

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

In the Matter of the Request for	)	DOCKET NO. UT-023021
Approval of Negotiated Agreement	)	
Under the Telecommunications Act	)	
of 1996 Between	)	
	)	
ATL COMMUNICATIONS, INC.,	)	
	)	
and	)	ORDER APPROVING
	)	NEGOTIATED THIRD AMENDED
QWEST CORPORATION	)	AGREEMENT
.....	)	

**BACKGROUND**

1 This matter comes before the Washington Utilities and Transportation Commission (Commission) for approval of a negotiated third amended agreement (Third Amended Agreement) under the Telecommunications Act of 1996 (Telecom Act). The Third Amended Agreement is between ATL Communications, Inc., (ATL), and Qwest Corporation (Qwest). On May 15, 2002, the parties filed a joint request that ATL receive all arrangements provided in an interconnection agreement previously approved by the Commission between MCImetro Access Transmission Services, LLC, (MCImetro), and U S WEST Communications, Inc., (U S WEST), in Docket UT-960310. The Commission accepted this request on May 24, 2002. On June 14, 2002, the Commission approved a First Amended Agreement. The Commission approved a Second Amended Agreement on September 25, 2002. 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 the Third Amended Agreement on February 4, 2004.

## FINDINGS AND CONCLUSIONS

- 2 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, and transfer of 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) ATL is authorized to provide telecommunications services to the public in the state of Washington.
- 8 (5) On May 15, 2002, the parties filed a joint request that ATL receive all arrangements provided in an interconnection agreement previously approved by the Commission between MCImetro Access Transmission Services, LLC, (MCImetro), and U S WEST Communications, Inc., (U S WEST), in Docket UT-960310. The Commission accepted this request on May 24, 2002. On June 14, 2002, the Commission approved a First Amended Agreement. The Commission approved a Second Amended Agreement on September 25, 2002. 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 4, 2004, the parties filed with the Commission a joint request for approval of a Third amended Agreement to the previously approved interconnection agreement, pursuant to the Telecom Act.
- 10 (7) The Third Amended Agreement between ATL and Qwest was brought before the Commission at its regularly scheduled meeting on March 31, 2004.
- 11 (8) ATL and Qwest voluntarily negotiated the entire amendment.
- 12 (9) The Third Amended Agreement does not discriminate against any other telecommunications carrier.
- 13 (10) The Third 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 Third Amended Agreement is consistent with the public interest, convenience, and necessity.
- 15 (12) The Third Amended Agreement meets the requirements of Sections 251 and 252 of the Telecommunications Act of 1996, 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 Third Amended Agreement. The Third Amended Agreement is subject to the jurisdiction of this Commission.

- 17 (14) After examination of the proposed Third Amended Agreement filed by Qwest Corporation and ATL Communications, Inc. on February 4, 2004, and giving consideration to all relevant matters, the Commission finds the proposed Third Amended Agreement should be approved.

### ORDER

- 18 (1) The Amended Agreement between Qwest Corporation and ATL Communications, Inc., which the parties filed on February 4, 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 negotiated 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 Third Amended Agreement. The Third 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 31<sup>st</sup> day of March, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary