

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
QWEST CORPORATION FOR APPROVAL ) CASE NO. QWE-T-09-16  
OF ITS INTERCONNECTION AGREEMENT )  
WITH SILVER STAR TELEPHONE )  
COMPANY, INC. PURSUANT TO 47 U.S.C. § )  
252(e) ) ORDER NO. 30953  
\_\_\_\_\_ )**

In this case the Commission is asked to approve an Interconnection Agreement between Qwest Corporation and Silver Star Telephone Company, Inc. With this Order, the Commission approves the parties' Interconnection Agreement.

**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.

**THE APPLICATION**

On September 3, 2009, Qwest filed an Application seeking approval of its Interconnection Agreement with Silver Star. On November 10, 2009, Qwest filed an Amendment to its Application to include Exhibit K, Performance Assurance Plan (PAP), which was previously omitted from its Application. The PAP provides assurances that Qwest will meet its Service Performance Indicators (PIDs) (Exhibit B), and if Qwest fails to meet its measurements, the PAP provides for penalty payments payable to the competitive local exchange carrier (CLEC) and other companies entering into an interconnection agreement with Qwest.

## STAFF ANALYSIS AND RECOMMENDATION

Staff reviewed the Amended Application and did not find any terms or conditions that it considers to be discriminatory or contrary to the public interest. Staff believes that the amended Agreement is consistent with the public interest as identified in the pro-competitive policies of this Commission, the Idaho Legislature, and the federal Telecommunications Act of 1996. Accordingly, Staff recommended that the Commission approve the Agreement.

In its initial review of the Application, Staff discovered that Exhibit K, Qwest's Performance Assurance Plan (PAP), had been omitted from the proposed Agreement. Staff noted that Qwest has recently filed five Interconnection Agreements where Exhibit K has been intentionally left blank. In four of those cases, the CLECs, once informed by Staff of the missing Exhibit K, subsequently requested that Qwest include the PAP in the Agreement.

The Staff recommended that the Commission remind Qwest of its obligations to offer both the PIDs and the PAP consistent with Commission Order No. 30750.

## 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.*

Previously, the Commission issued an Order granting Qwest's Motion to Withdraw its Statement of Generally Available Terms and Conditions (SGAT) in Idaho. *See* Order No. 30750. In that case, QWE-T-08-04, the Commission allowed Qwest to bifurcate the removal of the SGAT from the PIDs and the PAP because Qwest specifically vowed to continue its PAP and PID obligations if the Commission allowed the withdrawal of the SGAT:

If the Commission grants Qwest's request to withdraw the SGAT, Qwest will continue to make the PAP (presently designated as SGAT Exhibit K) and the PIDs (Exhibit B) available to CLECs on the same terms they are available today until Qwest is given authority to withdraw, amend or substitute an alternative(s) for said PAP and PIDs.

*Id.* at 2 (citing Qwest Motion to Bifurcate, p. 5). Thus, the Commission ordered that "withdrawal of the SGAT shall not alter the status and effectiveness of the exhibits to the SGAT including Exhibit A (price list), Exhibit B (PIDs) and Exhibit K (PAP)." Order No. 30750 at 9.

The Commission orders Qwest to include a copy of its PAP and PIDs (SGAT Exhibits B and K) with each application for approval of an Interconnection Agreement. Qwest shall be exempted from this requirement if it can demonstrate that, as a result of open and fair negotiations, the contracting CLEC has knowingly waived the inclusion of the PAP. A signed statement by the contracting CLEC indicating that it has been fully apprised of the content and purpose of the PAP shall be sufficient evidence to demonstrate the CLEC's waiver of this requirement.

Based upon our review of the Application and Staff's recommendation, the Commission finds that the Agreement is consistent with the public interest, convenience and necessity and does not discriminate. Therefore, the Commission finds that the Agreement should be approved subject to the aforementioned requirements. Approval of this Agreement does not negate the responsibility of either party to this Agreement 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**

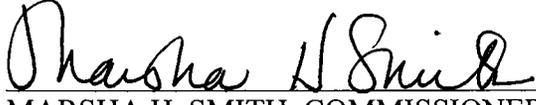
IT IS HEREBY ORDERED that the Interconnection Agreement between Qwest Corporation and Silver Star Telephone Company, Inc., Case No. QWE-T-09-16, is approved.

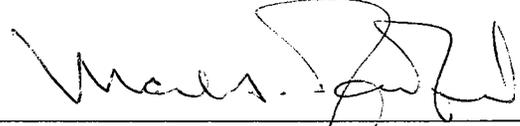
IT IS FURTHER ORDERED that Qwest shall include a copy of its Performance Assurance Plan with each application for approval of an Interconnection Agreement. In lieu of the inclusion of the Performance Assurance Plan, the Company may include a signed statement by the contracting CLEC demonstrating that the CLEC has been fully informed of both the content and purpose of the Performance Assurance Plan and has knowingly waived its inclusion as part of the Interconnection Agreement.

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 25<sup>th</sup>  
day of November 2009.

  
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JIM D. KEMPTON, 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

O:QWE-T-09-16\_np