

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

In the Matter of the Request of)	DOCKET NO. UT-033063
)	
MCIMETRO ACCESS)	ORDER NO. 01
TRANSMISSION SERVICES, LLC)	
)	
and)	
)	ORDER APPROVING
VERIZON NORTHWEST INC.)	NEGOTIATED FIRST
)	AMENDED AGREEMENT
For Approval of Negotiated)	ADDING PROVISIONS FOR
Agreement Under the)	UNITARY INTERCARRIER
Telecommunications Act of 1996)	COMPENSATION RATES
.....)	

BACKGROUND

1 This matter comes before the Washington Utilities and Transportation Commission (Commission) for approval of a negotiated first amended agreement (Amended Agreement) under the Telecommunications Act of 1996 (Telecom Act). The Amended Agreement is between MCImetro Access Transmission Services, LLC, (MCImetro) and Verizon Northwest Inc. (Verizon). On December 22, 2003, the parties filed a joint request that MCImetro receive all arrangements provided in an interconnection agreement previously approved by the Commission between AT&T Communications of the Pacific Northwest, Inc., (AT&T), and Verizon in Docket UT-960307. The Commission accepted this request on December 31, 2003. On April 12, 2000, in Docket UT-990355 – Interpretive and Policy Statement regarding Section 252 (i) of the Telecom Act – the Commission concluded that amendments to original adopted agreements would be deemed new agreements under the Telecom Act and must be submitted to the Commission for approval. The parties filed a joint request for approval of a first amendment on January 23, 2004.

- 2 The parties have engaged in negotiations, pursuant to a settlement agreement that was approved by the United States Bankruptcy Court for the Southern District of New York (Bankruptcy Court) on July 29, 2003, to resolve outstanding disputes on intercarrier compensation rates. The Amended Agreement adds provisions for unitary intercarrier compensation rates.

- 3 On February 17, 2004, the Commission received comments from Level(3) Communications, LLC (Level(3)), a competitive local exchange carrier authorized to provide service in the State of Washington. In their comments, Level(3) addressed its concern of a “blended” dial-up Internet traffic rate, the treatment of Voice Over Internet Protocol (VOIP), and requested that the Commission expressly declare that the Amended Agreement will not serve as a precedent to bind any other party. Level(3) does not suggest that the Commission reject the filed amendment.

- 4 On March 4 and March 12, 2004, the Commission received response comments from Verizon and MCImetro, respectively. Verizon asserts that a blended rate is consistent with the framework set forth by the Federal Communications Commission (FCC) regarding compensation for Internet bound traffic; the parties also assert that they are free to negotiate their own terms. Verizon points out that the FCC has initiated a rulemaking to investigate the issue of the regulatory status of VOIP; the parties have agreed they are bound by future federal determinations, and will adhere to such decisions. Staff agrees with Verizon and MCImetro that the approval of the amendment should not have precedential value in future arbitrations or any other proceedings. This is a fully negotiated amendment which does not discriminate against a telecommunications carrier not a party to the amendment, and the implementation of such amendment or portion is in the public interest because it will facilitate local exchange competition in the state of Washington.

FINDINGS AND CONCLUSIONS

- 5 (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.*
- 6 (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:
- 7 (i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- 8 (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.
- 9 (3) Verizon is engaged in the business of furnishing telecommunications services including, but not limited to, basic local exchange service within the state of Washington.
- 10 (4) MCImetro is authorized to provide telecommunications services to the public in the state of Washington.
- 11 (5) On December 22, 2003, the parties filed with the Commission a joint request that MCImetro receive all arrangements provided in an interconnection agreement previously approved by the Commission between AT&T and Verizon in Docket UT-960307. The Commission accepted this request on December 31, 2003. On April 12, 2000, in Docket

UT-990355 – Interpretive and Policy Statement regarding Section 252(i) of the Telecom Act – the Commission concluded that amendments to original adopted agreements would be deemed new agreements under the Telecom Act and must be submitted to the Commission for approval.

- 12 (6) On January 23, 2004, the parties filed with the Commission a joint request for approval of a first amendment to the previously approved interconnection agreement, pursuant to the Telecom Act.
- 13 (7) MCImetro and Verizon voluntarily negotiated the entire amendment.
- 14 (8) The Amended Agreement between MCImetro and Verizon was brought before the Commission at its regularly scheduled meeting on March 24, 2004.
- 15 (9) The Amended Agreement does not discriminate against any other telecommunications carrier.
- 16 (10) The Amended Agreement will facilitate local exchange competition in the state of Washington.
- 17 (11) The Amended Agreement is consistent with the public interest, convenience, and necessity.
- 18 (121) The Amended Agreement meets the requirements of Sections 251 and 252 of the Telecom Act, including Section 252(e).
- 19 (13) The laws and regulations of the State of Washington and Commission Orders govern the construction and interpretation of the Amended

Agreement. The Amended Agreement is subject to the jurisdiction of the Commission.

- 20 (14) After examination of the proposed Amended Agreement filed by MCImetro and Verizon on January 23, 2004, and giving consideration to all relevant matters, the Commission finds the proposed Amended Agreement should be approved.

ORDER

THE COMMISSION ORDERS:

- 21 (1) The Amended Agreement between MCImetro Access Transmission Services, LLC, and Verizon Northwest Inc., which the parties filed on January 23, 2004, is approved and effective as of the date of this Order.
- 22 (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.
- 23 (3) The laws and regulations of the State of Washington and Commission Orders govern the construction and interpretation of the Amended Agreement. The Amended Agreement is subject to the jurisdiction of the Commission.

The Commissioners, having determined this Order to be consistent with the public interest, directed the Secretary to enter this Order.

DATED at Olympia, Washington, and effective this 24th day of March, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary