

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 198(4)

In the Matter of)	
)	
PAC-WEST, INC., and QWEST)	STAFF COMMENTS
CORPORATION)	
)	
Forth Amendment Submitted for Commission)	
Approval Pursuant to Section 252(e) of the)	
Telecommunications Act of 1996.)	

RECOMMENDATION: APPROVE AMENDMENT

On February 12, 2003, Pac-West, Inc., and Qwest Corporation filed a fourth amendment to the agreement previously approved by the Public Utility Commission of Oregon (Commission). The parties seek approval of the 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 is not consistent with the public interest, convenience, and necessity.

The amendment included an effective date of June 14, 2001. This date gives the appearance of backdating the agreement. A backdated agreement would appear to be discriminatory since the amendment may only be adopted on a going-forward basis. Qwest and other carriers have filed this type of amendment in several other interconnection agreements. Since this amendment is filed under the same circumstances, Staff concludes that this amendment is not discriminatory and recommends the Commission approve it.

The amendment recognizes 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.

Qwest's interconnection agreements, including ARB 198, generally include a provision that allows Qwest to make changes in the terms and prices of the agreements when a law changes. Pursuant to this contract clause, the change mandated by the FCC Order was made

a part of the ARB 198 agreement “automatically” as of the day the FCC issued its Order. The amendment under consideration here merely confirms this fact. For these reasons, Staff concludes that the amendment merely clarifies what occurred “automatically” under the “change in law” provision of the ARB 198 agreement. As such, Staff does not find the amendment to be discriminatory merely because it was filed so long after the FCC Order was issued.

Nevertheless, Staff advises all parties to interconnection agreements to file changes of this type immediately after the rule or law changes. In this instance, there was a lag time of 18 months before the change was signed and filed with the Commission. This kind of delay only causes further delay in approving the amendments or agreements upon receipt by the Commission. Indeed, all agreements should be filed immediately upon signature to avoid further delay in approval.

Staff recommends approval of the agreement. 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 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.

Dated at Salem, this 5th day of March, 2003.

Celeste Hari
Telecommunications Analyst