

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Request of)	DOCKET NO. UT-003047
)	
AMERICAN FIBER NETWORK,)	
INC.,)	
)	
and)	
)	
QWEST CORPORATION)	
)	
For Approval of Negotiated)	ORDER APPROVING
Agreement Under the)	NEGOTIATED FIRST AMENDED
Telecommunications Act of 1996.)	AGREEMENT
.....)	

BACKGROUND

1 This matter comes before the Washington Utilities and Transportation Commission (Commission) for approval of a negotiated First Amended Agreement under the Telecommunications Act of 1996 (Telecom Act). The First Amended Agreement is between American Fiber Network, Inc., (AFN) and Qwest Corporation (Qwest). The Commission approved a joint request of AFN and Qwest for approval of an interconnection agreement between the parties on June 16, 2000. The Commission ordered that in the event the parties amended their agreement in the future, that amended agreement would be deemed a new agreement under the Telecommunications Act of 1996 and must be submitted to the Commission for approval. On February 4, 2004, the parties filed a joint request for approval of a First Amended Agreement.

FINDINGS AND CONCLUSIONS

2 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate public service companies, including

telecommunications companies. *RCW 80.01.040; Chapter 80.04 and Chapter 80.36 RCW.*

- 3 (2) Section 252(e)(1) of the Telecom Act requires parties to a negotiated
agreement to submit the agreement to the Commission for approval.
Section 252(e)(2)(A) states that the Commission may only reject an
agreement (or any portion thereof) adopted by negotiation if it finds that:
- 4 (i) the agreement (or any portion thereof) discriminates against a
telecommunications carrier not a party to the agreement; or
- 5 (ii) the implementation of such agreement or portion is not consistent
with the public interest, convenience, and necessity.
- 6 (3) Qwest is engaged in the business of furnishing telecommunications
services including, but not limited to, basic local exchange service within
the state of Washington.
- 7 (4) AFN is authorized to provide telecommunications services to the public in
the state of Washington.
- 8 (5) The Commission approved an interconnection agreement between the
parties on June 16, 2000. The Commission ordered that in the event the
parties amended their agreement in the future, that amended agreement
would be deemed a new agreement under the Telecommunications Act of
1996 and must be submitted to the Commission for approval.
- 9 (6) On February 4, 2004, the parties filed a joint request for approval of a First
Amended Agreement.

- 10 (7) The First Amended Agreement between AFN and Qwest was brought before the Commission at its regularly scheduled meeting on March 31, 2004.
- 11 (8) AFN and Qwest voluntarily negotiated the entire First Amended Agreement.
- 12 (9) The First Amended Agreement does not discriminate against any other telecommunications carrier.
- 13 (10) The First Amended Agreement is intended by the parties to give contractual effect to the Federal Communications Commission's (FCC) August 21, 2004, Triennial Review Order (TRO). *Amended Agreement at 1.* The parties' statements purporting to interpret the TRO are not binding on the Commission. There is a docket before the Commission (Docket No. UT-033044) in which the Commission anticipates addressing issues related to the TRO. That docket is pending. The Commission issued an order suspending those proceedings indefinitely on March 3, 2004. *Order No. 14 Granting Qwest Motion to Suspend Proceedings Indefinitely; Canceling Procedural Schedule, March 3, 2004.*
- 14 (11) The First Amended Agreement is consistent with the public interest, convenience, and necessity.
- 15 (12) The First Amended Agreement meets the requirements of Sections 251 and 252 of the Telecom Act, including Section 252(e).
- 16 (13) The laws and regulations of the State of Washington and Commission Orders govern the construction and interpretation of the First Amended Agreement. The First Amended Agreement is subject to the jurisdiction of the Commission.

- 17 (14) After examination of the proposed First Amended Agreement filed by Qwest Corporation and AFN on February 11, 2004, and giving consideration to all relevant matters, the Commission finds the proposed First Amended Agreement should be approved.

ORDER

THE COMMISSION ORDERS:

- 18 (1) The First Amended Agreement between American Fiber Network, Inc., and Qwest Corporation, which the parties filed on February 11, 2004, is approved and effective as of the date of this Order.
- 19 (2) In the event that the parties revise, modify, or amend the First Amended Agreement approved in this Order, the revised, modified, or amended First Amended Agreement will be deemed to be a new agreement under the Telecommunications Act of 1996 and must be submitted to the Commission for approval, pursuant to 47 U.S.C. § 252(e)(1) and relevant provisions of state law, prior to taking effect.
- 20 (3) The laws and regulations of the State of Washington and Commission Orders govern the construction and interpretation of the First Amended Agreement. The First Amended Agreement is subject to the jurisdiction of the Commission.

The Commissioners, having determined this Order to be consistent with the public interest, directed the Secretary to enter this Order.

DATED at Olympia, Washington, and effective this 31st day of March, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary