

## DECISION MEMORANDUM

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

**FROM:** CAROLEE HALL

**DATE:** APRIL 7, 2010

**RE:** APPLICATION FOR APPROVAL OF AN INTERCONNECTION  
AGREEMENT BETWEEN QWEST CORPORATION (“QWEST”)  
AND INTRADO COMMUNICATIONS, INC. (“INTRADO”).  
CASE NO. QWE-T-10-01.

### 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.

### APPLICATION

An Agreement between Qwest and Intrado, Case No. QWE-T-10-01, was filed March 23, 2010. 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.

### **BACKGROUND OF PID AND PAP REQUIREMENTS**

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."<sup>1</sup> 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 consistently continued to "intentionally leave blank" the Exhibit K.

### **CURRENT APPLICATION REVIEW**

On March 26 and 29, 2010, Staff contacted Qwest regarding the omission of the Exhibit K with the Intrado filing. Also on March 29, 2010, Staff contacted Intrado to investigate if the Company had intended to exclude the Performance Assurance Plan (Exhibit K). Staff's inquiry into the intentional omission of Exhibit K was pursuant to Commission Order No. 30953 in Case No. QWE-T-09-16. In that case the Commission, in an attempt to remind Qwest of its previous

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

order stated 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".<sup>2</sup>

### **STAFF ANALYSIS**

On March 31, 2010, Staff was contacted by Intrado and informed that the Company wanted the Exhibit K included in its Interconnection Agreement. On April 1, 2010, Intrado contacted Staff to confirm that it had instructed Qwest to put the Exhibit K into the Interconnection Agreement in Idaho and other Qwest states where it had also been excluded in those filings. Staff received the Exhibit K on April 2, 2010.

Staff has now completed its review of the Application, along with the added Exhibit K, between Intrado 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 the Agreement comports with the Commission's order to include the PIDs and PAP. Therefore, 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**

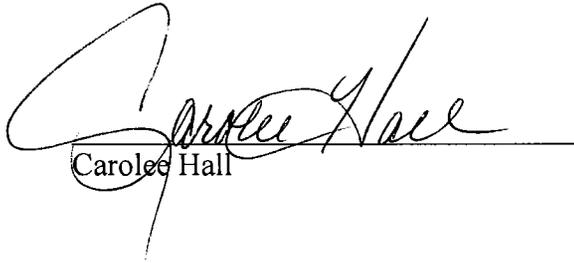
Because the Agreement between Intrado and Qwest is now consistent with the public interest, Staff believes that the Agreement merits the Commission's approval. For future Qwest filings, Staff recommends once again, that Qwest be reminded that the PAP and PIDs are to be included with their Interconnection Agreements and if the parties knowingly negotiate terms to exclude the PAP, a statement signed by the CLEC indicating knowledge of the PAP and its purpose must be included with each Application.

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<sup>2</sup> Case No. QWE-T-09-16, Order No. 30953, In The Matter of the Application of Qwest Corporation for Approval of its Interconnection Agreement with Silver Star Telephone Company, Inc.

**COMMISSION DECISION**

Does the Commission agree with Staff's recommendation?



Carolee Hall

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