

DECISION MEMORANDUM

**TO: COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSIONER KEMPTON
COMMISSION SECRETARY
LEGAL
WORKING FILE**

FROM: CAROLEE HALL

DATE: FEBRUARY 4, 2009

**RE: APPLICATION FOR APPROVAL OF AN INTERCONNECTION
AGREEMENT BETWEEN QWEST CORPORATION (QWEST) AND
GREENFLY NETWORKS INC DBA CLEARFLY COMMUNICATIONS
(CLEARFLY). CASE NO. QWE-T-09-2.**

BACKGROUND

Under the provision of the federal Telecommunications Act of 1996, interconnection agreements 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.

CURRENT APPLICATION

On January 13, 2009, this Commission received a new Interconnection Agreement between Qwest Corporation and Greenfly Networks Inc. dba Clearfly Communications in Case No. QWE-T-09-2.

This Agreement sets forth the terms, conditions and pricing under which Qwest will provide to Clearfly: Network Interconnection; access to Unbundled Network Elements along with Exhibits A – K. Exhibit A sets out Wholesale Rates; Exhibit B provides for Service Performance Indicators and Exhibit K explicitly sets out the Performance Assurance Plan.

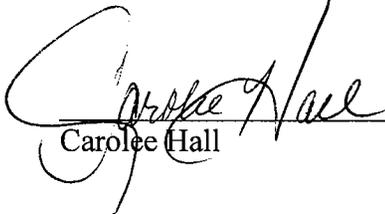
According to the parties this Agreement was reached through voluntary negotiations without resort to mediation or arbitration.

STAFF ANALYSIS

Staff has reviewed the Application and finds that the Statement of Terms and Conditions set forth by Qwest, and accepted voluntarily by Clearfly, do not appear to contain any terms or conditions that may be consider discriminatory or contrary to the public interest. Staff believes that the Statement of Terms and Conditions along with the Exhibits are consistent with the pro-competitive policies of this Commission, the Idaho Legislature, and Sections 251 and 271 of the federal Telecommunications Act of 1996. Accordingly, Staff believes that the Agreement merits the Commission's approval.

COMMISSION DECISION

Does the Commission wish to accept and approve the the Interconnection Agreement?


Carolee Hall