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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 514

In the Matter of)	
)	
UNIVERSAL TELECOMMUNICATIONS, INC.,)	
and UNITED TELEPHONE COMPANY OF THE)	
NORTHWEST, dba SPRINT,)	ORDER
)	
Adoption of the Terms of the Interconnection)	
Agreement previously approved in ARB 442,)	
Submitted Pursuant to Section 252(i) of the)	
Telecommunications Act of 1996.)	

DISPOSITION: AGREEMENT APPROVED

Background. On September 29, 2003, Universal Telecommunications, Inc. (UTI), pursuant to Oregon Administrative Rule 860-016-0025, 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809, filed a notice (Notice) of its intent to unilaterally adopt the current Interconnection Agreement in Oregon between United Telephone Company of the Northwest, dba Sprint (Sprint), and Level 3 Communications, Inc., as approved by the Oregon PUC in Order 02-622 in ARB 442, entered September 6, 2002 (Level 3 Agreement). In the Notice, UTI adopted the entire Level 3 Agreement except for the following:

Part A—Definitions (§ 1.68): Defining the term “virtual point of interconnection.” (VPOI)

Part F—Interconnection (§ 57.4.2): Establishing a VPOI within each of Sprint’s mandatory Local Calling Areas.

Part F—Interconnection (§§ 58.1.1, 58.1.2) Assigning responsibility for transport to the CLEC where virtual POIs are required.

UTI also claimed that Sprint repeatedly denied UTI’s requests to adopt individual arrangements in existing interconnection agreements as required by law.

By letter of October 10, 2003, Sprint denies that it has refused to make the Level 3 Agreement or any other agreement available. It asserts that UTI is trying to unilaterally amend the Level 3 Agreement and then adopt the amended terms. Sprint asserts that the FCC's "pick and choose" rules require UTI to accept terms that Sprint can prove are "legitimately related" to the desired term. Sprint also cited several FCC and U.S. Supreme Court opinions to support its views.

A telephone prehearing conference was held on November 4, 2003, at which time it was agreed that the parties would define the issue being disputed and file briefs thereon by November 12, 2003. The parties agreed that the issue was as follows:

May UTI adopt the Level 3 Agreement in Oregon, with the sole exception of the provisions addressing virtual points of interconnection?

The parties subsequently filed briefs on the issue, and after reviewing the briefs the Administrative Law Judge (ALJ) held a telephone conference with the parties on November 25, 2003. As a result of the telephone conference, the parties entered into further negotiations settling the dispute.

On December 12, 2003, pursuant to OAR 860-016-0025, UTI resubmitted its Notice of Adoption of the Level 3 Agreement, except as to the sections noted above. Sprint agreed not to file comments that would object to the Notice on the condition, agreed to by UTI, that UTI "will commence negotiations with Sprint for a new agreement on January 18, 2004, 160 days prior to the expiration of the Sprint—Level 3 interconnection agreement."¹ UTI requested that the Commission approve the adoption and Interconnection Agreement on the date that Sprint's comments were filed with the Commission.

By letter of January 6, 2004, Sprint stated in part:

While Sprint will not object to Universal's filing, Sprint does not admit to the legality of Universal's method of adoption or the terms and conditions contained in the adoption. Sprint reserves the right to advocate any position regarding Universal's method of adoption or the appropriateness of the terms and conditions of the adopted agreement before state or federal commissions whether in complaint dockets, arbitrations under Section 252 of the

¹ An *Errata to Unilateral Notice of Adoption dated December 12, 2003*, was filed on December 22, 2003, providing the intended date (which is set forth in the above quoted text) for the commencement of negotiations.

Act, commission established rulemaking dockets, or in any legal challenges stemming from such proceedings.

Discussion. OAR 860-016-0025 provides, in pertinent part:

(1) If a requesting telecommunications carrier decides to adopt *an identical* agreement or an *identical* individual arrangement contained in an agreement,...*with the exception of the adopting party's name and new effective date*,...it shall file notice of the adoption with the Commission. The notice shall include a completed Carrier-to-Carrier Agreement Checklist. (*Emphasis supplied.*)

As noted in the ALJ's Ruling of January 20, 2004, the submission by Universal did not meet these conditions because of the modifications to the adopted Level 3 Agreement noted above. Rather, Universal and Sprint negotiated an agreement and filed an application pursuant to OAR 860-016-0020(3)(4). The procedures outlined in the remainder of OAR 860-016-0020 therefore applied in this case and the ALJ granted expedited consideration.

The ALJ found that the Unilateral Notice of Adoption by Universal Telecommunications, Inc., of the Interconnection Agreement between United Telephone Company of the Northwest, dba Sprint, and Level 3 Communications, Inc., in ARB 442, filed July 3, 2002, is a negotiated Interconnection Agreement submitted pursuant to OAR 860-016-0020. The ALJ asked for public comments to be filed no later than January 27, 2004. The sole commentor was the Commission Staff, which recommended approval of the 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. We agree.

ORDER

IT IS ORDERED that the Unilateral Notice of Adoption by Universal Telecommunications, Inc., of the Interconnection Agreement between United Telephone Company of the Northwest, dba Sprint, and Level 3 Communications, Inc., is a negotiated Interconnection Agreement submitted pursuant to OAR 860-016-0020.

IT IS FURTHER ORDERED that the Interconnection Agreement is APPROVED.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
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 requirement 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.