

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT)
APPLICATION OF QWEST CORPORATION) **CASE NO. USW-T-99-3**
AND DIECA COMMUNICATIONS dba)
COVAD COMMUNICATIONS COMPANY)
FOR APPROVAL OF AN AMENDMENT TO)
AN EXISTING WIRELINE) **ORDER NO. 29760**
INTERCONNECTION AGREEMENT)
PURSUANT TO 47 U.S.C. § 252(e))

In this case the Commission is asked to approve the amendment of an interconnection agreement between Qwest Corporation and DIECA Communications, Inc. dba Covad Communications Company. With this Order the Commission approves the Agreement.

BACKGROUND

Under the provisions 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 CURRENT APPLICATION

The Application states that the Agreement between the parties was reached through voluntary negotiations without resort to mediation, and that the parties are jointly submitting their agreement to the Commission seeking its approval. The Agreement amends the terms, conditions, and rates for Batch Hot Cut processes. It also removes UNE-P, Enterprise and Mass Market Switching, and Shared Transport.

STAFF RECOMMENDATION

Staff has reviewed the Application and does not find any terms or conditions to be discriminatory or contrary to the public interest. Staff believes that the Application is consistent with the pro-competitive policies of this Commission, the Idaho Legislature, and the federal Telecommunications Act of 1996. Accordingly, Staff recommended Commission approval of the Agreement.

COMMISSION DECISION

Under the terms of the Telecommunications Act, interconnection agreements 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 the 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. However, approval of this Agreement does not negate the responsibility of either of the parties 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 amended interconnection agreement between Qwest Corporation and DIECA Communications, Inc. dba Covad Communications Company, Case No. USW-T-99-3, as discussed above, is approved.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in 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.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 20th
day of April 2005.



PAUL KJELLANDER, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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