

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF**

FROM: DON HOWELL

DATE: JULY 31, 2003

**RE: JOINT APPLICATION OF QWEST AND THE COMMISSION STAFF
REGARDING QWEST'S TOLL RESTRICTION SERVICE
CASE NO. QWE-T-03-15**

On July 30, 2003, Qwest and the Commission Staff (the Parties) filed a Joint Application to approve their Agreement concerning the regulatory status of toll restriction service. "Toll restriction" prohibits access to long distance carriers on any line on which it is installed. Briefly, the parties propose that toll restriction in Qwest's southern Idaho operating territory be removed from the Commission's Title 62 jurisdiction 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 propose an effective date for these changes of October 1, 2003, and suggest that this matter be processed under Modified Procedure.

THE JOINT APPLICATION

A. Background

In their Application, the Parties observed that the regulatory status of toll restriction has been in conflict since 1997. Application at 2. In its 1997 rate case, Qwest's predecessor (then U S WEST) argued that toll restriction should be a price-deregulated service under Title 62. Conversely, the Staff argued that the service should be price regulated under Title 61. In its rate case Order No. 27100, the Commission concluded that toll restriction should be regulated under Title 61. Qwest filed a timely Petition for Reconsideration which was subsequently denied. *Id.* at 3. Thereafter, Qwest filed a Notice of Appeal to the Idaho Supreme Court in December 1997.

While the appeal was pending, Qwest and the Staff entered into a Stipulation regarding the appropriate regulatory status for toll restriction. The parties agreed that toll restriction should remain a Title 62 service but that it should be offered under fixed rates and terms for a period of three years. Monthly residential rates were 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) 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 charge of \$13.50 except that the non-recurring charge would be waived on the first line for residential customers requesting toll restriction at the time they initiated local service. The Stipulation also called for Qwest to voluntarily dismiss its Supreme Court appeal if the Commission approved the Stipulation.

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.

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. This 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. *Id.*

B. The Present Agreement

In an attempt to settle this ongoing controversy, the Parties have engaged in settlement negotiations. Following these negotiations, the Parties recently entered into a new Agreement which culminated in the present 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 to a Title 61 service. Currently, toll restriction in Qwest's northern Idaho service territory remains under Title 61.
2. The parties propose that the monthly rates for toll restriction be increased for residential customers 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 the more than 35,000 customers who subscribe 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 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 assert that the foregoing proposed changes eliminate the ongoing controversy about the regulatory status of the toll restriction. The Parties further agree that adoption of the Joint Application will settle the controversy. The Parties maintain that the proposed rates are reasonable and approval of the Application is in the public interest. Each of the Parties supports the Application by including declarations from Beverly Barker and John Souba.

As part of the Application, Qwest has submitted proposed price list/tariff schedule incorporating the terms and conditions set out in the Joint Application. Qwest has also attached its proposed press release in accordance with the Commission's Rule 102, IDAPA 31.41.02.102. As previously mentioned, Qwest will individually notify toll restriction customers of the proposed rate changes.

The parties propose that the rates and terms of the Application become effective on October 1, 2003. The Parties propose that this matter be processed under Modified Procedure with a 28-day comment cycle.

COMMISSION DECISION

How does the Commission wish to process this Joint Application? Does the Commission desire to process this matter under Modified Procedure with a 28-day comment cycle as proposed by the Parties?



Don Howell

cc: Beverly Barker

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