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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 432 (1)

In the Matter)	
)	
EAGLE TELEPHONE and QWEST)	
CORPORATION)	ORDER
)	
First Amendment to the Interconnection)	
Agreement, Submitted for Commission Approval)	
Pursuant to Section 252(e) of the)	
Telecommunications Act of 1996.)	

DISPOSITION: AMENDMENT APPROVED

On January 27, 2003, Eagle Telephone and Qwest Corporation filed a first amendment to the interconnection agreement and previously approved by the Public Utility Commission of Oregon (Commission) in Order No. 02-481. 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 and 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 changes to rates for ISP-Bound traffic. The rate changes were due to 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. The effective date of the FCC Order is June 14, 2001. Part of the agreement discusses compensation dating back to the 2001. However,

the current agreement to which the amendment applies was effective on July 30, 2002. This is well after the FCC ruling was effective and as such, nothing in the amendment can logically be effective prior to July 30, 2002. Staff believes that the language referring to prior dates is extraneous and has no bearing on the amendment since the interconnection agreement between Eagle Telephone and Qwest Corporation was not effective prior to July 30, 2002.

Staff further noted that the amendment was signed in April 2002. This is almost one year prior to the amendment being filed with the Commission and three months prior to the original agreement being approved. Agreements and amendments should be filed with the Commission immediately after signing. It is unusual to have an amendment take place before the original agreement is effective.

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 252 (a) and (e). Accordingly, Staff pointed out that the effective date of this filing should 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 with the requirement that the effective date of the ISP-compensation rate change is the date of the Commission's order approving the amendment, not the effective date of the FCC order, the date the amendment was signed, or the effective date of the original interconnection agreement. Staff concluded 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 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 agreement, between Eagle Telephone and Qwest Corporation is approved.

Made, entered, and effective _____.

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.