

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

In the Matter of the Request of)	DOCKET NO. UT-023041
)	
EXCEL TELECOMMUNICATIONS,)	
INC.)	
)	
and)	
)	ORDER APPROVING
QWEST CORPORATION)	NEGOTIATED FIRST AMENDED
)	AGREEMENT ADDING
For Approval of Negotiated)	PROVISIONS FOR QWEST DSL™
Agreement Under the)	(with discount) PROVIDED
Telecommunications Act of 1996)	WITH UNE-P
.....)	

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 Excel Telecommunications, Inc. (Excel), and Qwest Corporation (Qwest). The Commission approved an interconnection agreement between the parties on August 14, 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 a first amendment on March 24, 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) Excel 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 August 14, 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 March 24, 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.
- 10 (7) The Amended Agreement between Excel and Qwest was brought before
the Commission at its regularly scheduled meeting on April 14, 2004.

- 11 (8) Qwest and Excel voluntarily negotiated the entire amendment.
- 12 (9) The Amended Agreement does not discriminate against any other telecommunications carrier.
- 13 (10) The Amended Agreement will facilitate local exchange competition in the state of Washington.
- 14 (11) The Amended Agreement is consistent with the public interest, convenience, and necessity.
- 15 (12) The 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 Amended Agreement. The Amended Agreement is subject to the jurisdiction of the Commission.
- 17 (14) After examination of the proposed Amended Agreement filed by Excel and Qwest on March 24, 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 Amended Agreement between Excel Telecommunications, Inc. and Qwest Corporation, which the parties filed on March 24, 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 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 14th day of April, 2004.

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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary