

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 47(6)

In the Matter of)
)
RIO COMMUNICATIONS, INC. and QWEST) STAFF COMMENTS
CORPORATION,)
)
Sixth Amendment to the Interconnection)
Agreement Submitted for Commission)
Approval Pursuant to Section 252(e) of the)
Telecommunications Act of 1996.)

RECOMMENDATION: REJECT AMENDMENT AS MOOT

On July 2, 2004, Rio Communications, Inc. and Qwest Corporation (Qwest) filed a sixth 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 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.

The signature date of the amendment is June 22, 2004. the termination date of the amendment is June 30, 2004. The amendment was filed on July 2, 2004. The terms of the amendment have come and gone before the Commission could approve or disapprove of the filing. Staff cautions Qwest and all companies to file agreements and amendments prior to the stated effective date and well before the termination date. The amendment expired before it ever was filed with the Commission, thus precluding the Commission from actually taking any action.

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 is moot since the terms of the agreement have expired. Staff notes that any provision stating that the parties' agreement is effective prior to the Commission approving it, is not enforceable.

This amendment is similar to a previous filing where the Commission issued a "moot and reject" order. *See* Order No. 04-301 in docket ARB 526. Staff recommends that this amendment also be designated as moot, and the filing rejected. Continued late filings should not be tolerated. Staff concludes that the agreement itself 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.

Dated at Salem, Oregon this 23rd day of July, 2004.

Celeste Hari
Telecommunications Analyst