

DECISION MEMORANDUM

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

FROM: CAROLEE HALL

DATE: DECEMBER 10, 2008

**RE: APPLICATION FOR APPROVAL OF AMENDMENT TO THE
INTERCONNECTION AGREEMENT BETWEEN AMERICAN FIBER
SYSTEMS INC. (fka: IDACOMM Inc) AND QWEST CORPORATION
(fka: U S WEST) ; CASE NO. USW-T-00-17.**

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

On November 17, 2008, Qwest and American Fiber Systems Inc., in Case No. USW-T-00-17, filed an amendment to its original Interconnection Agreement that was initially approved by this Commission. The current amendment between the parties provides for the

adoption of the Qwest Local Services Platform Agreement (“QLSP”). The QLSP, as adopted by American Fiber Systems, is a replacement of Qwest’s Statement of Generally Available Terms and Conditions (SGAT). The QLSP does set out rates, terms and conditions for interconnection and the purchase of certain network facilities.

STAFF ANALYSIS

Staff has reviewed the Application and does not find any terms or conditions that it considers to be discriminatory or contrary to the public interest. The Application states that the amendment was reached through voluntary negotiations without resort to mediation or arbitration therefore, Staff believes that this 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 believes that the Agreement merits the Commission’s approval.

COMMISSION DECISION

Does the Commission wish to approve this Interconnection Agreement?



Carolee Hall

i:udmemos/USW-T-00-17 Qwest Corporation and American Fiber Systems Inc. (fka: IDACOMM Inc)