

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**
3 **ARB 714**

4 In the Matter of

5 T-MOBILE USA, INC. AND HOME
6 TELEPHONE COMPANY

7 Interconnection Agreement Submitted for
8 Commission Approval Pursuant to Section
9 252(e) of the Telecommunications Act of
1996.

STAFF RESPONSE COMMENTS

10 On January 12, 2006, Home Telephone Company (“Home”) and T-Mobile USA, Inc. (T-
11 Mobile) asked the Commission to approve the interconnection agreement (“the Agreement”) at
12 issue in this proceeding. However, the Agreement provides that it is effective more than one
13 year prior to the parties’ request for approval. Because the parties’ delay in requesting approval
14 of the Agreement results in an agreement that is potentially discriminatory to other companies,
15 staff recommends that the Commission reject the Agreement as it written. In the alternative,
16 staff recommends that the Commission approve the Agreement, but only on a going-forward
17 basis.

18 Staff concludes that the back-dated Agreement is discriminatory because other companies
19 are only able to adopt it on a going-forward basis. Home disagrees, noting that other companies
20 may take advantage of the back-dating provision as well. Home states that any agreement
21 between T-Mobile or Home and another company will be back-dated to the day negotiations
22 between these companies commence. (Reply to Staff Comments 2-3.) Even assuming that this
23 is true, the Agreement at issue in this docket is still discriminatory because it amounts to what is
24 essentially a year-long secret agreement between Home and T-Mobile that other companies
25 could not have been aware of and thus, could not have asked to adopt.

1 In other words, if the Agreement is accepted by the Commission, providers could
2 routinely enter into agreements, but delay final execution and the Commission approval process
3 for many months, or possibly years. In this case, no other company would be aware of the terms
4 of such agreements, and thus, could not request the opportunity to enter into the same agreement.

5 Furthermore, to the extent Home relies on the recently enacted true-up provision in 47
6 C.F.R. § 20.11, the reliance is misplaced. 47 CFR § 20.11(f) provides,

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8 An incumbent local exchange carrier may request interconnection from a
9 commercial mobile radio service provider and invoke the negotiation and
10 arbitration procedures contained in section 252 of the Act. A commercial mobile
11 radio service provider receiving a request for interconnection must negotiate in
12 good faith and must, if requested, submit to arbitration by the state commission.
13 Once a request for interconnection is made, the interim transport and termination
14 pricing described in § 51.175 shall apply.

15 47 CFR § 51.715 provides that upon request from a telecommunications carrier without
16 an existing interconnection agreement with an incumbent LEC, the incumbent LEC shall provide
17 transport and termination of telecommunications traffic immediately under an interim
18 arrangement, pending resolution of negotiation and arbitration regarding transport and
19 termination rates and approval of such rates by a state commission under sections 251 and 252 of
20 the Telecommunications Act of 1996. Applicable interim rates are specified in 47 CFR §
21 51.715(b)(30). Subsection (d) of the rule provides that if the rates for transport and termination of
22 telecommunications traffic in an interim compensation arrangement differ from the rates
23 established by a state commission pursuant to § 51.705, the state commission shall require
24 carriers to make adjustments to past compensation to allow each carrier to receive the same
25 amount of compensation it would have received had the rates in the interim compensation
26 arrangement equaled the rates later established by the state commission pursuant to § 51.705.
The Commission has not established rates for Home pursuant to § 51.705. Therefore, Subsection
(d) of the rule is inapplicable.

1 The Agreement in this docket is actually counter to the policies encompassed in 47
2 C.F.R. § 20.11. Instead of agreeing on an interim rate for the transport and termination of
3 telecommunications traffic, the parties agreed that “the negotiated rate applies from the date (or
4 close to it) that the interconnection request was made and will be applied for that interim period
5 of time between the date the interconnection request was made and the date the agreement is
6 approved as the interim transport and termination rate.” (Reply to Staff Comments 7.) This
7 process is not sanctioned by the federal rules. Furthermore, the federal rules specifically provide
8 for interim compensation for the transport and termination of telecommunication traffic. The
9 federal rules do not provide for interim provisions for all aspects of an interconnection agreement
10 between companies.

11 In any event, aside from the Agreement’s effective date of January 1, 2005, staff believes
12 the Agreement satisfies the requirements for approval under the Act. Accordingly, in the event
13 the Commission does not wish to reject the Agreement, staff recommends that the Commission
14 approve it, subject to it going into effect on a going-forward basis, only.

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16 Dated at Salem, this 13th day of March, 2006.

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19 **Celeste Hari**
20 Telecommunications Analyst
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