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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

ARB 57 (2)

In the Matter of	)	
	)	
NEXTEL WEST CORP. and QWEST CORPORATION,	)	ORDER
	)	
	)	
Second Amendment to Interconnection Agreement. Submitted for Commission Approval Pursuant to Section 252 (e) of the Telecommunications Act of 1996.	)	

**DISPOSITION: AMENDMENT APPROVED**

On June 26, 2002, Nextel West Corp. and Qwest Corporation filed a second amendment to the interconnection agreement and subsequent amendment previously approved by the Public Utility Commission of Oregon (Commission) by Order Nos. 98-165 and 00-625. The parties seek approval of the current amendment under Section 252(e) of the Telecommunications Act of 1996. The Commission provided notice by posting an electronic copy of the amendment on the World Wide Web, at: <http://www.puc.state.or.us/caragmnt/>. Only the Commission Staff (Staff) filed 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.

Staff noted that the amendment included an effective date of June 14, 2001, and recognized the Federal Communications Commission's (FCC) ruling regarding the proper treatment of telecommunications traffic delivered to Internet Service Providers for purposes of inter-carrier compensation. This date 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.

After further investigation, Staff determined that many of Qwest's interconnection agreements, including ARB 57, include a provision that allows to make changes in the terms and

prices of the agreements when a law changes. Pursuant to this contract clause, the change mandated by order of the FCC was made a part of the ARB 57 agreement “automatically” as of the day the FCC issued its Order. The amendment under consideration here merely confirmed this fact. Staff further concluded that the amendment merely clarifies what occurred “automatically” under the “change in law” provision of the ARB 57 agreement. As such, Staff did not find the amendment to be discriminatory merely because it was filed almost one year after the FCC Order was issued.

Staff 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 pointed 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 recommended approval of the amendment. Staff concluded that the amendment to the previously approved 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 amendment to the previously approved agreement. No participant in the proceeding has requested that the amendment be rejected or has presented any reason for rejection. Accordingly, the amendment should be approved.

### **CONCLUSIONS**

1. There is no basis for finding that the amendment to the previously approved agreement discriminates against any telecommunications carrier not a party to the agreement.
2. There is no basis for finding that implementation of the amended agreement is not consistent with the public interest, convenience, and necessity.
3. The amendment should be approved.

**ORDER**

IT IS ORDERED that the amendment to the previously approved agreements, between Nextel West Corp. and Qwest Corporation, is approved.

Made, entered, and effective \_\_\_\_\_.

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**John Savage**  
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.