ORDER NO. 04-678

ENTERED NOV 22 2004

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 516(1)

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

DISPOSITION: AMENDMENT REJECTED

On August 27, 2004, Granite Telecommunications LLC and Qwest Corporation filed an amendment to the interconnection agreement previously approved by the Public Utility Commission of Oregon (Commission) in Order No. 04-141. 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.

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, the effective date of this filing(s) will be the date the Commission signs an order approving it, and any provision stating that the parties' amendment is effective prior to that date is not enforceable.

The amendment removes all aspects of UNE-P, mass market switching and shared transport from the agreement and states that those elements are available in a separate agreement not filed with the Commission for approval. Staff concludes that the amendment does not comply with the filing requirements as stated in Federal Communication Commission (FCC) Order No. 04-179, released August 20, 2004 ("FCC Order").[1] The FCC's Order, in partial response to the decision in *USTA II*,[2] creates a temporary rule that provides that unbundled access to switching, enterprise market loops, and dedicated transport remains a Section 251(c) obligation.

Staff believes that the parties may negotiate to change the rates, terms and conditions, but they cannot negotiate away the Section 252 filing requirement. Staff interprets the FCC Order to mean that these elements must still be filed with state commissions for approval under Section 252 of the Act. The amendment is contrary to law and contrary to the public interest, convenience, and necessity. The unfiled portion of the amendment also appears to be discriminatory to any carrier who is not a party to the amendment. Accordingly, Staff points out that if the Commission rejects this filing, any provision stating that the parties' agreement is effective may not be enforceable. Staff recommends that the Commission reject the amendment to the agreement.

OPINION

The Commission adopts Staff's recommendation and concludes that there is a basis under the Act to reject the amendment to the previously approved agreement. Accordingly, the amendment should be rejected.

CONCLUSIONS

1. There is a basis for finding that the amendment to the previously approved agreement discriminates against any telecommunications carrier not a party to the agreement.

[1] The FCC's Order, paragraph 16, states in part: " Specifically, we conclude that the appropriate interim approach here is to require incumbent LECs to continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms, and conditions that applied under their interconnection agreements as of June 15, 2004. These rates, terms, and conditions shall remain in place until the earlier of the effective date of final unbundling rules promulgated by the Commission or six months after the Federal Register publication of the Order, except to the extent that they are or have been superceded by (1) voluntary negotiated agreements, (2) an intervening Commission order affecting specific unbundling obligations (e.g. an order addressing a pending petition for reconsideration), or (3) (with respect to rates only) a state public utility commission order raising the rates for network elements."

[2] *United States Telecom Ass'n. v. FCC*, Case No. 00-1012 (March 2, 2004).

2. There is a basis for finding that implementation of the amended agreement is not consistent with the public interest, convenience, and necessity.

3. The amendment should be rejected.

ORDER

IT IS ORDERED that the amendment to the previously approved agreement between Granite Telecommunications LLC 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.