

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 175(2)

In the Matter)	
)	
TIME WARNER TELECOM OF OREGON LLC)	
and VERIZON NORTHWEST INC.,)	ORDER
)	
Second Amendment to the Interconnection)	
Agreement, Submitted for Commission Approval)	
Pursuant to Section 252(e) of the)	
Telecommunications Act of 1996.)	

DISPOSITION: AMENDMENT APPROVED

On May 6, 2005, Time Warner Telecom of Oregon LLC and Verizon Northwest Inc. (Verizon) filed a second amendment to the interconnection agreement previously acknowledged by the Public Utility Commission of Oregon (Commission), recognizing the adoption of ARB 91 terms. A subsequent amendment was approved with Order No. 02-024. The parties seek approval of the current amendment under Section 252(e) of the Telecommunications Act of 1996. The Commission provided notice by posting an electronic copy of the 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.

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, including a conversation with a Verizon representative, Staff concluded that this amendment is not discriminatory and recommended approval.

The amendment recognizes the Federal Communication 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.

Verizon's interconnection agreements, including ARB 175, generally include a provision that allows Verizon 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 175 agreement "automatically" as of the day the FCC issued its Order. The amendment under consideration here merely confirms this fact. A Verizon representative stated that all of the carriers with which Verizon had interconnection agreements like the ARB 175 agreement were flash-cut to the inter-carrier compensation method put forth by the FCC Order. For these reasons, Staff concluded that the amendment merely clarifies what occurred "automatically" under the "change in law" provision of the ARB 175 agreement. As such, Staff did not find the amendment to be discriminatory due to it being filed after the FCC Order was issued.

Nevertheless, all parties to interconnection agreements should file changes of this type immediately after the rule or law changes. In this instance, there was a lag time of nearly one year before the change was signed and filed with the Commission. This kind of delay only causes further delay in approving the amendments or agreements upon receipt by the Commission. Indeed, all agreements should be filed immediately upon signature to avoid further delay in approval. Verizon indicated to Staff that during a cross check of its interconnection agreements, it discovered the amendment had not been filed. As soon as this was discovered, Verizon sent the filing to the Commission.

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 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.

Staff recommended approval of the amendment. Staff concluded that the amendment to the previously acknowledged 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 acknowledged 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 acknowledged 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 agreement between Time Warner Telecom of Oregon LLC and Verizon Northwest Inc. is approved.

Made, entered, and effective JUL 27 2005



A handwritten signature in black ink, appearing to read "Michael Grant", is written over a horizontal line.

Michael Grant
Chief Administrative Law Judge
Administrative Hearings Division

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.