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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 302 (1)

In the Matter of the First Amendment (Amendment)
No. 2) to the Interconnection Agreement Between)
McLEODUSA TELECOMMUNICATIONS)
SERVICES, INC. and QWEST CORPORATION)
(fka U S WEST COMMUNICATIONS, INC.),)
Submitted for Commission Approval Pursuant to)
Section 252(e) of the Telecommunications Act of)
1996.)

ORDER

DISPOSITION: AMENDMENT APPROVED

On December 26, 2000, McLeodUSA Telecommunications Services, Inc. (McLeodUSA) and Qwest Corporation, formerly known as U S WEST Communications, Inc. (Qwest), filed with the Public Utility Commission of Oregon (Commission), a first amendment (Amendment No. 2)¹ to their adoption of the terms of ARB 250 previously acknowledged by Commission letter issued December 19, 2000. The parties seek approval of the current amendment under Section 252(e) of the Telecommunications Act of 1996 (Act).

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.

¹ To date, an amendment No. 1 has not been filed with the Commission. Therefore, as this current amendment, referred to by the parties as No. 2, represents the first actual amendment filing with the Commission, we recognize it as ARB 302(1).

The Commission provided notice of the request for approval and an opportunity to comment to a list of persons who have participated in arbitrations under the Act. PUC Staff filed comments.

While Staff recommended approval of the amendment, Staff noted that McLeodUSA and Qwest agreed to allow the amendment to become effective upon October 1, 2000, which is a date prior to approval or disapproval by the Commission. Staff further noted that Sections 252(a) and 252(e) of the Telecommunications Act of 1996 require parties to an interconnection agreement to submit the agreement to the state commission for approval or rejection and that agreements do not have force or effect until approved by the relevant state commission. Therefore, according to Staff, the provision allowing the amendment to the agreement to become effective upon that date of execution is not enforceable.

Staff concluded that the amendment to the previously filed 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 has reviewed the amendment to the previously filed agreement and the comments. No participant in the proceeding has requested that the amendment be rejected or has presented any reason for rejection. The Commission concludes that there is no basis under the Act to reject the amendment and that 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 with the understanding that the provision governing the effective date is unenforceable.

ORDER

IT IS ORDERED that the amendment to the previously acknowledged agreement, between McLeodUSA Telecommunications Services, Inc. and Qwest Corporation, formerly known as U S WEST Communications, Inc., is approved.

Made, entered, and effective _____.

Phil Nyegaard
Acting Director
Utility Program

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.