

DECISION MEMORANDUM

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

FROM: CAROLEE HALL

DATE: MAY 19, 2009

RE: APPLICATION FOR APPROVAL OF AN INTERCONNECTION
AGREEMENT BETWEEN QWEST CORPORATION (“QWEST”) AND
NETTALK.COM, INC. (“NETTALK”). CASE NO. QWE-T-09-6.

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 April 7, 2009, this Commission received a new Interconnection Agreement between Qwest Corporation and NetTalk.Com, Inc. (“NetTalk”) in Case No. QWE-T-09-6.

During its review Staff noticed that the Performance Assurance Plan (PAP) (Exhibit K) was not included as part of the Agreement. The PAP is a two-tiered, self-executing remedy plan that was implemented to ensure that once Qwest was granted approval to offer in-region long distance service under Section 271 of the Telecommunications Act of 1996, that it would also provide quality service to competitive local exchange carriers (CLECs) to whom it provided interconnection and other products and services. The PAP provides for penalty payments should the Company miss certain measurements set out for the Performance Indicator Definitions (PIDs) (Exhibit B).

The PIDs are contained in Exhibit B of the Interconnection Agreements between Qwest and the CLECs and set out specific measurements and benchmarks that Qwest must meet when interconnecting with competitors. If Qwest should miss a PID measurement, then there is a subsequent PAP payment assessed for each violation.

Originally each of the Exhibits B and K were a part of Qwest's Statement of Generally Available Terms and Conditions (SGAT). The PIDs and the PAP played a critical role in the Section § 271 requirement for Qwest's FCC approval to offer in-region long distance services. On March 17, 2009, this Commission issued Order No. 30750 in Case No. QWE-T-08-4 granting Qwest's petition to withdraw its SGAT, but directed that:

Withdrawal of the SGAT **does not affect any of the exhibits to the SGAT**, including Exhibit A (price list), Exhibit B (PIDs) and Exhibit K (PAP). We direct Qwest, consistent with its stated commitment, to continue to abide by the terms of the SGAT exhibits until such time as the Commission approves their removal, substitution or amendment.¹ (Emphasis added).

Staff initially was informed that NetTalk had "opted out of Exhibit K." Qwest offered to prepare a standardized letter for these instances where CLECs chose to decline the Exhibit K.

On April 8, 2009, Staff contacted NetTalk to confirm that the company's intent was to opt-out out of the PAP and explained what the PAP was and how it worked in conjunction with the PIDs (Exhibit B). NetTalk subsequently forwarded an e-mail to Qwest stating that, "It is not our intention to opt out of Exhibit K. Please provide us with that Exhibit so that it may be sent to the Idaho PUC." NetTalk also requested that the Exhibit B be included in all of its Qwest state filings. On May 8, 2009, Qwest filed to amend the Application between the companies.

¹ Idaho Public Utilities Commission Order No. 30750, March 17, 2009.

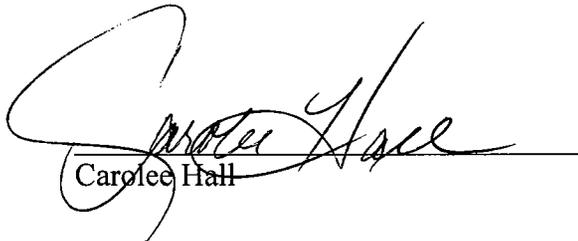
STAFF ANALYSIS

Staff has reviewed the Application, the amendment to the Application that contains the PAP along with all remaining exhibits to the Agreement between the parties. Staff finds that the interconnection agreement between Qwest and NetTalk does not appear to contain any terms or conditions that may be considered discriminatory or contrary to the public interest. Staff believes that with the inclusion of both Exhibits B and K the public interest requirement is satisfied between Qwest's wholesale products it offers to NetTalk and those products it provides to itself.

Staff further believes that the interconnection agreement, along with all exhibits, is now consistent with the pro-competitive policies of this Commission, the Idaho Statutes, and the federal Telecommunications Act of 1996. Accordingly, Staff believes that the Agreement merits the Commission's approval.

COMMISSION DECISION

Does the Commission wish to approve the Interconnection Agreement?



Carolee Hall

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