

ORDER NO. 04-380

ENTERED JUL 08 2004

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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UM 973

In the Matter of the Statement of Generally	)	
Available Terms and Conditions for	)	
Interconnection, Unbundled Network	)	
Elements, Ancillary Services, and Resale	)	ORDER
of Telecommunications Services Provided	)	
by U S WEST Communications, Inc., in	)	
the State of Oregon.	)	

DISPOSITION: SIXTEENTH AMENDMENT (FIFTEENTH REVISION)  
TO STATEMENT PERMITTED TO GO INTO EFFECT  
PROSPECTIVELY. AMENDMENTS NOT TO APPLY  
TO EXISTING AGREEMENTS

On April 24, 2000, U S WEST Communications, Inc., now known as Qwest Corporation (Qwest), filed a statement of generally available terms (SGAT) under Section 252(f) of the Telecommunications Act of 1996 (Act). After a notice and comment period, we allowed the filing to go into effect and ordered that its substance be reviewed in proceedings in docket UM 823.<sup>1</sup>

Qwest subsequently filed numerous amendments to its SGAT. To date, we have reviewed fifteen amendments and, on each occasion, allowed the SGAT, as amended, to go into effect.<sup>2</sup>

On May 10, 2004, Qwest filed its Sixteenth Amendment (Fifteenth Revision) to its SGAT and a Notice thereto (Notice). The substantive revisions to the SGAT relate to the Statement of Compliance, Updated Exhibit B to the SGAT, which is the Performance Indicator Definitions (PIDS) and changes to the comprehensive price list in Exhibit A. Changes are described in the Notice as follows:

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<sup>1</sup> Order No. 00-327.

<sup>2</sup> See Orders No. 01-122, 01-721, 01-878, 01-1050, 02-145, 02-315, 02-731, 03-074, 03-150, 03-189, 03-410, 03-572, 03-665, 03-753 and 04-208.

### **Exhibit B LPTA PID updates**

The agreed-upon changes fall into the following categories: new product reporting and/or standards, association between certain terms in the PIDs to the Definition of Terms, language clarifications, PID deletion, and PID revisions.

First, new product reporting and/or standards for line sharing, line splitting and EELs were adopted....

Second, certain terms that appear in a PID's definition have been associated with its corresponding explanation in the Definition of Terms....

Third, the parties agreed to clarify certain language on the introduction page i, and in the PIDs BI-1, MR-3, MR-4, MR-5, MR-6, MR-9, BI-3A....

Fourth, agreement was reached to delete PO-10, LSR Accountability.

Fifth, agreement was reached to revise MR-7, Repair Repeat Report Rate, to more closely tie a repeated trouble report with the initial trouble report.

Last, the parties adopted language from PO-1 and PO-19 in the Arizona PIDs.<sup>3</sup>

### **Exhibit A changes**

Further, Qwest has made a number of revisions to Exhibit A of the SGAT. Exhibit A is the comprehensive list of prices in the SGAT. Many of these revisions are due to reasons such as moving certain prices to other SGAT sections, changes of names of certain elements, the addition of new rates, the elimination of certain rates, the correction of certain rates, and other formatting changes, rate information, removals and notes.<sup>4</sup>

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<sup>3</sup> Notice, pp. 2-5, footnotes omitted.

<sup>4</sup> Id., pp. 5-6, footnotes omitted.

The Notice concludes as follows:

Qwest further requests that the Commission deem this revised Exhibit B to modify the SGAT and existing interconnection agreements that *currently contain the PIDs as an exhibit*.<sup>5</sup>

### DISCUSSION

The discussion of the nature of the SGAT and the SGAT process contained in our prior orders is adopted herein and will not be repeated. This fifteenth amendment to the SGAT is not unexpected. As we first noted in Order No. 00-327, “[t]he SGAT will likely undergo considerable revision \* \* \* and, once in effect, changes to the SGAT document may become cumbersome. It is conceivable that each amendment to the original document might trigger a new 60-day review period and an additional item on our Public Meeting agenda.”

As with the original SGAT submission and the first through fifteenth amendments, we neither endorse nor approve of the substance of this new amendment, while, at the same time, we allow the amendment to take effect. These circumstances are not changed by our actions in the Final Recommendation Report of the Commission in docket UM 823.

After our approval of the tenth amended SGAT, the Federal Communications Commission (FCC) approved Qwest’s Section 271 application for Oregon. However, on August 21, 2003, the FCC released the text of its order in docket No. CC 01-338 (the Triennial Review or TRO). On March 2, 2004, the U.S. Court of Appeals for the District of Columbia Circuit reversed and remanded a significant portion of the FCC’s TRO order. We will schedule further proceedings in this docket to consider the SGAT’s entire substance for compliance with our rules and policies and the furtherance of competition and the public interest in Oregon once the legal uncertainties surrounding the TRO and the applicable FCC rules have been resolved. Since competitive local exchange carriers (CLECs) are able to negotiate interconnection agreements regardless of the availability of an SGAT, they will not be prejudiced by our action.

As it did at the time of the filing of its Fifteenth Amendment, Qwest has requested that we modify existing interconnection agreements, rather than having the parties address and negotiate such changes between them directly. Now, as before, we decline to do so for several reasons. First, such a modification would require us to pass judgment on the representations of Qwest as to the lack of substance and impact of the proposed changes. Second, it bypasses the processes for modification of agreements provided for in the SGAT and the Act. Third, it sets a dangerous precedent of circumventing the arbitration process as a means for examining the terms and conditions of agreements and making changes thereto. Qwest offers no reasons for us to do so.

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<sup>5</sup> *Id.*, p. 7, emphasis in text.

**ORDER**

IT IS ORDERED that pursuant to OAR 860-016-0040(2), the sixteenth amendment to the Statement of Generally Available Terms filed by Qwest Corporation on May 10, 2004, in accordance with Section 252(f) of the Telecommunications Act of 1996, is permitted to go into effect as of July 9, 2004. Existing interconnection agreements are not affected by this Order.

Made, entered, and effective \_\_\_\_\_.

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**Lee Beyer**  
Chairman

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**John Savage**  
Commissioner

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**Ray Baum**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.