitigated by elimination of the non-recurring (installation) charge for residential customers in both northern and southern Idaho. The parties requested an effective date of October 1, 2003.

In Order No. 29314 issued August 7, 2003, the Commission issued a Notice of Application and Notice of Modified Procedure requesting public comment on the Joint Application. The Commission requested written comment be filed no later than September 4, 2003. The Commission received seven public comments, most objecting to the proposed rate increase. After reviewing the Application, the declaration of the parties and the public comments, we approve the Joint Application.

THE JOINT APPLICATION***A. Procedural History***

In their Joint Application, the parties observed that the regulatory status of toll restriction has been in conflict since 1997. App. at 2. In a 1997 rate case, Qwest's predecessor (U S WEST) argued that toll restriction should be a price-deregulated service offered under the Commission's Title 62 authority, *Idaho Code* §§ 62-601 *et seq.* Conversely, the Staff argued that the service should be price regulated under the Commission's traditional regulatory authority

found in Title 61 of the Idaho Code.¹ In Order No. 27100, the Commission concluded that toll restriction should be regulated under Title 61. Qwest subsequently appealed this determination to the Idaho Supreme Court. *Id.*

While the appeal was pending, Qwest and the Staff entered into a settlement Stipulation regarding the appropriate regulatory status for toll restriction. The parties agreed toll restriction should remain a Title 62 service but it should be offered under fixed rates and terms for a period of three years. The monthly residential rate was proposed to be \$0.25 and the monthly single-line business rate was proposed to be \$1.00. Customers in the Idaho Telecommunications Service Assistance Program (ITSAP)² would receive toll restriction at no charge. Residential and single-line business customers ordering the service in southern Idaho would be assessed a non-recurring installation charge of \$13.50 except that this charge would be waived on the first line for residential customers requesting toll restriction service at the time they initiated local service.

In October 1998, a majority of the Commission approved the terms of the Stipulation in Order No. 27785. *Id.* at 4. That Order provided that the terms of the Stipulation should run for a period of three years. In addition, Qwest voluntarily dismissed its appeal.

Near the end of the three-year period, Staff discovered that Qwest had inadvertently assessed the non-recurring charge on new residential customers ordering toll restriction and had misbilled some of its ITSAP customers. Consequently, the parties executed another Stipulation in September 2001. The second Stipulation required Qwest to refund money to affected customers and extended the terms of the original Stipulation through the end of calendar year 2002. This latter Stipulation was approved by the Commission in Order No. 28862 in October 2001.

¹ The Commission's traditional regulatory authority is found in Title 61 of the Idaho Code. The Idaho Telecommunications Act of 1988 added a new chapter to Title 62 and created a modified form of regulation for telephone companies providing other than basic local exchange services in Idaho. *Idaho Code* § 61-604(2) allows Qwest to remove its non-basic local services from the Commission's Title 61 authority. In March 1989, Qwest's predecessor elected to remove its non-basic local services from the Commission's Title 61 authority. Consequently, non-basic services provided in southern Idaho (e.g., local services to business with more than five access lines or custom calling features) are now subject to the Commission's Title 62 jurisdiction.

² Eligible low-income households receive discounted local exchange service pursuant to federal and state assistance programs. *Idaho Code* § 56-902.

B. The Present Settlement

In an attempt to settle the ongoing controversy regarding the appropriate regulatory treatment of toll restriction service, the parties entered into settlement negotiations. These negotiations culminated in a new agreement, the terms of which are presented in the Joint Application. As set out on pages 5-6 of the Application, the new agreement contains the following provisions:

1. In southern Idaho Qwest will file appropriate tariff revisions to move toll restriction service for residential and business customers with five or fewer lines from a Title 62 service to a Title 61 service. Toll restriction service in Qwest's northern Idaho service territory will remain under Title 61.
2. The Parties propose that the monthly rates for toll restriction for residential customers be increased from \$.25 per line to \$.75; and from \$1.00 to \$2.00 per business line. Residential and business customers in both northern and southern Idaho will be charged the same monthly rates.
3. Qwest will individually notify each customer who subscribes to toll restriction service of the proposed rate changes.
4. As part of its rate adjustments, Qwest will file changes to its northern and southern Idaho schedules to eliminate the respective \$24.00 and \$13.50 non-recurring (installation) charges for residential customers ordering the service. In addition, the non-recurring charge for northern Idaho business customers will be reduced from \$24.00 to \$13.50. Business customers in both northern and southern Idaho will be assessed the same \$13.50 non-recurring charge.
5. ITSAP customers will not be charged for toll restriction.
6. The Staff will not seek a rate reduction in Title 61 toll restriction rates outside a general rate case in either northern or southern Idaho.

The parties agreed that adoption of the Joint Application will settle the regulatory controversy. They also maintained that the proposed rates are reasonable and approval of the Joint Application is in the public interest. Each party supported the Application by including witness declarations.

As part of the Joint Application, Qwest submitted proposed price lists/tariff schedules incorporating the proposed terms and conditions set out in the Joint Application. Pursuant to Telephone Customer Relations Rule 102, Qwest individually notified approximately 38,000

customers who subscribe to toll restriction in northern and southern Idaho.³ IDAPA 31.41.02.102.

C. The Declarations

1. Qwest. In support of the Application, Qwest offered the declaration of John F. Souba, Idaho Regulatory Affairs Manager. Mr. Souba explained that Qwest supports the adoption of the Application for several reasons. First, he observed that proposing toll restriction be subject to the Commission's Title 61 jurisdiction "is a big concession on Qwest's part. . . ." Declaration at ¶ 7. He notes that Qwest has long advocated that toll restriction is not properly characterized as a Title 61 "basic local exchange service." In addition, the Company argued toll restriction was not subject to the "claw-back" provisions under *Idaho Code* § 62-605(5) because it was not offered prior to the effective date of the 1988 Telecommunications Act. He stated that approval of the Joint Application would lay this controversy to rest and avoid further litigation before the Commission or the Courts. *Id.*

Second, he asserted approval of the Joint Application will allow Qwest to offer toll restriction under the same terms and conditions for all Idaho customers whether they are located in northern or southern Idaho. This offers efficiencies to both the Company and the Staff, as well as minimizing customer confusion. Third, he declared that Qwest has installed new central office switching equipment in Lewiston at an investment of \$7 million. *Id.* ¶ 8. Qwest has not sought to recover this investment but the proposed rate increase will help offset this investment.

Finally, he stated that despite the recommended monthly increase, the proposed rates are reasonable. He noted toll restriction rates in effect prior to the 1997 rate case were \$1.00 per month for residential customers. *Id.* at ¶ 6. Thus, rates would still be lower than they were in 1997. Although the Application proposes increases for both residential and business customers, the suggested rates "are very low compared with other states. . . ." *Id.* at 6. The proposed residential rate of \$.75 is the lowest in the other 12 Qwest states where a fee is charged. Qwest operates in 14 states. In addition, he maintained the increases are mitigated by elimination of the non-recurring installation charge of \$13.50 for residential customers in northern and southern Idaho, respectively. The non-recurring charge for business customers in northern Idaho will be

³ Qwest reports that there are 35,233 residential customers and 676 business customers that subscribe to toll restriction in southern Idaho. In its eight northern Idaho exchanges, 1,728 residential and 362 business customers subscribe to toll restriction.

reduced from \$24.00 to the level of the southern Idaho business non-recurring charge of \$13.50. Moreover, ITSAP customers will continue to receive toll restriction service without charge. *Id.* at ¶ 8.

He concluded that the Joint Application presents a reasonable and appropriate resolution of these toll restriction issues. “Granting the relief requested by the Joint Application will allow the Company and Staff to focus on other issues and avoid the further expenditure of time and expenses on this issue.” *Id.* at ¶ 11.

2. Staff. Also attached to the Application was the declaration of Staff member Beverly Barker, supervisor of the Consumer Assistance Section. Without repeating the toll restriction history, she noted Staff’s primary goal is to promote universal service by preserving the Commission’s jurisdiction over toll restriction once and for all. She explained toll restriction service promotes universal service by allowing customers to obtain local exchange service without paying a deposit. “It also allows customers to obtain or retain local exchange service while making payments on past due or prior bills.” Declaration at ¶ 1. She also insisted toll restriction limits or prevents toll calls, thereby providing customers a greater degree of control over the ultimate amount of their telephone bills.

Ms. Barker listed several other reasons supporting the adoption of the Joint Application. First, placing toll restriction under the Commission’s Title 61 regulatory authority assures customers that the Commission will have full regulatory oversight with respect to the rates, terms and conditions of this service. Second, adoption of the parties’ agreement will provide for regulatory certainty and will allow both the Staff and Qwest to focus their resources on other matters. Third, moving toll restriction to Title 61 for both residential customers and business customers with five or fewer lines in southern Idaho is consistent with Commission Order No. 27715. In that Order, the Commission designated the nine core universal services as Title 61 basic local exchange services including “toll limitation.” *Id.* at ¶ 2. Fourth, adoption of the Application makes the terms and conditions for toll restriction in both northern and southern Idaho consistent. This regulatory symmetry will avoid customer confusion and be more efficient for both the Staff and the Company. *Id.* at 3.

Finally, Ms. Barker acknowledged the Application proposes to increase the monthly charge for residential and business toll restriction service. She noted that the elimination of the non-recurring residential charge and the reduction in the northern Idaho non-recurring charge for

business customers is a substantial benefit to new customers. *Id.* at 4. She concluded that the reduction or elimination of non-recurring charges mitigates to some degree the impact of the increase in monthly rates for this service. In summary, the Staff argued that the rate proposal is only one component of a comprehensive resolution of the toll restriction controversy. *Id.* at ¶ 5.

PUBLIC COMMENTS

As previously indicated, the Commission received seven public comments. None of the comments address the regulatory realignment of toll restriction but six comments oppose the proposed monthly rate increases. One customer asked why he should be charged for a service (access to the toll network) that he does not want. He characterized the proposed increase as “nothing more than another ‘money grab.’” Another customer with income “well below the poverty level,” questioned whether the proposed increase was cost justified.

A customer with rental properties stated he had numerous “problems with this service. Perhaps Qwest should be required to make the service work properly before they increase the price by [200%].” Another customer from Caldwell indicated that Qwest does not deserve an increase in this price “considering the way they do business. They give the customers the run-around when the customer calls for help on a particular concern. . . .”

DISCUSSION

As discussed above, the regulatory status of toll restriction has periodically been in dispute since 1997. The Staff has advocated that toll restriction should be subject to our traditional Title 61 regulatory authority. At the same time, Qwest has asserted that toll restriction service should be regulated under our Title 62 authority, *Idaho Code* § 62-601 *et seq.* Over time this dispute has resulted in toll restriction having different regulatory treatments and rates in Qwest’s northern and southern service territories. We are pleased to see that the Staff and the Company have reached a resolution of this issue, particularly as it relates to the appropriate regulatory status of toll restriction.

Based upon the settlement and the lack of opposition to the regulatory proposal, we find that it is appropriate that toll restriction services offered in southern Idaho be placed under the Commission’s Title 61 jurisdiction.⁴ By finally determining that toll restriction for

⁴ As noted above, toll restriction service in Qwest’s northern Idaho service territory will continue to be subject to our Title 61 jurisdiction.

residential customers and business customers with five or fewer lines shall be regulated under Title 61, rates for this service will be subject to the Commission's ratesetting authority. Under Title 61, Qwest cannot raise rates for this service without the Commission's approval. We further find that providing Title 61 toll restriction to residential and business customers with five or fewer lines is in the public interest.

We next turn to the other terms and conditions of the parties' settlement. The parties propose that the monthly rate for toll restriction for residential customers be increased from \$.25 per line to \$.75; and from \$1.00 to \$2.00 per business line. Although these increases are significant, we note that the proposed monthly rate of \$.75 would be the lowest residential rate for this service in the 12 states that have established rates for toll restriction service.⁵ The same can generally be said for the proposed business rate. Six out of the seven public commenters oppose the proposed rate increases. Although we are mindful of these comments, we are surprised at the low number of opposing comments. Out of 38,000 customers who subscribe to this service and were notified of the proposed rate increase, only six customers submitted public comments opposing the proposed rates. While we are concerned with the magnitude of the proposed increases, the resulting rates appear affordable.

Although these rate increases are significant, the increases are offset by changes to the non-recurring (installation) charges. The parties proposed that the \$13.50 non-recurring charge for residential customers be eliminated. In addition, the non-recurring charge for northern Idaho business customers was proposed to be reduced from \$24.00 to \$13.50. Moreover, the parties propose that ITSAP customers continue to receive toll restriction without charge. Although these non-recurring charges are assessed on a one-time basis, their reduction or elimination represents benefits to customers. Overall these non-recurring rate adjustments mitigate the monthly rate increases.

After reviewing the public comments, there appeared to be some confusion regarding what "toll restriction" actually is or does. Toll restriction service blocks access to a wide variety of long-distance (e.g., toll) calling including: direct-dialed toll (1+); operator-assisted toll (0+); "dial-around" toll (10-10-XX, 101XXXX+1, or 0+XXX-XXXX); pay per call services (1 or 0+900, 1 or 0+976); calls to the operator (0, 00+, 01+, 0+XXX, 011+); and toll calls to directory

⁵ Qwest provides local telephone service in 14 states.

assistance (1 or 0+555-1212, 0+411, 1 or 0+NPA+555-1212, 1+NPA+555-1212).⁶ Customers with toll restriction may access toll-free telephone numbers (1-800, 800, 888, 877, etc.), Qwest local directory assistance (555-1212, 411, 1-411) and use toll-free calling cards.

Customers desiring to block access to some long-distance calling have another alternative although it is not as encompassing as toll restriction. Customers who do not want access to long-distance calling may request that Qwest not assign a: (1) “primary interexchange carrier” (PIC) for interLATA⁷ and out-of-state calls; and (2) an “intraLATA primary interexchange carrier (LPIC) for intraLATA toll calls. In telephone terms this is referred to as “No-PIC” and “No local-PIC.” Selecting both No-PIC and No local-PIC will block access in the same manner as toll restriction except for pay per calls, dial-around toll, calls to the operator, and dial-around directory assistance calls. Unlike toll restricted customers, customers with No-PIC or LPIC would have access to Qwest directory assistance statewide. Customers selecting No-PIC and No local-PIC may also avoid charges assessed by long-distance carriers because the customer has no pre-selected toll carrier. For some customers the “No-PIC/No local-PIC” option may provide a cheaper alternative than toll restriction service in reducing or controlling long-distance charges. For more information contact Qwest’s customer service.⁸

ORDER

IT IS HEREBY ORDERED that the Joint Application filed by Qwest Corporation and the Commission Staff is approved. The proposed rates will be effective October 1, 2003.

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-03-15 may petition for reconsideration within twenty-one (21) days of the service

⁶ These dialing patterns do not present all the possible dialing patterns but are listed as examples of the types of toll calling prohibited by toll restriction service.

⁷ A “LATA” (local access and transport area) is a geographic area designed to facilitate the divestiture of AT&T and the Bell Operating Companies (BOCs) in the 1980s. The LATAs were created to facilitate the division of assets between AT&T and the BOCs (like Qwest), and to mark the boundaries within which Qwest could transport long-distance calls. All of the Qwest exchanges south of the Salmon River are included in a single LATA, called the Idaho LATA. The eight Qwest exchanges in northern Idaho (between Grangeville and Lewiston) are included in the Spokane LATA. Also located in northern Idaho is the Coeur d’Alene “market area” served by Verizon and is not associated with either the Spokane or Idaho LATAs.

⁸ Qwest customers changing their “PIC” and “local-PIC” designation simultaneously will be assessed a one-time charge of \$5.00.

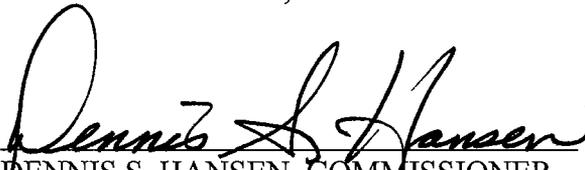
date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. QWE-T-03-15. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this **26th** day of September 2003.



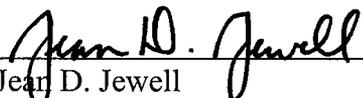
PAUL KJELLANDER, PRESIDENT

See Separate Opinion of Commissioner Smith
Concurring in Part and Dissenting in Part
MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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**OPINION OF
COMMISSIONER MARSHA H. SMITH
CONCURRING IN PART AND DISSENTING IN PART**

**CASE NO. QWE-T-03-15
ORDER NO. 29337**

I concur in that part of Order No. 29337 finding that it is reasonable and in the public interest for toll restriction service to be classified as a Title 61 service. As noted in my 1998 dissent to Order No. 27785 (Case No. USW-S-96-5), there is ample evidence to support a conclusion that toll restriction service is properly classified as a Title 61 service. I am pleased that this matter finally has been resolved.

However, I do respectfully dissent to that portion of today's Order regarding the rate increases for toll restriction. Although I recognize that the approved rates are low when compared to the rates in other states, I believe that customers should not have to pay to block their access to long-distance carriers. As customers said in their comments, they should not have to pay to avoid something they do not want.



MARSHA H. SMITH, COMMISSIONER