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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

ARB 105 (3)

In the Matter of	)	
	)	
ERNEST COMMUNICATIONS, INC. and	)	ORDER
QWEST CORPORATION	)	
	)	
Third Amendment to Interconnection	)	
Agreement, Submitted for Commission	)	
Approval Pursuant to Section 252(e) of the	)	
Telecommunications Act of 1996.	)	

DISPOSITION: AMENDMENT APPROVED

On October 3, 2002,<sup>1</sup> Ernest Communications, Inc. and Qwest Corporation (Qwest) filed a third amendment to the interconnection agreement previously approved by the Public Utility Commission of Oregon (Commission) with Order No. 98-497, acknowledging the adoption of ARB 6 terms. Subsequent amendments have been approved with Order Nos. 00-426 and 01-938. 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. *See relevant notes set forth below:*

The amendment is part of a larger group of agreements Qwest submitted for approval following a complaint lodged by the Minnesota Department of Commerce. The Minnesota complaint alleged that several Qwest-CLEC contracts previously not filed with the Minnesota PUC, should have been filed under Section 252(a) of the Federal Telecommunications Act (Act). This complaint triggered other states, including Oregon, to look at similar unfiled contracts. As a result, Qwest submitted this amendment, along with over 70 other agreements or amendments to agreements, to the Commission in March 2002. Qwest claimed that the Act did not require it to file the agreements it was submitting. Staff is currently investigating this matter.

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<sup>1</sup> Qwest intended these amendments be filed on September 4, 2002, however, due to an initial failure of complying with service requirements, the filings were not considered acceptable until October 3, 2002, when Qwest's complete proof of service materials were provided. *See also, Arbitrator's Ruling on Qwest's Requests for Expedited Treatment issued October 10, 2002, by Ruth Crowley, Administrative Law Judge.*

In April 2002, Qwest petitioned the Federal Communications Commission (FCC) for a declaratory ruling on the scope of the duty to file and obtain prior approval of negotiated contractual arrangements under Section 252(a)(1). On October 4, 2002, the FCC issued a memorandum opinion and order on the matter. The order finds that agreements creating an ongoing obligation pertaining to resale, number portability, dialing parity, access to right-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation are interconnection agreements and must be filed pursuant to section 252(a)(1). The FCC specifically includes dispute resolution and escalation procedures among the agreements that should be filed. The order gives the state commissions the authority to decide on a case-by-case basis whether the Act requires a particular agreement to be filed for approval.

The Minnesota PUC also recently determined that Qwest should have filed several contracts in Minnesota.

In early September 2002, Qwest re-submitted 16 of the 70+ previously unfiled agreements to the Commission, including the amendment at issue here. In its letter accompanying the re-submission, Qwest stated that while it wanted the Commission to approve these agreements, it asked the Commission to refrain from deciding whether the 16 agreements were in fact required to be filed under the Act. Qwest said it was filing the agreements at this time so they could be on file and available for adoption under Section 251(i).

Staff agrees with Qwest that the Commission may approve these agreements under the Act while Staff continues to investigate the issue of whether the Act requires Qwest to file any, or all, of the 70+ previously non-filed agreements. \*

\* Staff also notes that some parts of the agreements have been redacted. Staff recommends that the Commission reserve its right to address those portions of the agreements not identified by Qwest as part of its submission.

Staff noted that its comments were restricted to the areas set out as items (1) and (2) below. 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 further 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 these filings will be the date the Commission signs an order approving them, and that any provision stating that the parties' amendments are 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 recommendations 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 reasons 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.
4. The Commission reserves the right to address those portions of the amendment not identified by Qwest as part of its submissions.

**ORDER**

IT IS ORDERED that the amendment to the previously approved agreements, between Ernest Communications, Inc. and Qwest Corporation, is approved, subject to the reservations of rights noted in conclusion number four.

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.