

Decision No. C02-440

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 01B-493T

RUBY RANCH INTERNET COOPERATIVE ASSOCIATION,

PETITIONER,

V.

QWEST CORPORATION,

RESPONDENT.

**RULING ON APPLICATION FOR RECONSIDERATION,
REARGUMENT, AND REHEARING**

Mailed Date: April 17, 2002
Adopted Date: April 17, 2002

I. BY THE COMMISSION

A. Statement

This matter comes before the Commission for consideration of the application for reconsideration, reargument, and rehearing ("RRR") filed by Ruby Ranch Internet Cooperative Association ("Ruby Ranch" or "Coop") on March 18, 2002. Ruby Ranch seeks reconsideration of Decision No. C02-209 ("Decision"), the Commission's rulings on the Petition for Arbitration. In its application for RRR, Ruby Ranch seeks reconsideration on the following issues: the subloop activation charge; the monthly subloop charge; the quote preparation fee;

the insurance requirement; and the proposed contract. A central theme in the application for RRR is that the Decision is not just, reasonable, and nondiscriminatory as applied to the Coop. Now being duly advised, we deny the application for RRR with the clarification below.

B. Discussion

1. Issue No. 1--Subloop Activation

a. Ruby Ranch argues that the Federal Communications Commission has held that good reason exists for using a different rate (*i.e.*, a rate not generally available to all telecommunications carriers) when the costs of providing a service to a specific carrier are different. Based on the Commission's recently approved¹ hourly rate of \$27.67 for outside plant work (in Docket No. 99A-577T), and Ruby Ranch's estimate that it would take 20 minutes of work, it calculates that a reasonable subloop activation charge is \$9.22. It further states that it is willing to pay as much as a \$27.00 subloop activation charge based upon half of Qwest Corporation's ("Qwest") present charge for activation of business local service. That charge, Ruby Ranch asserts, is more than generous to Qwest. We affirm our ruling that the subloop activation charge should be the rate

¹ See, Docket No. 99A-577T, Decision No. C01-1302.

recently approved by us (Docket No. 99A-577T) for Qwest's Statement of Generally Available Terms and Conditions ("SGAT").

b. As stated in the Decision, the type of connection Ruby Ranch seeks fits the "classic" definition of a subloop. Ruby Ranch did not present persuasive evidence that its arrangement with Qwest (for activating subloops) and the costs of that arrangement are so different from those involving other carriers requesting subloop activation. Therefore, we conclude that the SGAT rate, the rate generally applicable to other carriers, is appropriate here. As such, there is no basis for deviating from the rates established based on Qwest's Total Element Long-Run Incremental Cost in Docket No. 99A-577T. To the extent Ruby Ranch requests a rate not available to other carriers, we find there is no basis to change our previous ruling on this matter and the request for reconsideration is denied. We point out that the rate specified in Docket No. 99A-577T has been substantially modified in the Commission's ruling on the applications for RRR in that case. We now clarify that the updated and modified rate approved in Docket No. 99A-577T will be the rate for the interconnection agreement between Ruby Ranch and Qwest. Decision No. C02-209 specified the subloop activation charge as \$120.67. Based upon the order on reconsideration in 99A-577T, the new charge will be \$59.88. This rate will remain in effect for the contract length of the

interconnection agreement reached between Ruby Ranch and Qwest. Upon expiration of the interconnection agreement and renegotiation of a new interconnection agreement, the then effective SGAT rates will take precedence, unless a showing can be made as to why Ruby Ranch's situation demonstrates a basis for a different rate.

2. Issue 2—Monthly Recurring Subloop Charge

Attached to Ruby Ranch's application for RRR, is an e-mail correspondence, in which Qwest's attorney in this case allegedly agreed to a monthly subloop charge of \$4.54. (In fact, the email is from Ruby Ranch's representative to Qwest's attorney.) Because this correspondence is not in the record, the Commission will not consider it. We affirm our conclusion in this case that Ruby Ranch should pay the SGAT rate. No persuasive evidence was presented here that Qwest's costs of providing unbundled subloops to the Coop are substantially different from the costs of providing unbundled subloops to other carriers. Thus, we find there is no basis to change our previous ruling on this matter and the request for RRR on the monthly recurring subloop charge is denied to the extent Ruby Ranch requests a rate different from that approved by the Commission in Docket No. 99A-577T. As stated above, the rates approved in the Decision, including the recurring charge for unbundled subloops, are changing due to the ruling on

reconsideration in Docket No. 99A-577T. The new rate (\$15.84) will apply to the interconnection agreement between Ruby Ranch and Qwest. This rate will remain in effect for the contract length of the interconnection agreement reached between Ruby Ranch and Qwest. Upon expiration of the interconnection agreement and renegotiation of a new interconnection agreement, the then effective SGAT rates will take precedence, unless a showing can be made as to why Ruby Ranch's situation demonstrates a basis for a different rate.

3. Issue No. 3—Quote Preparation Fee ("QPF")

Ruby Ranch argues that the QPF of \$1,107.09 without refunds is not reasonable. It estimates that construction costs to hook-up the Coop to the Qwest network will be \$177.69. According to Ruby Ranch, that results in a profit of \$929.40, a profit margin in excess of 600 percent. We disagree with Ruby Ranch's estimated profit figure since it fails to include other costs which Qwest will incur to establish a connection between Ruby Ranch's facilities and the Qwest network. Those include, but are not limited to: outside plant engineering; reviewing maps and equipment records; updating accounting and billing records; and tactical planning, etc. When the Commission set the field connection point QPF in 99A-577T it was based on an averaging of estimated costs for various types of field connection points. In setting a price based on

an average, the Commission knew that there would be cases when the price would be less than the average. However, unless the estimated QPF costs for a specific customer are substantially different from those for other customers, we decline to diverge from the generally applicable rate. For that reason, we find there is no basis to change our previous ruling on this matter and the request for RRR on the quote preparation fee is denied.

4. Issue No. 4—Insurance

Ruby Ranch reiterates its arguments that no insurance requirements should be placed on the Coop, since there is no risk of harm to the Qwest network and ignores the fact that Qwest already recovers the cost of insuring against groundless and frivolous lawsuits in its prices. The Commission notes that Ruby Ranch is a newly formed non-profit association with no assets, with minimal revenues, and was created in a form to shield its owners from all liabilities. We agree with Qwest's contention that unless Ruby Ranch has insurance, it will have no means to reimburse Qwest or anyone else for any property damage or injuries for which Ruby Ranch is legally liable. Thus, we find there is no basis to change our previous ruling on this matter and the request for RRR on this issue is denied.

5. Issue No. 5—Contract Terms

Ruby Ranch contends that since Qwest did not specifically oppose its five-page contract, it should be adopted by the Commission. Our initial decision stated that we will not adopt either party's proposal as the appropriate interconnection agreement at this point in time. The Commission directed the parties to negotiate the specific contract to be filed for approval with the Commission pursuant to the Rules Establishing Procedures Relating to the Submission for Approval of Interconnection Agreements within Colorado by Telecommunications Carriers, 4 *Code of Colorado Regulations* 723-44. We now affirm that ruling. Therefore, the request for RRR on this issue is denied.

II. ORDER

A. The Commission Orders That

1. The application for Reconsideration, Reargument, and Rehearing filed by Ruby Ranch Internet Cooperative Association is denied with the clarification stated above.

2. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING April 17, 2002.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners