BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 354(3)

In the Matter of	)	
	)	
NEW ACCESS COMMUNICATIONS LLC and QWEST CORPORATION.	)	STAFF COMMENTS
	)	
Third Amendment to the Interconnection Agreement Submitted for Commission Approval Pursuant to Section 252(e) of the Telecommunications Act of 1996.	)	

RECOMMENDATION: REJECT AMENDMENT

On October 13, 2004, New Access Communications LLC and Qwest Corporation filed a third amendment to the interconnection 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 agreement on the World Wide Web, at: http://www.puc.state.or.us/caragmnt/. Staff was unable to complete the comments in a timely manner due to the complexity of the issues raised by this filing. 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 cover letter to the amendment requests that a ruling be held off until the Commission decides Qwest's motion to dismiss in the ARB 6 docket. Staff's comments are not a ruling and are filed according to the regular schedule.

The amendment removes all aspects of UNE-P, mass market switching and shared transport from the agreement and states that those elements are available in a separate agreement not 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 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 if the Commission rejects this filing, any provision stating that the parties' agreement is effective may not be enforceable.

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

Dated at Salem, this 2nd day of October, 2004.

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).