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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 184 (14)

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|--|---|-------|
| In the Matter of |) | |
| |) | |
| WANTEL TELECOMMUNICATIONS, INC., |) | |
| and QWEST CORPORATION |) | ORDER |
| |) | |
| Fourteenth Amendment to Interconnection |) | |
| Agreement, Submitted for Commission |) | |
| Approval Pursuant to Section 252(e) of the |) | |
| Telecommunications Act of 1996. |) | |

DISPOSITION: AMENDMENT APPROVED

On June 5, 2003, Wantel Telecommunications, Inc., and Qwest Corporation filed a fourteenth amendment to the interconnection agreement previously acknowledged by letter of the Public Utility Commission of Oregon (Commission) issued December 3, 1999, recognizing the adoption of ARB 1 terms, and with subsequent amendments approved by Order Nos. 00-761, 01-441, 01-587, 02-768, 03-028, 03-100, 03-129, 03-374, and 03-471. The parties seek approval of the current amendments under Section 252(e) of the Telecommunications Act of 1996. The Commission provided notice by posting an electronic copy of the agreement and amendments 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.

The amendment included an effective date of June 14, 2001. This date gives the appearance of backdating the agreement. A backdated agreement would appear to be discriminatory since the amendment may only be adopted on a going-forward basis. After further investigation and prior approval of similar agreements, Staff concludes that this amendment is not discriminatory and recommends the Commission approve it.

The amendment recognizes 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.

Qwest's interconnection agreements, generally include a provision that allows the companies to make changes in the terms and prices of the agreements when a law changes. Pursuant to this contract clause, the change mandated by the FCC Order was made a part of the ARB 184 agreement "automatically" as of the day the FCC issued its Order. The amendment under consideration here merely confirms this fact. For these reasons, Staff concludes that the amendment merely clarifies what occurred "automatically" under the "change in law" provision of the ARB 184 agreement. As such, Staff does not find the amendment to be discriminatory merely because it was filed almost one year after the FCC Order was issued.

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 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 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 acknowledged and approved agreement between Wantel Telecommunications, Inc., 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.