

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION</b>	)	
<b>OF QWEST CORPORATION FOR</b>	)	<b>CASE NO. QWE-T-10-01</b>
<b>APPROVAL OF ITS INTERCONNECTION</b>	)	
<b>AGREEMENT WITH INTRADO</b>	)	
<b>COMMUNICATIONS, INC. PURSUANT TO</b>	)	<b>ORDER NO. 31051</b>
<b><u>47 U.S.C. § 252(e)</u></b>	)	

In this case the Commission is asked to approve an Interconnection Agreement between Qwest Corporation and Intrado Communications, Inc. With this Order, the Commission approves the Interconnection Agreement.

**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 APPLICATION**

On March 23, 2010, Qwest submitted an Application for approval of its Interconnection Agreement with Intrado. Staff’s review of the Application revealed that the Performance Assurance Plan (PAP) section of the Agreement was left blank. The PAP provides assurances that Qwest will meet its Service Performance Indicators (PIDs), 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. Staff then recounted the history

surrounding Qwest's Motion to Withdraw its Statement of Generally Available Terms and Conditions (SGAT) in Idaho, QWE-T-08-04, including the PAP and PIDs exhibits. The Commission has allowed Qwest to remove the SGAT from its interconnection agreements. In doing so, the Commission declared that the removal 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)." *See* Order No. 30750.

Staff noted that since the Commission's Order Qwest has continued to leave the Exhibit K section of its interconnection agreements blank. Staff contacted Qwest and Intrado regarding the omission. Pursuant to Commission Order No. 30953, Staff sought verification from Intrado that it "knowingly waived" the inclusion of the PAP as part of its Interconnection Agreement. Intrado informed Staff that it had contacted Qwest and advised the Company that it would like the PAP to be part of their Agreement. On April 2, 2010, Staff received Exhibit K and it was incorporated into the Interconnection Agreement.

#### **STAFF RECOMMENDATION**

Staff reviewed the Application and does not find any terms or conditions that it considers to be discriminatory or contrary to the public interest. Staff recommended that the Commission remind Qwest of its obligation to provide the PAP and PIDs, or an appropriate waiver demonstrating that the CLEC was apprised of the purpose of the PAP, in all of its interconnection agreements with CLECs.

Staff believes that the Agreement is consistent with the pro-competitive policies of this Commission, the Idaho Legislature, and the federal Telecommunications Act. Accordingly, Staff recommended that the Commission approve Qwest's Interconnection Agreement with Intrado.

#### **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.*

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. 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.

Additionally, the Commission admonishes Qwest to adhere to the Commission's unequivocal mandate to include Exhibit K, or 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[.]" in all of its Interconnection Agreement filings with the Commission. Order No. 30953. A continued failure to comply with the Commission's Orders regarding this matter may subject future applications to additional delays and elicit appropriate sanctions from the Commission.

### **ORDER**

IT IS HEREBY ORDERED that the Interconnection Agreement between Qwest Corporation and Intrado Communications, Inc., Case No. QWE-T-10-01, is approved.

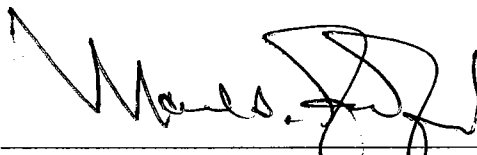
IT IS FURTHER ORDERED that Qwest shall include Exhibit K (PAP), or a signed statement by the contracting CLEC demonstrating that the CLEC has been fully informed of both the content and purpose of the Performance Assurance Plan and has knowingly waived its inclusion as part of the interconnection agreement, in all future applications for approval of an 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.

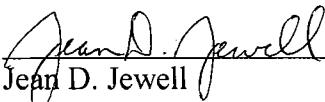
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 16<sup>th</sup>  
day of April 2010.

  
JIM D. KEMPTON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
MACK A. REDFORD, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

O:QWE-T-10-01\_np