

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

In the Matter of the Request of)	DOCKET NO. UT-043122
)	
ONFIBER CARRIER SERVICES, INC.)	ORDER NO. 01
)	
and)	
)	ORDER APPROVING
QWEST CORPORATION)	NEGOTIATED FIRST
)	AMENDED AGREEMENT
For Approval of Negotiated)	REMOVING PROVISIONS FOR
Agreement Under the)	CERTAIN UNBUNDLED
Telecommunications Act of 1996)	NETWORK ELEMENTS
.....)	

BACKGROUND

- 1 This matter comes before the Washington Utilities and Transportation Commission (Commission) for approval of a negotiated first amended agreement (Amended Agreement) under the Telecommunications Act of 1996 (Telecom Act). The Amended Agreement is between OnFiber Carrier Services, Inc. (OnFiber) and Qwest Corporation (Qwest).

- 2 On December 8, 2004, the parties filed a joint request that OnFiber receive all arrangements provided in an interconnection agreement previously approved by the Commission between Level 3 Communications, Inc., and Qwest in Docket UT-023042. The Commission accepted this request on December 29, 2004. On April 12, 2000, in Docket UT-990355 – Interpretive and Policy Statement regarding Section 252 (i) of the Telecom Act – the Commission concluded that amendments to original adopted agreements would be deemed new agreements under the Telecom Act and must be submitted to the Commission for approval. The parties filed a joint request for approval of a first amendment on December 8, 2004.

FINDINGS AND CONCLUSIONS

- 3 (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.
- 4 (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:
- 5 (i) the agreement (or any portion thereof) discriminates against a
telecommunications carrier not a party to the agreement; or
- 6 (ii) the implementation of such agreement or portion is not
consistent with the public interest, convenience, and necessity.
- 7 (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.
- 8 (4) OnFiber is authorized to provide telecommunications services to the
public in the state of Washington.
- 9 (5) On December 8, 2004, the parties filed with the Commission a joint
request that OnFiber receive all arrangements provided in an
interconnection agreement previously approved by the Commission
between Level 3 Communications, Inc., and Qwest in Docket
UT-023042. The Commission accepted this request on December 29,

2004. On April 12, 2000, in Docket UT-990355 – Interpretive and Policy Statement regarding Section 252(i) of the Telecom Act – the Commission concluded that amendments to original adopted agreements would be deemed new agreements under the Telecom Act and must be submitted to the Commission for approval.

- 10 (6) On December 8, 2004, the parties filed with the Commission a joint request for approval of a first amendment to the previously approved interconnection agreement, pursuant to the Telecom Act.
- 11 (7) OnFiber and Qwest voluntarily negotiated the entire amendment.
- 12 (8) The Amended Agreement between OnFiber and Qwest was brought before the Commission at its regularly scheduled meeting on January 26, 2005.
- 13 (9) The Amended Agreement does not discriminate against any other telecommunications carrier.
- 14 (10) The Amended Agreement is intended by the parties to give contractual effect to the parties' interpretations of the Federal Communications Commission's (FCC) Triennial Review Order¹, the US Court of Appeals USTA II Decision², and the FCC's Interim Rules³ without need for further amendment. *Amended Agreement at 1 and 2.* The

¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147, (effective October 2, 2003).

² *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (effective June 16, 2004).

³ *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC

Commission, in approving any fully-negotiated agreement, does not endorse any particular interpretation of these documents, nor does the Amended Agreement abrogate either the parties' filing obligation or their rights under the Telecom Act.

- 15 (11) The Amended Agreement will facilitate local exchange competition in the state of Washington.
- 16 (12) The Amended Agreement is consistent with the public interest, convenience, and necessity.
- 17 (13) The Amended Agreement meets the requirements of Sections 251 and 252 of the Telecom Act, including Section 252(e).
- 18 (14) The laws and regulations of the State of Washington and Commission Orders govern the construction and interpretation of the Amended Agreement. The Amended Agreement is subject to the jurisdiction of the Commission.
- 19 (15) After examination of the proposed Amended Agreement filed by Qwest and OnFiber on December 8, 2004, and giving consideration to all relevant matters, the Commission finds the proposed Amended Agreement should be approved.

ORDER

THE COMMISSION ORDERS:

- 20 (1) The Amended Agreement between OnFiber Carrier Services, Inc., and Qwest Corporation, which the parties filed on December 8, 2004, is approved and effective as of the date of this Order.
- 21 (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.
- 22 (3) The laws and regulations of the State of Washington and Commission Orders govern the construction and interpretation of the Amended Agreement. The 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 26th day of January, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary