

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 105(5)

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

RECOMMENDATION: APPROVE AMENDMENT

On March 22, 2005, Ernest Communications, Inc. and Qwest Corporation (Qwest) filed the fifth amendment to the interconnection agreement previously filed for approval 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/>. The Commission Staff (Staff) offers these comments.

Under the Act, the Commission must approve or reject an agreement or amendment thereto reached through voluntary negotiation within 90 days of filing. The Commission may reject an agreement or amendment 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.

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.

The ARB 105(5) amendment consists of two documents, one entitled "Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts" (Batch Hot Cut Amendment). The other document is

entitled, "Qwest Master Services Agreement," which incorporates rates, terms, and conditions for Qwest's Platform Plus Service (QPP).

Qwest included a letter and attachment with the filing. The attachment is captioned "Agreement Filing Under Protest and With Reservations of Rights." These documents inform the Commission that Qwest is filing the QPP portion of the ARB 105(5) amendment under protest. Qwest acknowledges that the Commission determined in Order No. 04-661 in docket ARB 6 "that the Commercial QPP™ Agreement between Qwest and MCI was subject to its jurisdiction and that the law required that it be filed for approval by the Commission." See Agreement Filing Under Protest and With Reservations of Rights, p.2. Qwest disagrees with the Commission's determination that both the Batch Hot Cut Amendment and the QPP must be filed for approval under Section 252 of the Telecommunications Act of 1996. The company contends that only the Batch Hot Cut Amendment need be filed. However, under protest Qwest filed both the Batch Hot Cut Amendment and the QPP for approval.

In Order No. 04-661 in docket ARB 6, the Commission initially rejected the 15th amendment to the ARB 6 agreement between MCImetro Access Transmission Services, LCC (MCI) and Qwest. This filing, designated ARB 6(15), was filed by MCI and included both the Batch Hot Cut Amendment and the QPP. The Commission rejected the ARB 6(15) amendment because Section 4.0 of the Batch Hot Cut Amendment included language that the Commission concluded did not comply with the filing requirements as stated in FCC Order No, 04-179, released August 20, 2004. MCI requested reconsideration. The Commission granted reconsideration, and approved the Batch Hot Cut Amendment and the QPP in Order No. 05-103, because the filing of the QPP replaced the obligations that were removed in the Batch Hot Cut Amendment. Therefore, the Commission determined that the Batch Hot Cut Amendment could be approved, but only if the QPP is also filed simultaneously. The ARB 105(5) amendment before the Commission in this instance is virtually the same as the ARB 6(15) amendment. Therefore, staff recommends approval of the ARB 105(5) amendment.

Staff concludes that the amendment 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 12th day of April, 2005.

Celeste Hari
Telecommunications Analyst