

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF QWEST CORPORATION FOR ) CASE NO. QWE-T-07-05**  
**APPROVAL OF AN INTERCONNECTION )**  
**AGREEMENT WITH AMERICAN FIBER )**  
**NETWORK, INC. PURSUANT TO 47 U.S.C. § ) ORDER NO. 30400**  
**252(e) )**  
**)**

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In this case the Commission is asked to approve a new Interconnection Agreement. With this Order, the Commission approves the new interconnection agreement.

**BACKGROUND**

Under the provisions of the federal Telecommunications Act of 1996, interconnection agreements, including amendments thereto, must be submitted to the Commission for approval. 47 U.S.C. § 252(e)(1). The Commission may reject an agreement adopted by negotiations only if it finds that the agreement: (1) discriminates against a telecommunications carrier not a party to the agreement; or (2) implementation of the agreement is not consistent with the public interest, convenience and necessity. 47 U.S.C. § 252(e)(2)(A). As the Commission noted in Order No. 28427, companies voluntarily entering into interconnection agreements “may negotiate terms, prices and conditions that do not comply with either the FCC rules or with the provision of Section 251(b) or (c).” Order No. 28427 at 11 (emphasis in original). This comports with the FCC’s statement that “a state commission shall have authority to approve an interconnection agreement adopted by negotiation even if the terms of the agreement do not comply with the requirements of [Part 51].” 47 C.F.R. § 51.3.

**THE CURRENT APPLICATIONS**

1. Qwest Corporation and American Fiber Network, Inc. (Case No. QWE-T-07-05).

In this Application, the parties request the Commission’s approval to adopt the interconnection agreement between Qwest Corporation and 360networks USA, Inc., approved by the Commission on March 7, 2006 in Case No. QWE-T-06-02. See Order No. 29986. Qwest asserts that the agreement to adopt the aforementioned interconnection agreement was reached through voluntary negotiations and that said agreement will “provide customers with increased choices among local telecommunications services.” Application at 2.

### STAFF RECOMMENDATION

The Staff has reviewed the Application and does not find any terms or conditions that it considers to be discriminatory or contrary to the public interest. Staff believes that this Agreement is consistent with the pro-competitive policies of this Commission, Title 62 of the Idaho Code, and the federal Telecommunications Act. Accordingly, Staff recommends that the Commission approve the Interconnection Agreement.

### COMMISSION DECISION

Under the terms of the Telecommunications Act, interconnection agreements, including amendments thereto, must be submitted to the Commission for approval. 47 U.S.C. § 252(e)(1). The Commission's review is limited, however. The Commission may reject an agreement adopted by negotiation only if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement or implementation of the agreement is not consistent with the public interest, convenience and necessity. *Id.*

Based upon our review of the Application and the Staff's recommendation, the Commission finds that the Qwest and American Fiber Agreement is consistent with the public interest, convenience and necessity and does not discriminate. Therefore, the Commission finds that the Agreement should be approved. Approval of this Application does not negate the responsibility of either of the parties to this Agreement to obtain a Certificate of Public Convenience and Necessity, pursuant to Commission Order No. 26665, if they are offering local exchange services or to comply with *Idaho Code* §§ 62-604 and 62-606 if they are providing other non-basic local telecommunications services as defined by *Idaho Code* § 62-603.

### ORDER

IT IS HEREBY ORDERED that the interconnection agreement between Qwest Corporation and American Fiber Network, Inc., Case No. QWE-T-07-05, is approved.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* §§ 61-626 and 62-619.


DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 9<sup>th</sup>  
day of August 2007.

  
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PAUL KJELLANDER, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

  
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MACK A. REDFORD, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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