

Decision No. [C03-0091](#)~~SELECT PARAGRAPH, F9 TO UPDATE~~ Decision No.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02T-649

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF INTERCONNECTION
AGREEMENT BETWEEN QWEST CORPORATION AND NEW ACCESS
COMMUNICATIONS, LLC.

**DECISION GRANTING APPLICATION FOR
APPROVAL OF INTERCONNECTION
AGREEMENT IN PART AND DENYING IN PART**

Mailed Date: [January 24, 2003](#)
Adopted Date: January 22, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of the Joint Application (Application) for Approval of an Interconnection Agreement filed by Qwest Corporation (Qwest), and New Access Communications, LLC (New Access) on December 12, 2002. The Application seeks approval of the [p](#)Parties' Interconnection Agreement (Agreement) for the provision of Qwest's local exchange services. Additionally, Qwest and New Access request that the Commission approve the Agreement *nunc pro tunc* to the date of execution because, while the parties have been operating under the Agreement since May 2001, "because of an isolated issue, the Agreement was inadvertently not filed in due course." The Application is filed pursuant to the Commission's Rules Establishing Procedures Relating to the Submission for Approval of Interconnection Agreements, and any Amendments to Interconnection Agreements within Colorado by Telecommunications Carriers, 4 *Code of Colorado Regulations* (CCR) 723-44 (Interconnection

Agreement Rules). As part of their Application, Qwest and New Access attached their Agreement.

2. Pursuant to 4 CCR 723-44-5.6 of the Interconnection Agreement Rules, notice of the submitted Application was given to the public. Interested persons were given an opportunity to file comments within 30 days of the notice. No comments were filed with the Commission. Likewise, no person has sought to intervene in this matter.

3. Now being duly advised in the premises, we ~~will~~ grant the Application, but deny the parties' request to do so *nunc pro tunc* to the date of execution.

B. Background

4. The Application and Agreement were submitted following the successful completion of voluntary negotiations between Qwest and New Access.¹ Only a portion of the rates included in Exhibit A to the Agreement have been previously approved by the Commission in Docket No. 96S-331T, as modified by subsequent ~~a~~Advice ~~l~~etter filings. Additionally, the underlying Agreement is subject to revisions to the [Statement of Generally Available Terms and Conditions](#) (SGAT) in Docket No. 97I-198T from the ~~§Section~~ 271 proceedings. The entire SGAT, including rates, is currently being reviewed in the 99A-577T proceeding and may be affected by decisions in Docket Nos. 02M-259T and 02M-260T. The requirements of Rule 44 have been included in the Application.

¹ In the Application, the parties state that New Access “opted into” the Version 3.6 Template Agreement posted on Qwest’s website. Because that Template Agreement had not been previously approved by the Commission, New Access did not “opt into” the Agreement within the meaning of our reference to the Telecommunications Act of 1996, 47 U.S.C. § 252(i). *See infra*.

5. Pursuant to 4 CCR 723-44-5.7.3, the Commission shall approve or reject this ~~negotiated interconnection a~~[Agreement](#) within 90 days after its submission by the parties; otherwise the [A](#)greement shall be deemed approved.

6. In deciding whether to approve or reject the Agreement, the Commission follows the Interconnection Agreement Rules. Those rules were promulgated to implement certain directives set forth in the Telecommunications Act of 1996 (Act), 47 U.S.C. § 251 *et seq.*

7. The Act sets forth the procedures for negotiation, arbitration, and approval of interconnection agreements between telecommunications providers. Notably, 47 U.S.C. §§ 252(a) and (e) mandate that all interconnection agreements between providers shall be submitted to the State commission (*e.g.*, the Colorado Public Utilities Commission) for review. The State commission may approve or reject any submitted agreement in accordance with the standards listed in 47 U.S.C. § 252(e)(2) (commission may reject an agreement adopted by negotiation if it discriminates against a telecommunications carrier not a party to the agreement or if the implementation of such agreement is not consistent with the public interest, convenience, and necessity).[.](#)

8. In pertinent part, 47 U.S.C. § 251 and the regulations promulgated by the Federal Communications Commission (FCC) require telecommunications carriers to interconnect their facilities and equipment. 47 U.S.C. § 251(a). The Act further imposes upon all local exchange carriers duties concerning resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. 47 U.S.C. § 251(b). Additionally, the Act obligates incumbent local exchange carriers to negotiate in good faith the particular terms and conditions of interconnection agreements for the transmission and routing of telephone exchange service and

exchange access. 47 U.S.C. § 251(c). The FCC's regulations implementing 47 U.S.C. § 251 are codified at 47 C.F.R. pt. 51.

9. Section 47 U.S.C. § 252(d) addresses pricing standards. In order to comply with this section, rates for interconnection and network elements must be just and reasonable, nondiscriminatory, and based on the cost of providing the interconnection or network element. This section also deals with charges for the transportation and termination of traffic and with wholesale prices for telecommunications services.

10. Since 47 U.S.C. § 252(e) compels State commissions to review interconnection agreements between telecommunications carriers, the Commission adopted the Interconnection Agreement Rules to establish the procedures for Commission review and approval of all interconnection agreements entered into between telecommunications carriers.

11. Under the 47 U.S.C. § 252(i) “pick and choose” provision of the Act, New Access may at some future date opt into the rates, terms, and conditions of the Commission approved SGAT.

C. Findings

12. — Rule 4 CCR 723-44-5.7.2.1 of the Interconnection Agreement Rules provides that the Commission may reject a submitted interconnection agreement entered into by negotiation only if:

- (1) The agreement, or portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or
- (2) The implementation of such agreement, or portion thereof, is not consistent with the public interest, convenience, and necessity; or
- (3) The agreement is not in compliance with intrastate telecommunications service quality standards or requirements.

Accord 47 U.S.C. § 252(e)(2)(A). In light of the requirements of Rule 4 CCR 723-44-5.7.2.1, we find that the Agreement should be approved, and, therefore, that the Application should be granted.

13. The Agreement addresses all pertinent provisions of 47 U.S.C. § 251. With respect to 47 U.S.C. § 252(d), costing and pricing issues are governed by the Agreement which incorporates by reference interim and final orders of the Commission.

14. The Application, however, does not state any cause that would justify the Commission in approving the Agreement *nunc pro tunc* to the date of execution. [We do not now address the propriety of the time lag between this Agreement's execution and its filing with the Commission, nor do we discuss possible attendant discriminatory treatment of, or anti-competitive injury to, other competitive local exchange carriers. Those issues are left to Docket No. 02I-572T, the investigatory docket regarding Qwest's unfiled agreements, and any other dockets that may follow.](#)

D. Conclusion

15. Based upon the record in the present proceeding and the standards for review of interconnection agreements as set forth in the Interconnection Agreement Rules, we conclude that the Application should be granted and that the Agreement between Qwest and New Access should be approved. However, the request for approval *nunc pro tunc* to the date of execution is denied.

II. ORDER**A. The Commission Orders That:**

1. The Joint Application filed by Qwest Corporation and New Access Communications, LLC on December 12, 2002, which incorporated their Interconnection Agreement, is granted.

2. The request by Qwest Corporation and New Access Communications, LLC for approval of the Interconnection Agreement *nunc pro tunc* to the date of execution is denied.

3. This Order is effective ~~immediately upon~~ its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 22, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

POLLY PAGE

JIM DYER

Commissioners