

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 671

In the Matter of QWEST CORPORATION'S)
Petition for Arbitration of Interconnection)
Rates, Terms, Conditions, and Related) ORDER
Arrangements with UNIVERSAL TELE-)
COMMUNICATIONS, INC.)

**DISPOSITION: REQUEST GRANTED; ORDER TEMPORARILY
STAYED**

On April 19, 2006, the Commission entered Order No. 06-190 adopting, with modifications, the Arbitrator's Decision issued February 2, 2006. In that Order, we found that "[T]he Arbitrator was also correct to conclude that VNXX arrangements are prohibited in Oregon.... This Commission cannot approve an interconnection agreement that allows parties to participate in an illegal arrangement, regardless of their mutual enthusiasm for doing so."¹ Paragraph 2 of the ordering clause required that the parties file a compliant interconnection agreement no later than May 19, 2006.

On May 5, 2006, pursuant to ORS 183.482(3)(a)(A) and (B), Universal Telecommunications, Inc. (Universal), filed a Request for Reconsideration of Order No. 06-190, and a Request for Stay pending that reconsideration. Subsection (3) (a)(A) requires a showing of irreparable injury to the Petitioner. Subsection (3)(a)(B) requires a showing of a colorable claim of error in the Order.

Universal asserts that it will suffer irreparable injury because it will be forced to cease operation and that no substantial public harm will result from granting the stay. We find that Universal has met its burden under Subsection (3)(a)(A) of a showing of irreparable injury.

In Oregon, the phrase "a colorable claim of error" as appearing in Oregon statutes relating to agency actions has been recently defined by the Supreme Court as follows: "Here, the ordinary meaning of the term 'colorable' is 'seemingly valid and genuine: having an appearance of truth, right, or justice: PLAUSIBLE[.]'"² As Universal notes,³ it need only make a substantial and non-frivolous or plausible argument

¹ Order, p. 7.

² In the Matter of Jennifer Jeannette Rardin, a Minor Child, STATE ex rel DEPARTMENT OF HUMAN SERVICES, Respondent on Review, v. CHRISTOPHER RARDIN, Petitioner on Review.(CC No. 2590J; CA A125045; SC S51810), April 14, 2005.

³ Request, p. 7, citing *Bergerson v. Salem-Keizer School District*, 185 Ore. App 649, 659 (OR. CT App. 2003).

that the Commission has committed legal error that will result in its Order being set aside. We find that Universal has raised legitimate questions of law sufficient to meet this standard.

On May 12, 2006, Qwest Corporation (Qwest) filed a letter stating that it intended to submit a conforming agreement, without Universal's signature, seeking prompt Commission approval. Qwest does not deny that implementation of the terms of the interconnection agreement will irreparably harm Universal. Neither does it assert that Universal offers no plausible legal arguments in its Request for Reconsideration. Instead, Qwest asserts that it does not intend to disconnect or otherwise interfere with Universal's service pending Commission review of the agreement. Qwest therefore argues that the urgency of a request for stay does not exist.


Qwest will have ample opportunity to address the legal and procedural issues raised by Universal in its Request for Reconsideration. Despite its assertion that it does not intend to interfere with the VNXX arrangements *status quo*, Qwest states that it intends to submit a signed, conforming agreement. Qwest does not, however, intend to *abide* by that agreement until these matters are resolved. Simply put, the Commission does not find it either in the public interest or good public policy to accept an interconnection agreement proffered by a party with the caveat that it intends to violate the agreement in the near term.

ORDER

IT IS ORDERED that:

- 1. The request is GRANTED.
- 2. The effectiveness of our Order No. 06-190 requiring the parties to file an interconnection agreement complying with the terms of the Arbitrator's Decision as modified is STAYED pending the issuance of a Final Order in this proceeding.

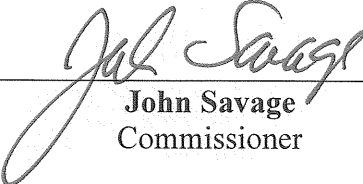
Made, entered and effective MAY 12 2006 .



Lee Beyer
 Chairman



Ray Baum
 Commissioner



John Savage
 Commissioner

