

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

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| In the Matter of the Request of  | ) | DOCKET NO. UT-043015   |
|  | ) |  |
| ACN COMMUNICATION SERVICES,<br>INC.  | ) | ORDER NO. 02   |
|  | ) |  |
| and  | ) |  |
|  | ) |  |
| VERIZON NORTHWEST INC.   | ) |  |
|  | ) |  |
| For Approval of Negotiated Agreement<br>Under the Telecommunications Act of<br>1996<br>..... | ) | ORDER APPROVING FIRST<br>AMENDED AGREEMENT<br>CONCERNING PRICING |
|  | ) |  |

**BACKGROUND**

1 This matter comes before the Washington Utilities and Transportation Commission (Commission) for approval of a negotiated first amended agreement (First Amended Agreement) under the Telecommunications Act of 1996 (Telecom Act). The Agreement is between ACN Communication Services, Inc. (ACN), and Verizon Northwest Inc. (Verizon). The Commission approved an interconnection agreement between the parties on March 24, 2004. The parties filed a joint request for approval of the First Amended Agreement on February 26, 2004.

**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)     Verizon 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)     ACN 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 March 24, 2004. The Commission ordered that in the event the  
          parties amended their agreement, the amended agreement would be  
          deemed a new agreement under the Telecom Act and must be submitted  
          to the Commission for approval.

- 9 (6) On February 26, 2004, the parties filed with the Commission a joint request for approval of the first amendment to the previously approved interconnection agreement, pursuant to the Telecom Act.
- 10 (7) ACN and Verizon voluntarily negotiated the entire Agreement.
- 11 (8) The First Amended Agreement between ACN and Verizon was brought before the Commission at its regularly scheduled meeting on April 28, 2004.
- 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 ACN and Verizon on February 26, 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, concerning pricing, between ACN Communication Services, Inc. and Verizon Northwest Inc., which the parties filed on February 26, 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 agreement approved in this Order, the revised, modified, or amended agreement will be deemed to be a new agreement under the Telecom Act 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 28<sup>th</sup> day of April, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary