

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 646(1)

In the Matter of)	
)	
AMERICAN FIBER NETWORK, INC. and)	PUC STAFF'S COMMENTS
VERIZON NORTHWEST INC.)	
)	
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 May 27, 2005, American Fiber Network, Inc. (AFN) and Verizon Northwest Inc. (Verizon) filed the first amendment to the interconnection agreement previously acknowledged by the Public Utility Commission of Oregon (Commission), recognizing the adoption of the ARB 271 terms. The parties seek approval of the agreement 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 thereof is not consistent with the public interest, convenience, and necessity.

In paragraph 2.3 of the amendment, the parties state that if Verizon becomes obligated to provide discontinued facilities or UNE's...to the CLEC (AFN) in the future, it will do so according to a Tariff that Verizon "revises or establishes" or pursuant to the parties mutual agreement. Staff points out that there are no UNE Tariffs filed or approved in Oregon. Should Verizon become obligated to provide the noted services, it would do so under a tariff that is properly filed and approved by the Commission or as mutually agreed by the parties and filed as an amendment to the agreement.

Staff also concludes that it would be beneficial to all parties if the template used in these types of amendments were changed to incorporate the language stating that any changes in terms or offering would be filed with and approved by the Commission. This would eliminate any misunderstanding that the parties may operate under a tariff or conditions that have not been approved by the Commission.

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 252 (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.

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 recommends approval of the agreement.

Dated at Salem, Oregon this 17th day of June, 2005.

Celeste Hari
Telecommunications Analyst
Competitive Issues