

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 468(1)

In the Matter of)
)
FRONTIER TELENET and QWEST) STAFF COMMENTS
CORPORATION.)
)
First Amendment to the Interconnection)
Agreement Submitted for Commission)
Approval Pursuant to Section 252(e) of the)
Telecommunications Act of 1996.)

RECOMMENDATION: APPROVE AMENDMENT

On January 9, 2003, Frontier TeleNet and Qwest Corporation filed a first amendment to the interconnection agreement previously acknowledged by letter of the Public Utility Commission of Oregon (Commission). The parties seek approval of the current amendment under Section 252(e) of the Telecommunications Act of 1996. The Commission provided notice by posting an electronic copy of the agreement on the World Wide Web, at: <http://www.puc.state.or.us/caragmnt/>. The Commission Staff (Staff) offers these comments.

Under the Act, the Commission must approve or reject an agreement reached through voluntary negotiation within 90 days of filing. The Commission may reject an agreement only if it finds that:

- (1) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (2) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

The amendment included changes to rates for ISP-Bound traffic. The rate changes were due to the Federal Communications Commission's (FCC) ruling regarding the proper treatment of telecommunications traffic delivered to Internet Service Providers for purposes of inter-carrier compensation. The effective date of the FCC Order is June 14, 2001.

Part of the agreement discusses compensation dating back to the 2001. However, the current agreement to which the amendment applies was effective on January 9, 2003. This is well after the FCC ruling was effective and as such, nothing in the amendment can logically be effective prior to January 9, 2003. Staff believes that the language referring to prior dates is

extraneous and has no bearing on the amendment since there was no interconnection agreement between Frontier TeleNet and Qwest Corporation prior to January 9, 2003.

Staff recommends the Commission approve the amendment to the agreement with the requirement that the effective date of the ISP-compensation rate change is the date of the Commission's order approving the amendment, not the effective date of the FCC order as the contracting parties propose. Staff concludes that the agreement does not appear to discriminate against telecommunications carriers who are not parties to the agreement and does not appear to be inconsistent with the public interest, convenience, and necessity.

Staff notes that an interconnection agreement or amendment thereto has no effect or force until approved by a state Commission. *See* 47 U.S.C. Sections 251 (a) and (e). Accordingly, Staff points out that the effective date of this filing will be the date the Commission signs an order approving it, and that any provision stating that the parties' agreement is effective prior to that date is not enforceable.

Dated at Salem, this 30th day of January, 2003.

Celeste Hari
Telecommunications Analyst