

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

ARB 714

In the Matter of )  
 )  
T-MOBILE USA, INC. and HOME ) STAFF COMMENTS  
TELEPHONE COMPANY, )  
 )  
Interconnection Agreement Submitted for )  
Commission Approval Pursuant to Section )  
252(e) of the Telecommunications Act of 1996. )

**RECOMMENDATION: REJECT AGREEMENT**

On January 12, 2006, T-Mobile USA, Inc. and Home Telephone Company filed an interconnection agreement for approval by the Public Utility Commission of Oregon (Commission). The parties seek approval of the agreement 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 is not consistent with the public interest, convenience, and necessity.

The agreement included a stated effective date of January 1, 2005. This is over one year prior to filing the agreement. The agreement was executed in December 2005. The parties have agreed between themselves to apply the rates, terms and conditions of the agreement to past activities back to the date of January 1, 2005, as a true-up. Staff believes this backdating of the agreement would be discriminatory since the agreement may only be adopted by other companies on a going-forward basis.

Some of the past agreements approved by the Commission have been situations where the parties selected an effective date and executed the documents near the chosen date, but actually operated under the agreement without the protection of the Commission because of the lag time for processing interconnection agreements. This agreement does not fall under that situation. This agreement contains an actual backward true-up that no other company would be able to obtain. The Commission-approved past agreements did not contain that element.

Other seemingly backdated agreements approved by the Commission have involved a change of law that applied to all agreements. That is not the case here.

Staff does not believe that there is authorization for backdating under the Telecommunications Act of 1996 or any of the subsequent rulings relating to the Act. Staff believes the agreement to be discriminatory. It is not in the public interest to approve agreements that are discriminatory.

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 is not enforceable.

Staff recommends that the Commission reject the agreement.

Dated at Salem, this 10<sup>th</sup> day of February, 2006.

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**Celeste Hari**  
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