BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 628(1)

In the Matter of	)	
	)	
CAL-ORE TELEPHONE CO. and QWEST CORPORATION,	)	STAFF COMMENTS
	)	
	)	
First Amendment to the Interconnection Agreement Previously Submitted for Commission Approval Pursuant to Section 252(e) of the Telecommunications Act of 1996.	)	

RECOMMENDATION: REJECT AMENDMENT

On September 28, 2004, Cal-Ore Telephone Co. and Qwest Corporation (Qwest) filed a first amendment to the interconnection agreement previously approved by the Public Utility Commission of Oregon (Commission). The parties seek approval of this amendment under Section 252(e) of the Telecommunications Act of 1996. The Commission provided notice by posting an electronic copy of the amendment 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 or amendment 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 thereof is not consistent with the public interest, convenience, and necessity.

The amendment references the TRO, effective October 2, 2004; the USTA II decision, effective June 16, 2004; and the Interim Rules released August 20, 2004. All of which made changes to the availability of unbundled network elements pursuant to Section 251(c)(3) of the Telecommunications Act of 1996.

The amendment removes all aspects of UNE-P, mass market switching and shared

transport from the agreement and states that those elements are to be discontinued or converted to an "alternative arrangement" on or before January 1, 2005. It appears that whatever arrangement is made, it will not be filed with the Commission for approval.

Staff concludes that the amendment does not comply with the filing requirements as stated in FCC Order No. 04-179, released August 20, 2004 ("FCC Order")[1]. The FCC's Order, in partial response to the decision in *USTA II*[2], creates a temporary rule that provides that unbundled access to switching, enterprise market loops, and dedicated transport remains a Section 251(c) obligation. Therefore, the most current FCC pronouncement provides that access to these services remains a Section 251(c) obligation.

Staff believes that the parties may negotiate to change the rates, terms and conditions, but they cannot negotiate away the Section 252 filing requirement. Staff interprets the FCC Order to mean that these elements must still be filed with state commissions for approval under section 252 of the Act. The amendment is contrary to law and contrary to the public interest, convenience, and necessity. The unfiled portion of the amendment also appears to be discriminatory to any carrier who is not a party to the amendment.

Staff recommends that the Commission reject the amendment to the agreement.

Dated at Salem, Oregon this 22nd day of October, 2004.

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Celeste Hari
Telecommunications Analyst

[1] The FCC's Order, paragraph 16, states in part: " Specifically, we conclude that the appropriate interim approach here is to require incumbent LECs to continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms, and conditions that applied under their interconnection agreements as of June 15, 2004. These rates, terms, and conditions shall remain in place until the earlier of the effective date of final unbundling rules promulgated by the Commission or six months after the Federal Register publication of the Order, except to the extent that they are or have been superceded by (1) voluntary negotiated agreements, (2) an intervening Commission order affecting specific unbundling obligations (e.g. an order addressing a pending petition for reconsideration), or (3) (with respect to rates only) a state public utility commission order raising the rates for network elements."

[2] *United States Telecom Ass'n. v. FCC*, Case No. 00-1012 (March 2, 2004).