

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

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| In the Matter of the Request of |) | DOCKET NO. UT-990384 |
| |) | |
| ALLEGIANCE TELECOM OF |) | |
| WASHINGTON, INC., |) | |
| |) | |
| and |) | |
| |) | |
| QWEST CORPORATION |) | ORDER APPROVING |
| |) | NEGOTIATED ELEVENTH |
| For Approval of Negotiated |) | AMENDED AGREEMENT |
| Agreement Under the |) | ADDING PROVISIONS FOR |
| Telecommunications Act of 1996 |) | UNBUNDLED LOOPS |
| |) | |

BACKGROUND

1 This matter comes before the Washington Utilities and Transportation Commission (Commission) for approval of a negotiated eleventh amended agreement (Eleventh Amended Agreement) under the Telecommunications Act of 1996 (Telecom Act). The Amended Agreement is between Allegiance Telecom of Washington, Inc., (Allegiance), and Qwest Corporation (Qwest). The Commission approved an interconnection agreement between the parties on September 22, 1999, a first amended agreement on March 10, 2000, a second amended agreement on February 23, 2001, a third amended agreement on February 27, 2002, a fourth amended agreement on September 11, 2002, a fifth amended agreement on November 27, 2002, a sixth amended agreement on January 8, 2003, a seventh amended agreement on March 12, 2003, an eighth amended agreement on August 27, 2003, a ninth amended agreement on

March 12, 2004,* and a tenth amended agreement 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. The parties filed a joint request for approval of the Eleventh 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 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

* In reviewing this filing and the prior two orders, the Commission discovered four immaterial errors, which it corrects in this order. First, in the order approving the Ninth Amended Agreement, the caption refers to both DC power measuring and unbundled network elements combinations, but the Ninth Amended Agreement concerns only DC power measuring. Because the caption describes but does not define the purpose of the order, the error in the caption is not material. Second, in the order approving the Tenth Amended Agreement, the caption again refers to both DC power measuring and unbundled network elements combinations, but the Tenth Amended Agreement concerns only unbundled network elements combinations. As with the other caption error, this is not material. Third, in the order approving the Tenth Amended Agreement, the order states the request was filed on February 4, 2004, when it was actually filed on February 11, 2004 (at the same time the request was filed for approval of the Ninth Amended Agreement, and one week after the request for approval of this Eleventh Amended Agreement). Because all three amendments are approved, the error also is not material. Fourth, footnote one in the order approving the Tenth Amended Agreement inaccurately describes the order of amendments. Again, because all amendments are approved, the error is not material.

- 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) Allegiance 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 September 22, 1999, a first amended agreement on March 10,
 2000, a second amended agreement on February 23, 2001, a third amended
 agreement on February 27, 2002, a fourth amended agreement on
 September 11, 2002, a fifth amended agreement on November 27, 2002, a
 sixth amended agreement on January 8, 2003, a seventh amended
 agreement on March 12, 2003, an eighth amended agreement on
 August 27, 2003, a ninth amended agreement on March 12, 2004, and a
 tenth amended agreement 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 11, 2004, the parties filed with the Commission a joint
 request for approval of the Eleventh amendment to the previously
 approved interconnection agreement, pursuant to the Telecom Act.
- 10 (7) The Eleventh Amended Agreement between Allegiance and Qwest was
 brought before the Commission at its regularly scheduled meeting on
 April 14, 2004.

- 11 (8) Allegiance and Qwest voluntarily negotiated the entire Eleventh amendment.
- 12 (9) The Eleventh Amended Agreement does not discriminate against any other telecommunications carrier.
- 13 (10) The Eleventh Amended Agreement may be 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 2-3*. 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 Eleventh Amended Agreement is consistent with the public interest, convenience, and necessity.
- 15 (12) The Eleventh 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 Eleventh Amended Agreement. The Eleventh Amended Agreement is subject to the jurisdiction of the Commission.
- 17 (14) After examination of the proposed Eleventh Amended Agreement filed by Allegiance and Qwest on February 11, 2004, and giving consideration to all relevant matters, the Commission finds the proposed Eleventh Amended Agreement should be approved.

ORDER

THE COMMISSION ORDERS:

- 18 (1) The Eleventh Amended Agreement between Allegiance Telecom of Washington, Inc., and Qwest Corporation, which the parties filed on February 11, 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 Eleventh Amended Agreement. The Eleventh Amended Agreement is subject to the jurisdiction of the Commission.

DATED at Olympia, Washington, and effective this 14th day of April, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary