

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
LEGAL
WORKING FILE

FROM: CAROLEE HALL

DATE: APRIL 14, 2005

RE: MARCH 18, 2005 FILING AS A JOINT APPLICATION OF QWEST CORPORATION (QWEST) AND DIECA COMMUNICATIONS, INC. dba COVAD COMMUNICATIONS COMPANY FOR APPROVAL OF A WIRELINE INTERCONNECTION AGREEMENT PURSUANT TO 47 U.S.C. § 252(E); CASE NO. USW-T-99-03.

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

Qwest and COVAD's Application for Approval of the Amendment to the Interconnection Agreement ("Amendment"), which was approved by the Idaho Public Utilities Commission on April 22, 1999 (the "Agreement").

The Application for Approval of Amendment to the interconnection Agreement between Qwest and COVAD states that the parties are jointly filing and that this Amendment was reached through voluntary negotiations without resort to mediation. The Agreement amends the terms, conditions and rates for Batch Hot Cut processes set forth in Attachment A and incorporated into this filing. It also removes UNE-P, Enterprise and Mass Market Switching and Shared Transport from Interconnection Agreement(s) in accordance with, according to Qwest, "certain regulatory uncertainty in light of the DC Circuit Court's decision in United States Telecom Association v. FCC, 359 F.3d 554 (March 2, 2004), with respect to the future existence, scope, and nature of Qwest's obligation to provide such UNE-P arrangements under the Communications Act (the "Act")".

STAFF ANALYSIS AND RECOMMENDATION

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

COMMISSION DECISION

Does the Commission agree?


Carollee Hall

i:\udmemosUSW-T-99-3 Qwest and COVAD March 18, 2005 filing