BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION FOR APPROVAL OF AN AMENDMENT TO ITS INTERCONNECTION AGREEMENT WITH ACCESS POINT, INC. PURSUANT TO 47 U.S.C. § 252(e)	))))))) **CASE NO. QWE-T-08-03**
IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION FOR APPROVAL OF AN AMENDMENT TO ITS INTERCONNECTION AGREEMENT WITH GREENFLY NETWORKS, INC. DBA CLEARFLY COMMUNICATIONS PURSUANT TO 47 U.S.C. § 252(e)	)))))))) **CASE NO. QWE-T-09-02** **ORDER NO. 32170**

In these cases, the Commission is asked to approve Amendments to separate Interconnection Agreements between Qwest Corporation and Access Point, Inc.; and Qwest Corporation and Greenfly Networks, Inc. dba Clearfly Communications. With this Order, the Commission approves the Amendments to the parties' Interconnection Agreements.

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 APPLICATIONS

<u>Qwest Corporation and Access Point Inc., Case No. QWE-T-08-03</u>. On December 16, 2010, Qwest submitted an Application for approval of an amendment to its Interconnection Agreement with Access Point. The original interconnection agreement and an amendment to the agreement were approved by the Commission on May 2, 2008, and May 23, 2008, respectively. *See* Commission Order Nos. 30544 and 30553. In this Application, the parties request that the Commission allow the parties to adopt Qwest's Local Services Platform (QLSP) Agreement, with Attachments and Rate Sheets, as part of their Interconnection Agreement.

The parties request an expeditious approval process and maintain that the Agreement was reached through voluntary negotiations.

<u>Qwest Corporation and Greenfly Networks, Inc. dba Clearfly Communications, Case No. QWE-T-09-02</u>. On January 11, 2011, the Commission received Qwest's Application requesting authority to amend its Interconnection Agreement with Clearfly. The parties' original Interconnection Agreement was approved by the Commission on February 18, 2009. *See* Order No. 30730. The proposed Amendment would adopt the QLSP Agreement, with Attachments and Rate Sheets, as part of the parties' Interconnection Agreement. The QLSP sets out rates, terms and conditions for the companies to interconnect their services.

The parties request an expeditious approval process and maintain that the Agreement was reached through voluntary negotiations.

STAFF RECOMMENDATION

Staff reviewed the foregoing Applications and did not find any terms or conditions that it considers to be discriminatory or contrary to the public interest. Staff believes that the Amendments to the Interconnection Agreements are consistent with the pro-competitive policies of this Commission, the Idaho Legislature, and the federal Telecommunications Act. Accordingly, Staff recommended that the Commission approve the proposed Amendments to the parties' Interconnection Agreements.

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). However, the Commission's review is limited. The Commission may reject an agreement adopted by negotiation <u>only</u> 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 Applications and Staff's recommendation, the Commission finds that the Amendments to the Agreements are consistent with the public interest, convenience and necessity and do not discriminate. Therefore, the Commission finds that the Amendments, reviewed by Staff and more fully described above, should be approved. Approval of the Agreements does not negate the responsibility of either party to these Agreements to obtain a Certificate of Public Convenience and Necessity 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 Amendment to the Interconnection Agreement between Qwest Corporation and Access Point, Inc., Case No. QWE-T-08-03, is approved.

IT IS FURTHER ORDERED that the Amendment to the Interconnection Agreement between Qwest Corporation and Greenfly Networks, Inc. dba Clearfly Communications, Case No. QWE-T-09-02, 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.
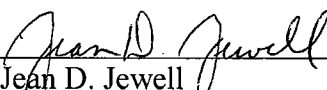
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 28ᵗʰ day of January 2011.

JIM D. KEMPTON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

MACK A. REDFORD, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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