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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UA 55

In the Matter of)
)
U S WEST TELECOMMUNICATIONS,)
INC. (QWEST CORPORATION))
)
Application for an Order Transferring)
Right to Exclusively Served Territory,)
Fairway Downs, Oregon City to Beaver)
Creek Telephone Company.)

ORDER

DISPOSITION: NOTICE OF REOPENED DOCKET

On January 29, 2003, the Commission entered Order No. 03-073 in docket ARB 445, Beaver Creek Cooperative Telephone Company's (Beaver Creek) petition for arbitration of an interconnection agreement with Qwest Corporation with respect to traffic in the Beaver Creek exchange.

In UA 55, by Order No. 97-297, the Commission approved U S WEST Communications, Inc.'s (now Qwest Corporation, Qwest) application to transfer territory to Beaver Creek. The territory in question was a subdivision under construction, Fairway Downs, in which Qwest had no facilities and no customers. The developer of the subdivision wanted to take telephone service from Beaver Creek, and Qwest agreed to transfer the territory.

Transferring just the Fairway Downs subdivision would have resulted in an island of Beaver Creek service territory in Qwest's Oregon City exchange. To make the boundaries between the Oregon City exchange and the Beaver Creek exchange as rational as possible, Commission Staff suggested that a larger portion of the Oregon City exchange than just the Fairway Downs subdivision be transferred to the Beaver Creek exchange. Qwest was unaware that it had customers in the area that Staff proposed to transfer with the Fairway Downs subdivision. Qwest and Beaver Creek agreed to square off the area to rationalize the boundaries between exchanges. This squaring off process resulted in a boundary change that included Fairway Downs as well as other surrounding areas.

After Qwest's transfer application was approved on August 6, 1997, it was discovered that Qwest did have customers in the squared off territory (the subject territory). Staff asked the parties to provide certain information as a result of the presence of Qwest customers in what was now the Beaver Creek exchange, and suggested that to avoid amending Order No. 97-297, the parties could enter into a memorandum of understanding (MOU) with respect to the Qwest customers that had been transferred.

The parties agreed to enter into an MOU, and on October 29, 1997, and November 3, 1997, they signed the MOU. Under the MOU, Qwest was to continue to provide service in the subject territory unless the customer selects another service provider, and Qwest assumed responsibility for maintenance of its facilities located in the subject territory.

The parties have operated under the MOU from late 1997 to the present. However, the Commission has never approved the MOU. Therefore, Qwest's status in the Beaver Creek exchange is problematic. In ARB 445, Beaver Creek argued that Qwest was a competitive local exchange carrier (CLEC) in the Beaver Creek exchange. Qwest argued that it was an incumbent local exchange carrier (ILEC) in the subject territory, even though that territory was in the Beaver Creek exchange. Qwest supported its position by referring to the MOU, which was designed to maintain the status quo for the Qwest customers who had inadvertently been transferred to the Beaver Creek exchange.

In deciding ARB 445, we noted:

The record in this case strongly suggests that Qwest would not have transferred the subject territory to Beaver Creek if Qwest had known that the subject territory contained Qwest customers. Indeed, the Commission issued Order No. 97-297 relying on the parties' mistaken representation on this very point. We believe it is time to correct this mistake. Accordingly, by this Order, we reopen the UA 55 proceeding pursuant to ORS 756.658 for the purpose of amending Order No. 97-297. We make no determinations on the merits of the issues to be resolved in UA 55 at this time. Instead, we intend that our Administrative Hearings Division will assign an administrative law judge to Docket UA 55 and that the judge will convene a prehearing conference to identify the issues and set a schedule for the proceeding. We wish to make clear that, until the reopened UA 55 is resolved by a subsequent Commission order, the current territorial allocation approved in Order No. 97-297 will continue in effect.

By this order we give notice that we are reopening UA 55 to amend Order No. 97-297. By separate notice a prehearing conference will be announced at which issues will be defined and a schedule set.

ORDER

IT IS ORDERED that notice is hereby given that UA 55 is reopened to amend Order No. 97-297.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

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.