

**PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: August 17, 2004**

**Upon Filing with the
Secretary of State of
Oregon**

REGULAR	<u>X</u>	CONSENT	EFFECTIVE DATE	
DATE:			July 30, 2004	
TO:			Commissioners Beyer, Baum, and Savage	
FROM:			Michael Grant, Administrative Law Judge	
REVIEWED BY:			Terry Lambeth, Rules Project Leader	
SUBJECT:			<u>AR 485</u> : Adopt Temporary Rules to Allow for the Approval of Promotional Offerings that would Modify the Terms of an Existing Carrier-to-Carrier Agreement approved under Section 252(e) of the Telecommunications Act of 1996.	

ADMINISTRATIVE LAW JUDGE RECOMMENDATION:

Amend existing OAR 860-016-0020 and adopt proposed OAR 860-016-0021 to allow the approval of promotional offerings consistent with Section 252(e) of the Telecommunications Act of 1996. The temporary rules will become effective upon filing with the Secretary of State and will remain in effect for a maximum of 180 days. A permanent rulemaking (AR 486) will proceed during the effective dates of the temporary rulemaking.

DISCUSSION:

Section 252(e) of the Telecommunications Act of 1996 (Act) requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval by a State commission. In Oregon, OAR 860-016-0020 governs the review and approval of these agreements. Among other things, that rule provides that the Commission will give notice of such filings and allow interested persons an opportunity to file written comments. This process helps ensure that any filing does not discriminate against other carriers who are not parties to the agreement.

Recently, Qwest Communications (Qwest) has been offering promotional discounts to competitive local exchange carriers (CLEC). These offers, if accepted by a CLEC, modify the terms of an existing interconnection agreement. Consequently, Qwest and

any accepting CLEC must file amendments to existing agreements to incorporate the terms of the promotion.

Due to the nature of these promotions, however, Qwest and accepting CLECs have been unable at times to submit such an amendment for approval prior to the expiration of the offering. This is problematic, because an interconnection agreement or amendment thereto has no effect or force until approved by a state Commission. See 47 U.S.C. Sections 252 (a) and (e).

To address this problem, temporary rules are proposed to establish a process by which Qwest and other carriers may seek, in essence, preapproval of promotional offerings. Under the provisions of the temporary rules, a carrier intending to provide a wholesale promotion must provide the Commission notice of the offering at least 15 days prior to the effective date of the promotion. The notice shall include (1) the language used to describe the promotion, (2) the terms and conditions to be used for the promotional offering, and (3) a description of the means used to notify carriers of the promotion. Following notice of an opportunity for public comment, the Commission will acknowledge the promotional offering unless it finds that the offering, if filed as an amendment to an interconnection agreement, would be subject to rejection under existing rules.

OAR 860-016-0020 should be modified, and OAR 860-016-0021 should be adopted immediately to help promote the development of competitive markets by allowing carriers the ability to provide promotional offerings in a manner consistent with Section 252(e) of the Act. Qwest wants to continue to make promotional offerings, and has plans to do so in the near future. Without the adoption of these temporary rules, Qwest would be required to wait until a formal rulemaking process is completed—a process which could take up to six months. Such a result would harm Qwest and CLECs, and possibly delay competitive choices to telecommunications service customers.

Attached to this memo are: 1) a draft order adopting the temporary rules; and 2) a Statement of Need and Justification for the Temporary Rules.

PROPOSED COMMISSION MOTION:

Temporary rules be adopted to allow for the approval of promotional offerings consistent with Section 252(e) of the Telecommunications Act of 1996.

ORDER NO. DRAFT

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 485

In the Matter of a Temporary Rule to)
Allow for the Approval of Promotional)
Offerings that would Modify the Terms of)
an Existing Carrier-to-Carrier Agreement)
approved under Section 252(e) of the)
Telecommunications Act of 1996.)
(Amending OAR 860-016-0020 and)
Creating OAR 860-016-0021.))

ORDER

DISPOSITION: TEMPORARY RULES ADOPTED

Section 252(e) of the Telecommunications Act of 1996 (Act) requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval by a State commission. In Oregon, OAR 860-016-0020 governs the review and approval of these agreements. Among other things, that rule provides that the Commission will give notice of such filings and allow interested persons an opportunity to file written comments. This process helps ensure that any filing does not discriminate against other carriers who are not parties to the agreement.

Recently, Qwest Communications (Qwest) has been offering promotional discounts to competitive local exchange carriers (CLEC). These offers, if accepted by a CLEC, modify the terms of an existing interconnection agreement. Consequently, Qwest and any accepting CLEC must file amendments to existing agreements to incorporate the terms of the promotion.

Due to the nature of these promotions, however, Qwest and accepting CLECs have been unable at times to submit such an amendment for approval prior to the expiration of the offering. On numerous occasions, we have cautioned carriers to file agreements and amendments prior to the stated effective date and well before the termination date. Otherwise, the carriers would be operating under the negotiated terms without Commission approval. As we have noted on numerous occasions, an interconnection agreement or amendment thereto has no effect or force until approved by a state Commission. *See* 47 U.S.C. Sections 252 (a) and (e). Moreover, such conduct could be discriminatory if no other carriers had access to the unapproved agreement or amendment.

ORDER NO. DRAFT

To address this problem, temporary rules are proposed to establish a process by which Qwest and other carriers may seek, in essence, preapproval of promotional offerings. Under the provisions of the temporary rules, a carrier intending to provide a wholesale promotion must provide the Commission notice of the offering at least 15 days prior to the effective date of the promotion. The notice shall include (a) the language used to describe the promotion, (2) the terms and conditions to be used for the promotional offering, and (3) a description of the means used to notify carriers of the promotion. Following notice of an opportunity for public comment, the Commission will acknowledge the promotional offering unless it finds that the offering, if filed as an amendment to an interconnection agreement, would be subject to rejection under existing rules.

Those rules should be adopted immediately to help promote the development of competitive markets by allowing carriers the ability to provide promotional offerings in a manner consistent with Section 252(e) of the Act. Qwest wants to continue to make promotional offerings, and has plans to do so in the near future. Without the adoption of these temporary rules, Qwest would be required to wait until a formal rulemaking process is completed—a process which could take up to six months. Such a result would harm Qwest and CLECs, and possibly delay competitive choices to telecommunications service customers.

IT IS ORDERED that temporary rules OARs 860-016-0020 and 860-016-0021, to allow the approval of promotional offerings, are adopted.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may appeal this order to a court pursuant to applicable law.

OAR 860-016-0020

Agreements Arrived at through Negotiation

(1) Upon receiving a request for interconnection, services, or network elements pursuant to Section 251 of the Act, the affected telecommunications carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier.

(2) The negotiating parties may ask a mediator outside the Commission to help them reach agreement. If they request the Commission to mediate, the Commission will use an Administrative Law Judge (ALJ) or a member of the utility Staff to mediate. Only the negotiating parties and the mediator will participate in mediation sessions.

(3) After the parties reach agreement under Section 252(a) of the Act, they shall file an application with the Commission seeking approval of the agreement, or for approval of an amendment to an approved agreement on file with the Commission. The application shall include an original plus ~~three~~ **two** copies of the negotiated agreement and a completed Carrier-to-Carrier Agreement Checklist. A copy of the checklist is available on the Commission's Internet website. The parties may also include any other supporting information with their application.

(4) The negotiating parties shall also submit a copy of the negotiated agreement and a copy of the checklist in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. The electronic copy may be an unsigned version of the negotiated agreement. The Commission will provide notice of the application by posting the checklist and the agreement on its Internet website.

(5) **Except as provided in OAR 860-016-0021,** ~~t~~The public may file written comments within 21 days of the filing date of the application, unless the Commission establishes a different time limit in an individual case.

(6) The Commission will accept or reject the agreement within 90 days, with written findings as to any deficiencies. The grounds for rejection are that the agreement:

(a) Discriminates against a carrier not a party to the agreement; or

(b) Is not consistent with the public interest, convenience, and necessity. Applicable Commission policies will be a factor in public interest, convenience, and necessity determinations.

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98; PUC 25-2001, f. & cert. ef 11-5-01; PUC 6-2002, f. & cert. ef. 2-13-02

OAR 860-016-0021

Wholesale Promotions

(1) A carrier intending to provide a wholesale promotion that would modify the terms of existing carrier-to-carrier agreements must provide the Commission notice of the offering at least 15 days prior to the effective date of the promotion. The notice shall include:

(a) Language used to describe the promotion;

(b) The terms and conditions to be used for the promotional offering; and

(c) A description of the means used to notify carriers of the promotion.

(2) The carrier shall file an original plus two copies of the notice and a completed Carrier-to-Carrier Agreement Checklist. The carrier shall also submit a copy of the notice and checklist in electronic format compatible with Adobe Acrobat Reader or Rich Text Format. The Commission will post the notice and checklist on its Internet website.

(3) The public may file written comments on the promotional offering within 10 days of the filing date of the notice, unless the Commission establishes a different time limit in an individual case.

(4) The Commission will acknowledge the promotional offering unless it finds that the offering, if filed as an amendment to an interconnection agreement, would be subject to rejection under OAR 860-016-0020(6).

(5) If another carrier accepts the promotional offering, the carrier offering the promotion and the accepting carrier shall file any required amendment to an existing carrier-to-carrier agreement for approval pursuant to OAR 860-016-0020. Any such amendment entered into during the identified promotional period and submitted for Commission approval within 10 days of execution will be deemed timely filed.

(6) The Commission will accept or reject an amendment adopting the terms of the promotional offering within 10 days, pursuant to standards set forth in OAR 860-016-0020.

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: 47 USC 252

Hist.: NEW