

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Interconnection)
Agreement Between Qwest Corporation,)
Covista, Incorporated)

DOCKET NO. 04-049-101
REPORT AND ORDER

ISSUED: September 1, 2004

SYNOPSIS

The Interconnection Agreement at issue being defective as involving a non-certificated carrier, the Commission rejects the Interconnection Agreement.

By the Commission:

On June 21, 2004, Qwest Corporation (Qwest) submitted for Commission approval a proposed Interconnection Agreement (“the Agreement”) with Covista, Inc. The Commission asked the Division of Public Utilities, Utah Department of Commerce (“DPU”) to review the matter, and DPU filed its Memorandum on August 26, 2004, recommending disapproval, as Covista has no certificate to operate in Utah nor is it a wireless carrier exempt for certificate requirements.

The Commission rejects the Interconnection Agreement submitted herein. 47 U.S.C. §252(e)(2) provides the basis upon which we may reject a negotiated interconnection agreement. That section, in part, provides that: “The State commission may only reject - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that - (I) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity. . .”

Covista withdrew its application for a Certificate of Public Convenience and Ne Necessity on January 5, 2004. The fact that Covista is not certificated to provide services within the State of Utah is dispositive in our

consideration of this Interconnection Agreement. Utah law is clear that entities that provide public telecommunication services are public utilities subject to the provisions of Utah's public utility laws.

In this context, we conclude that the Interconnection Agreement must be rejected as "not consistent with the public interest, convenience, and necessity" in attempting to position a carrier to provide public telecommunication services in the State of Utah without a certificate. The statutory standards for qualifying for a certificate are minimal and do not constitute a barrier to entry. Covista's failure to be subject to and to be able to comply with these requirements preclude us from approving the Interconnection Agreement. We conclude that it would also "discriminate against [all other] telecommunications carrier[s] not a party to the Agreement" that have complied with Utah law and obtained their certificates to provide the services that Covista anticipated to provide.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that we reject the Interconnection Agreement submitted June 21, 2004. The rejection is without prejudice.

Agency Review and Judicial Appeal

Pursuant to Utah Code 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 1st day of September, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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