

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

ARB 660(1)

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

RECOMMENDATION: APPROVE AMENDMENT

On April 13, 2005, Trans National Communications International, Inc. (Trans National) and Qwest Corporation (Qwest) filed a first 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/>. 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 amendment consists of a document 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 ARB 660(1) QPP amendment under protest.

In Order No. 04-661 in docket ARB 6, the Commission initially rejected the 15<sup>th</sup> 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.

Qwest and Trans National filed the ARB 660 agreement with the Commission after the FCC adopted permanent UNE rules. The FCC adopted its permanent UNE rules in FCC Order 04-290. The rules became effective March 11, 2005. Trans National signed the agreement on March 8, 2005 and Qwest signed it on March 10, 2005. Both signatures are prior to the effective date of the permanent rules, but were signed in anticipation of them. The Commission will consider the agreement under the new rules because they are currently in effect and because the agreement was filed after the effective date of the rules.

The ARB 660 agreement does not include the UNE's that the FCC eliminated in its permanent UNE rules. FCC Order 04-290 replaced the FCC's interim UNE rules, which had required incumbent carriers such as Qwest to continue providing Mass Market Switching and Shared Transport as UNE's under Section 251 of the Act. The permanent rules eliminated both Mass Market Switching and Shared Transport as UNE's. The ARB 660(1) QPP amendment restores those same functionalities.

In Order No. 04-661 in docket ARB 6, the Commission tied the filing of a QPP to the Interim order and the obligation to file agreements dealing with Section 251 elements. Because the FCC permanent order has now replaced the Interim Order, the conditions cited in Commission Order No. 04-661 no longer exist. Staff believes that Qwest and Trans National are not obligated to file the QPP agreements with the Commission for approval under Section 252, provided the QPP does not include any other elements which would be subject to Commission approval under Section 252.

Should parties still choose to file a QPP for Commission approval, staff recommends that the QPP reviewed under Section 252 rather than be rejected. This is a time of uncertainty while the courts consider the scope of Section 252 requirements as described in Qwest's protest letter and there is no harm caused by approving a QPP. The QPP filed in the

ARB 660(1) amendment before the Commission now is virtually the same as the one filed in the ARB 6(15) amendment.

For the reasons discussed above, Staff recommends approval of the ARB 660(1) QPP 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 3rd day of May, 2005.

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