

Decision No. C04-1375

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04T-520

RE: THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN QWEST CORPORATION AND WINSTAR WIRELESS OF COLORADO, INC.

**DECISION GRANTING MOTION FOR APPROVAL OF
OPERATOR SERVICES AGREEMENT**

Mailed Date: November 23, 2004

Adopted Date: November 17, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission on the motion of Qwest Corporation, formerly known as U S WEST Communications, Inc. (Qwest), for approval of an Operator Services Agreement (Agreement) between Qwest and Winstar Wireless of Colorado, Inc. (Winstar). An interconnection agreement between Winstar and Qwest was approved on July 18, 1997 in Decision No. C97-719.

2. This application, filed October 13, 2004, seeks approval of terms and conditions in an agreement for operator services signed and dated February of 1999. Qwest has decided to file the Agreement now because of “recent pronouncements” by the Federal Communications Commission that this type of Agreement falls within the filing requirements of 47 U.S.C. § 252 of the Telecommunications Act of 1996 (the Act).

3. 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 and 47 U.S.C. § 252(a)(1). As part of its application, Qwest attached the Agreement.

4. Pursuant to 4 CCR 723-44-5.6 of the Commission's rules, notice of the 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, and no person has sought to intervene in this matter.

5. Section 47 U.S.C. § 251 *et seq.* of the Act requires that the Commission review and approve or reject interconnection agreements involving incumbent local exchange carriers like Qwest. To comply with the Act, rates in negotiated agreements must be just and reasonable, nondiscriminatory, and based on the cost of providing the interconnection or network element. 47 U.S.C. § 252(e). In reviewing agreements (or portions thereof) the Commission generally is guided by 47 U.S.C. § 252(e)(2), requiring that interconnection agreements not discriminate against non-parties and be consistent with the public interest, convenience, and necessity.

6. 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 application should be granted.

7. 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.

8. Under the terms of 47 U.S.C. § 252(i) of the Act, Winstar may at some future date opt into the terms and conditions of Commission approved and currently effective agreements:

[a] local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

9. The Commission has previously approved all of the terms and conditions proposed here. The services in the agreements have been available to competitive local exchange carriers through Qwest's Statement of Generally Available Terms and Conditions, and through other agreements. It appears that Qwest's and Winstar's failure to file this negotiated agreement has not prejudiced any party. The Commission takes no formal position on whether harm to other entities has in fact occurred, and approves the filed Agreement.

II. ORDER

A. The Commission Orders That:

1. The application of Qwest Corporation for approval of its Operator Services Agreement with Winstar Wireless of Colorado, Inc. is granted.

2. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 17, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners