

DECISION MEMORANDUM

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

FROM: CAROLEE HALL

DATE: NOVEMBER 6, 2009

RE: APPLICATION FOR APPROVAL OF AN INTERCONNECTION
AGREEMENT BETWEEN QWEST CORPORATION ("QWEST") AND
SILVERSTAR TELEPHONE COMPANY, INC. ("SILVER STAR").
CASE NO. QWE-T-09-16.

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

An Agreement between Qwest and Silver Star, Case No. QWE-T-09-16, was filed September 3, 2009. During its review Staff noticed that the Performance Assurance Plan (PAP),

or Exhibit K, was intentionally left blank. The PAP provides assurances that Qwest meets its Service Performance Indicators (PIDs) (Exhibit B), and if Qwest fails to meet its measurements, the PAP provides penalty payments to the CLEC and other companies that enter into an interconnection agreement with Qwest.

On March 17, 2009, the Commission issued its Order granting Qwest's Motion to Withdraw its Statement of Generally Available Terms and Conditions (SGAT) in Idaho. The PAP and its performance indicator definitions (PIDs) were exhibits of Qwest's SGAT. The Commission allowed Qwest to bifurcate the removal of the SGAT from the PIDs and the PAP. In its Responsive Comments, p. 2, in Case QWE-T-08-04, Qwest committed 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."**¹ Emphasis added. The Commission did not approve the removal, substitution or amendment to the exhibits and in fact, directed 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)" and maintained that Qwest is to continue to provide the exhibits until such time this Commission, or the FCC upon Qwest's petition, relieves Qwest of this obligation. Emphasis Added. The Commission's directive to include the PIDs and PAP still stands. Since then, Qwest has filed five interconnection agreements where it has "intentionally left blank" the Performance Assurance Plan (Exhibit K). In each case Staff contacted the other companies to inquire about this omission in every case the companies were not aware of the PAP or its function as it relates to the PIDs. In four out of the five cases, the CLECs subsequently requested that Qwest include the PAP in the agreement. This has resulted in amended filings by Qwest.

On September 9, 2009, Staff contacted Qwest to inquire as to why the PAP had been omitted from the Silver Star Agreement. Qwest stated that the company "opted out" of the PAP. Staff contacted Silver Star to determine if the company was aware of the PAP and its purpose,

¹ Idaho Public Utilities Commission Order No. 30750, Case No. QWE-T-08-04

and briefly explained how the PAP and the PIDs worked in conjunction with one another.² On September 18th Silver Star contacted Qwest and requested that the PID and PAP be included in its interconnection agreement.

Through the month of October Staff contacted Qwest six times requesting the amended agreement that Silver Star had requested. On November 4th Silver Star told Staff that a signed copy was sent to Qwest on October 5th. Silver Star had to prepare a second amendment because of the loss of the first amendment, and that was done on October 30, 2009. Silver Star faxed the October 30th amendment to Staff. On November 4th Staff contacted Qwest to ask if the faxed amendment could be used for this decision memo, and Qwest had no objections.

STAFF ANALYSIS

In its final Order No. 30750 this Commission stated 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).” Staff recommends the Commission remind Qwest that this Order and directive still stand and that the exhibits are to be included in ALL interconnection agreements until such time as this Commission, or the FCC upon Qwest’s petition, relieves Qwest of this obligation.

Staff has reviewed the Amended Application between Silver Star and Qwest and does not find any terms or conditions that it considers to be discriminatory or contrary to the public interest. Staff believes that now that the PAP is included the Agreement is complete and 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.

STAFF RECOMMENDATION

Because the Amended Agreement between Silver Star and Qwest is consistent with the public interest Staff believes that the Agreement merits the Commission’s approval. For future Qwest filings, Staff recommends that Qwest be reminded that the PAP and PIDs are to be included with their Interconnection Agreements. If the parties knowingly negotiate terms to

² The Performance Assurance Plan (PAP) and accompanying Performance Indicator Definitions (PIDs) provides measures and subsequent penalties for missed measures to assure that Qwest has incentives to maintain high interconnection standards so that the local service market remains open to competitors. It also maintains parity between Qwest and the competitive providers.

exclude the PAP, a statement signed by the CLEC indicating knowledge of the PAP and its purpose must be included with each Application.

COMMISSION DECISION

Does the Commission agree with Staff's recommendation?



Carolee Hall

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