

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03T-011

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF INTERCONNECTION
AGREEMENT BETWEEN QWEST CORPORATION AND SAN ISABEL TELECOM, INC.

**DECISION GRANTING APPLICATION FOR APPROVAL
OF INTERCONNECTION AGREEMENT, WAIVER OF
4 CCR 723-44-7.1, AND WAIVER OF RESPONSE TIME**

Mailed Date: February 24, 2003

Adopted Date: February 19, 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 San Isabel Telecom, Inc. (San Isabel), on January 10, 2003. The Application seeks approval of the parties' Interconnection Agreement (Agreement) for the provision of Qwest's local exchange services. The Agreement contains the same language as Qwest's Statement of Generally Available Terms and Conditions (SGAT) for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunication Services, Eighth Revision filed on April 29, 2002, as subsequently amended by compliance filings on June 13 and 28, 2002, and as approved by the Commission on July 2, 2002, in Decision No. C02-739 in Docket No. 02M-260T, and as further amended in accordance with Decision No. C02-932, issued August 29, 2002. 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).

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. Additionally, the parties seek a waiver of the letter requirement under our Rule 4 CCR 723-44-7.1, which requires a letter from San Isabel notifying Qwest of its request to adopt a previously approved agreement or SGAT without modification be forwarded with this Application. The parties also request a waiver of response time.

4. Now being duly advised in the premises, we will grant the Application, motion for waiver of 4 CCR 723-44-7.1, and motion for waiver of response time.

B. Background

5. The Application and Agreement were submitted following the successful completion of voluntary negotiations between Qwest and San Isabel. The underlying Agreement is one of the working versions of the SGAT in Docket No. 97I-198T from the § 271 proceedings. The entire SGAT, including rates, is under review 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.

6. Pursuant to 4 CCR 723-44-5.7.3, the Commission shall approve or reject this negotiated Agreement within 90 days after its submission by the parties; otherwise the Agreement shall be deemed approved.

7. 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.*

8. 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).

9. 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). Pertinent to this Application, the Act requires incumbent local exchange carriers to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers, and to not prohibit or impose unreasonable or discriminatory conditions or limitations on, the resale of such

telecommunications service. 47 U.S.C. § 251(c)(4). The FCC's regulations implementing 47 U.S.C. § 251 are codified at 47 C.F.R. pt. 51.

10. 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.

11. 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.

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

C. Findings

13. 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.

14. 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.

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 San Isabel should be approved.

16. We further conclude that the motion for waiver of 4 CCR 723-44-7.1 and motion for waiver of response time should be granted.

II. ORDER

A. The Commission Orders That:

1. The Joint Application filed by Qwest Corporation and San Isabel Telecom, Inc., on January 10, 2003, which application incorporated portions of their Resale Interconnection Agreement, is granted.

2. The motion for waiver of Rule 4 *Code of Colorado Regulations* 723-44-7.1 is granted.

3. The motion for waiver of response time is granted.

4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 19, 2003.**

(S E A L)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

**THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners