

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

In the Matter of the Request of	)	DOCKET NO. UT-960356
	)	
	)	ORDER NO. 18
XO WASHINGTON, INC.,	)	
	)	
and	)	
	)	
QWEST CORPORATION	)	
	)	
	)	ORDER APPROVING
For Approval of Negotiated	)	NEGOTIATED FOURTEENTH
Agreement Under the	)	AMENDED AGREEMENT
Telecommunications Act of 1996	)	CONCERNING PRICING
.....	)	

**BACKGROUND**

1 This matter comes before the Washington Utilities and Transportation Commission (Commission) for approval of a negotiated fourteenth amended agreement (Fourteenth Amended Agreements) under the Telecommunications Act of 1996 (Telecom Act). The Amended Agreement is between XO Washington, Inc., (XO) and Qwest Corporation (Qwest). The Commission approved an interconnection agreement between the parties on April 30, 1997, a first amended agreement on November 15, 1999, a second amended agreement on July 31, 2000, a third amended agreement on April 25, 2001, a fourth amended agreement on August 8, 2001, a fifth amended agreement on April 24, 2002, a sixth amended agreement on July 26, 2002, a seventh amended agreement on September 25, 2002, an eighth amended agreement on December 10, 2002, a ninth amended agreement on February 28, 2003, a tenth amendment on March 12, 2003, an eleventh amended agreement on August 13, 2003, a twelfth amended agreement on February 11, 2004, and a thirteenth amended agreement on February 25, 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. The parties filed a joint request for approval of a fourteenth amendment on April 12, 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 RCW 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) XO 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 April 30, 1997, a first amended agreement on November 15,

1999, a second amended agreement on July 31, 2000, a third amended agreement on April 25, 2001, a fourth amended agreement on August 8, 2001, a fifth amended agreement on April 24, 2002, a sixth amended agreement on July 26, 2002, a seventh amended agreement on September 25, 2002, an eighth amended agreement on December 10, 2002, a ninth amended agreement on February 28, 2003, a tenth amendment on March 12, 2003, an eleventh amended agreement on August 13, 2003, a twelfth amended agreement on February 11, 2004, and a thirteenth amended agreement on February 25, 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 April 12, 2004, the parties filed with the Commission a joint request for approval of a Fourteenth Amended Agreement to the previously approved interconnection agreement, pursuant to the Telecom Act.
- 10 (7) The Fourteenth Amended Agreement between XO and Qwest was brought before the Commission at its regularly scheduled meeting on April 28, 2004.
- 11 (8) XO and Qwest voluntarily negotiated the entire amendment.
- 12 (9) The Fourteenth Amended Agreement does not discriminate against any other telecommunications carrier.
- 13 (10) The Fourteenth 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 Fourteenth Amended Agreement is consistent with the public interest, convenience, and necessity.
- 15 (12) The Fourteenth 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 Fourteenth Amended Agreement. The Fourteenth Amended Agreement is subject to the jurisdiction of the Commission.
- 17 (14) After examination of the proposed Fourteenth Amended Agreement filed by XO and Qwest on April 12, 2004, and giving consideration to all relevant matters, the Commission finds the proposed Amended Agreement should be approved.

## ORDER

### THE COMMISSION ORDERS:

- 18 (1) The Fourteenth Amended Agreement, concerning pricing, between XO Washington, Inc., and Qwest Corporation, which the parties filed on April 12, 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 Fourteenth Amended Agreement. The Fourteenth 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 28th day of April, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary