

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Request for Approval of Amendment to the
Interconnection Agreement between Qwest
Corporation and MCImetro Access
Transmission Services LLC

DOCKET UT-063055

COMMISSION STAFF'S
REQUEST FOR REVIEW OF THE
EXECUTIVE SECRETARY'S
ORDER APPROVING QWEST
AND MCIMETRO'S
INTERCONNECTION
AGREEMENT AMENDMENT

1 Commission Staff requests, pursuant to WAC 480-07-904(3), that the
Commission review the Executive Secretary's March 28, 2007, Order Approving
Interconnection Agreement Amendment in docket UT-063055. The interconnection
agreement (ICA) amendment is between Qwest Corporation and MCImetro Access
Service LLC.

Background

2 Qwest and MCImetro negotiated the ICA amendment partly as a means of
resolving, as between themselves, a complaint that Qwest brought before the
Commission against several different CLECs, including MCImetro. *See* Joint Motion to
Approve Settlement Agreement and Dismiss MCImetro Access Transmission LLC with
Prejudice, Narrative Supporting Settlement Agreement, and Settlement Agreement filed
March 7, 2007, in docket UT-063038.

3 The complaint in docket UT-063038 concerns the legality of "virtual NXX" or
VNXX arrangements. Specifically, Qwest's complaint seeks a commission order:

- (1) holding that VNXX violates state law and Qwest's tariff and is otherwise contrary to the public interest,
- (2) prohibiting Respondents from using VNXX numbering by assigning NPA/NXXs in local calling areas other than the local calling area where the customer is physically located or has a physical presence,
- (3) requiring that Respondents cease their misuse of such telephone numbering resources,
- (4) requiring that Respondents properly assign telephone numbers based on the actual physical location of its customer, and
- (5) requiring that Respondents comply with Qwest's access tariffs if they wish to enable toll-free long distance calling for their own customers and the customers of other local exchange companies.

4 Staff has filed testimony that is generally in agreement with Qwest's position.

5 On March 7, 2007, Qwest and MCImetro (d/b/a Verizon Access Transmission Services) filed with the Commission a settlement agreement which provides that Qwest will, among other things, support the dismissal of MCImetro from the complaint proceeding in return for, among other things, MCImetro entering into an interconnection agreement (the interconnection agreement filed in docket UT-063055) that expressly allows for the exchange of VNXX traffic between the parties at a compensation rate of zero (i.e., subject to "bill-and-keep").

6 On March 12, 2007, the Commission provided the parties an opportunity to submit written comments on the proposed settlement in UT-063038. Staff did so, and Level 3 has moved for leave to reply to Staff. Staff's position is that the settlement and the ICA may be partly consistent with the public interest, but not to the extent that it would allow VNXX for a purpose other than dial-up ISP service. In other words, it is Staff's view that the ICA is inconsistent with the public interest to the extent that it would allow the use of VNXX arrangements for non-ISP-bound (e.g., voice) traffic. Staff

contends that allowing VNXX for all types of traffic could have too great a potential impact on the intrastate access charge regime, which helps to keep rates for local phone service low. *See* Response of Commission Staff to Qwest and Verizon's Proposed Partial Settlement, March 19, 2007.

7 On March 22, 2007, Qwest filed in docket UT-063055 the ICA that is contemplated by the proposed settlement agreement for approval by the Commission pursuant to 47 U.S.C. Sec. 252(e)(1).

8 On March 28, 2008, the Commission's Executive Secretary, acting under delegated authority, issued an Order Approving Interconnection Agreement Amendment in docket UT-063055.

9 Qwest and MCImetro (Verizon Access) have subsequently agreed to present witnesses in support of the settlement—and staff has agreed to present a witness in partial opposition to the settlement—at the conclusion of the cross examination hearings in docket UT-063038. Those hearings are scheduled to take place the week of April 23. *See* Notice of Additions to Schedule, Docket UT-063038 (April 4, 2007).

Relief Requested

10 WAC 480-07-904(3) provides that any person affected by a decision on a matter delegated to the executive secretary may ask the commission to review the matter. The person seeking review must file his or her request for commission consideration no later than the fourteenth day after the date of the posting. Staff hereby timely seeks review of the Executive Secretary's March 28 order in docket UT-063055.

11 WAC 480-07-904 provides that review of decisions of the executive secretary is to occur at an open meeting. Staff does not, however, seek review of the executive

secretary's order at an open meeting. Rather, Staff requests that the Commission withhold its decision regarding approval of the ICA until after it has had the benefit of the parties' presentations in support of, and in opposition to the settlement on April 27. (The Commissioners are not sitting on this case, but the parties will go on record before ALJ Theodora Mace.)

12 The proposed settlement requires the Commission to make two very similar, if not identical, decisions in two separate dockets: (1) whether the ICA is "consistent with the public interest, convenience and necessity" under 47 U.S.C. Sec. 252(e)(3), and (2) whether the settlement—which incorporates the ICA—is consistent with the public interest for purposes of WAC 480-07-750, and therefore should be accepted, or accepted subject to conditions. Staff's request is that, if possible given the constraints of 47 U.S.C. Sec. 252(e)(4) (requiring a state commission to approve or reject a fully negotiated ICA within 90 days of submission), the commission should make these decisions simultaneously to avoid possible conflict. It is Staff's position that the ICA should not be approved with language authorizing VNXX for purposes other than ISP-bound traffic. However, if it is necessary to allow the amendment to go into effect because of 47 U.S.C. Sec. 252(e)(4)'s 90 day clock, there should be a stipulation that the ICA will be subject to later amendment to conform to the Commission's decision regarding VNXX in docket UT-063038.


13 It may be appropriate for the Commission consolidate consideration of Qwest's request for approval of the ICA under 47 U.S.C. Sec. 252(e)(1) (in docket UT-063055) with consideration of Qwest and Verizon's proposed settlement pursuant to WAC 480-

07-320 (in docket UT-063038). WAC 480-07-320 allows the Commission to consolidate proceedings “in which the facts or principles of law are related.”

DATED this 10th day of April, 2007.

Respectfully submitted,

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