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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

ARB 47(6)

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

**DISPOSITION: AMENDMENT MOOT; SUPPLEMENTAL APPLICATION REJECTED**

On July 2, 2004, Rio Communications, Inc. (Rio), and Qwest Corporation (Qwest) filed a sixth amendment to the interconnection agreement previously approved by the Public Utility Commission by Orders No. 98-014, 03-098, 03-174, 03-332, and 04-042. 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.

Rio and Qwest seek approval of an amendment that details a limited time promotional offering by Qwest to competitive carriers. The amendment specifies that the promotion is limited to a three-month period, from April 1, 2004, through June 30, 2004.

## DISCUSSION AND OPINION

In its comments, Staff concluded that, on its face, the amendment 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. However, Staff expressed concern that, given the fact that Rio and Qwest submitted the amendment for approval on July 2, 2004, the terms of the three-month promotional offering have come and gone before the Commission could approve or disapprove of the filing.

Subsequent to the filing of this amendment, the Commission adopted temporary rules to address this timing problem related to promotional offerings.<sup>1</sup> Under these temporary rules, Qwest and other carriers may seek, in essence, preapproval of promotional offerings. Such carriers must, at least 15 days prior to the effective date of the promotion, provide the Commission notice that includes: (1) the language used to describe the promotion, (2) the terms and conditions to be used for the promotional offering, and (3) a description of the means used to notify carriers of the promotion. Following notice of an opportunity for public comment, the Commission will acknowledge the promotional offering unless it finds that the offering, if filed as an amendment to an interconnection agreement, would be subject to rejection under existing rules.

The Commission adopted the temporary rules to allow carriers the ability to provide promotional offerings in a manner consistent with Section 252(e) of the Act. The Commission will consider any amendment to incorporate the terms of an approved promotional offering to be timely filed if signed during the identified promotional period and submitted for Commission approval within 10 days of its execution.

Unfortunately, the amendment at issue here was filed prior to the effective date of the temporary rules. Moreover, the negotiated terms in this docket have expired prior to Commission action. Under such circumstances, we must conclude that the approval of this amendment is not consistent with the public interest, convenience, and necessity. Accordingly, we conclude that the carrier's filing has been rendered moot and should be rejected. *See* Order No. 04-301. The carrier's late filing has precluded the Commission from taking action.

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<sup>1</sup> *See* AR 485, Order No. 04-480. The Commission also opened a rulemaking to adopt permanent rules in AR 486.

**CONCLUSION**

The negotiated terms submitted for Commission approval have expired. Accordingly, approval of the filing is not consistent with the public interest, convenience, and necessity.

**ORDER**

IT IS ORDERED that the amendment to the previously approved agreement, submitted for Commission approval by Rio Communications, Inc., and Qwest Corporation is rejected.

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 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.