

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

ARB 726(1)

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

**RECOMMENDATION: APPROVE AMENDMENT**

On March 15, 2006, HiMark Communications, Inc. and Qwest Corporation filed the 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 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 amendment noted that Qwest would back bill the rates in the amendment to March 11, 2005. This gives the appearance of backdating the amendment. A backdated amendment would appear to be discriminatory since the amendment may only be adopted on a going-forward basis.

The amendment recognizes and implements the Federal Communications Commission's (FCC) Triennial Review and Remand Order (TRRO). The effective date of the TRRO is March 11, 2005. The rates listed in the amendment are designated as transition rates. The TRRO contains provisions for transitioning the rate changes required by the order and sets a

timeframe for implementing those changes. All companies are under the same rules and obligations with regard to the transition period thus removing the discrimination factor. The amendment memorializes the change designated in the rules. Staff believes the amendment is consistent with the provisions within the TRRO.

Staff recommends the Commission approve the amendment to the agreement. Staff concludes that the agreement 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.

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.

Dated at Salem, this 28<sup>th</sup> day of March, 2006.

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**Celeste Hari**  
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