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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

ARB 369

In the Matter of the Negotiated Interconnection)
Agreement between DIGITAL)
TELECOMMUNICATIONS, INC. and) ORDER
VERIZON NORTHWEST, INC., Submitted for)
Commission Approval Pursuant to Section)
252 (e) of the Telecommunications Act of 1996.)

DISPOSITION: AGREEMENT APPROVED

On September 7, 2001, Digital Telecommunications, Inc. (Digital) and Verizon Northwest, Inc. (Verizon) filed an interconnection agreement with the Public Utility Commission of Oregon (Commission). The parties seek approval of this agreement under Section 252(e) of the Telecommunications Act of 1996. The Commission provided notice of the request for approval and an opportunity to comment. Only the Commission Staff (Staff) filed comments.

Staff expresses concern about a provision contained in the preface to the submitted agreement. Paragraph 1.1 provides:

This agreement includes: (a) the Principal Document; (b) the Tariffs of each Party applicable to the Services that are offered for sale by it in the Principle Document (which Tariffs are incorporated and made part of hereof this Agreement by reference); and (c) *an Order¹ by a Party that has been accepted by the other Party.* (emphasis added.)

Staff believes that, as written, Paragraph 1.1 makes any current or future order for service part of the agreement. Thus, Staff concludes, every order is, in effect, an amendment to the agreement that must be submitted to and approved by the Commission.

Staff has discussed this matter with Verizon and suggested that the company could avoid this potential problem by either deleting part (c) of Paragraph 1.1 or including language to clarify that Orders are made pursuant to the agreement. In response, Verizon indicated its continued desire to make Orders part of the agreement. The company also noted that the same language is used in other agreements and has not caused a problem.

¹ Order is defined in the Agreement as “an order or application to provide, change or terminate a Service (including but not limited to, a commitment to purchase a stated number or minimum number of lines or other Services for a stated period or minimum period of time).”

Section 252(e)(3) requires this Commission to approve any negotiated interconnection agreement. We must review an agreement within 90 days of filing, and may reject an agreement only if we find 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.

This Commission has interpreted these provisions to require the filing and approval of not just complete agreements, but also of any subsequent amendment to an underlying agreement. This gives us the continuing ability to ensure that the agreement does not discriminate against other carriers and remains consistent with the public interest.

The question presented in this case is whether Orders placed by Verizon or Digital constitute amendments to the underlying agreement that also must be submitted for Commission approval. Black's Law Dictionary (5th ed. 1983) defines "amendment" as: "To change or modify for the better. To alter by modification, deletion, or addition." Webster's Third New International Dictionary (1976) defines "amendment" as: "An alteration proposed or effected by such process."

It is doubtful that any Order placed by a party will change, modify, or alter any term or condition of the underlying agreement. As the agreement itself explains, an Order is simply an order or application by one party to provide, change, or terminate a service. Nonetheless, the Commission will not be able to determine whether an Order materially affects the underlying agreement without a review of that Order.

Accordingly, given the language set forth in Paragraph 1.1, and in order to fulfill our regulatory requirements, we conclude that Verizon and Digital must submit all Orders with the Commission for review. Unless acted upon by the Commission, all Orders will be deemed approved within 30 days of filing.

In its comments, Staff also noted that an interconnection agreement or amendment thereto has no effect or force until approved by a state Commission. *See* 47 U.S.C. Sections 251 (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.

Staff recommends approval of 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.

OPINION

The Commission adopts Staff’s recommendation and concludes that there is no basis under the Act to reject the agreement. No participant in the proceeding has requested that the agreement be rejected or has presented any reason for rejection. Accordingly, the agreement should be approved.

CONCLUSIONS

1. There is no basis for finding that the agreement discriminates against any telecommunications carrier not a party to the agreement.
2. There is no basis for finding that implementation of the agreement is not consistent with the public interest, convenience, and necessity.
3. The agreement should be approved.
4. All Orders are included in the agreement and must be filed with the Commission for review.

ORDER

IT IS ORDERED that the agreement, between Digital Telecommunications, Inc. and Verizon Northwest, Inc., is approved. The parties shall file all Orders, as defined in the agreement, with the Commission for review.

Made, entered, and effective _____.

Phil Nyegaard
Acting Director
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.