

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

QWEST CORPORATION,)	DOCKET UT-063038
)	
Complainant,)	
)	ORDER 04
v.)	
)	
LEVEL 3 COMMUNICATIONS,)	ORDER OF CONSOLIDATION
LLC., et al)	
)	
Respondents.)	
)	
.....)	
)	
In the Matter of the Request of)	DOCKET UT-063055
)	
MCIMETRO ACCESS)	
TRANSMISSION SERVICES, LLC)	ORDER 01
d/b/a VERIZON ACCESS)	
TRANSMISSION SERVICES)	
)	ORDER GRANTING REVIEW;
and)	CONSOLIDATING DOCKETS
)	
QWEST CORPORATION,)	
)	
For Approval of Negotiated Agreement)	
Under the Telecommunications Act of)	
1996)	
.....)	

BACKGROUND

1 This matter comes before the Washington Utilities and Transportation Commission (Commission) for review of the Executive Secretary’s approval of a negotiated fourth amendment to the interconnection agreement (Amended Agreement) under the

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Telecommunications Act of 1996 (Telecom Act)¹ between MCImetro Access Transmission Services, LLC, d/b/a Verizon Access Transmission Services (Verizon Access) and Qwest Corporation (Qwest).

- 2 The Commission approved an interconnection agreement between the parties on October 11, 2006. The Commission ordered that in the event the parties amended their agreement, the amended agreement would be deemed a new agreement under the Telecom Act and must be submitted to the Commission for approval.
- 3 Qwest and Verizon Access negotiated the interconnection agreement amendment at issue in Docket UT-063055 partly as a means of resolving, between themselves, Qwest's complaint in Docket UT-063038 regarding the legality of "virtual NXX" (VNXX) practices. On March 7, 2007, Qwest and Verizon Access filed with the Commission a settlement agreement which provides that Qwest will, among other things, support the dismissal of Verizon Access from the complaint proceeding in return for, among other things, Verizon Access entering into an interconnection agreement that expressly allows for the exchange of VNXX traffic between the parties at a compensation rate of zero (*i.e.*, subject to a "bill-and-keep" arrangement).
- 4 The parties filed a joint request for approval of the Amended Agreement on March 22, 2007. Following the Commission's procedures for filing negotiated interconnection agreements, Qwest filed the amendment with the Commission in a separate docket, Docket UT-063055. Under the Commission's delegation rule, WAC 480-07-904(1)(d)(i), the Commission delegates approval of fully negotiated telecommunications interconnection agreements to the Executive Secretary. The Commission's Executive Secretary signed a delegated order approving the amendment on March 28, 2007.
- 5 Commission Staff is a party in Docket UT-063038, and opposes in part the settlement agreement filed in that docket. Pursuant to WAC 480-07-904(3), Staff timely filed a request for review of the Executive Secretary's March 28 order in Docket UT-063055. Staff asserts that the Amended Agreement was inadvertently approved

¹ Public Law No. 104-104, 101 Stat. 56 (1996).

through the delegation process and that the Commission's decision on the Amended Agreement should be made concurrently with a decision on the settlement agreement. Staff requests the Commission consolidate the decision on the Amended Agreement in Docket UT-063055 with the issues pending in the Qwest complaint proceeding in Docket UT-063038.

6 On April 16, 2007, the Commission notified all interested parties that Staff's request for review would be heard at the April 27, 2007, open meeting. Staff's request is the first request for review of a delegated order under recently enacted provisions of RCW 80.01.030 and recently adopted rules in WAC 480-07 governing delegation of Commission powers and duties.²

7 Representatives of Qwest, Verizon Access, the Washington Exchange Carriers Association (WECA), Electric Lightwave, LLC, Northwest Telephone, Inc., Pac-West Telecomm, Inc., and Global Crossing Local Services, Inc., appeared at the open meeting, in person and telephonically. Qwest and Verizon Access did not oppose review of the order, but requested the Commission allow the amendment to remain in effect between the parties pending the Commission's review of the amendment. WECA opposes the Amended Agreement, but agrees to allow the amendment to remain in effect pending decision, subject to preserving without prejudice its opportunity to recover revenues that it otherwise may be eligible to receive pending resolution of issues in Docket UT-063038 and the Commission's decision regarding the Amended Agreement. The remaining carriers supported Staff's request for review.

FINDINGS AND CONCLUSIONS

8 (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; RCW 80.04 and RCW 80.36.*

² Statutory changes allowing the Commission to delegate powers and duties to designated assistants, such as the Executive Secretary, were enacted during the 2006 legislative session. *See RCW 80.01.030; Laws of 2006 c 346, § 2.* In September 2006, the Commission adopted rules governing delegation of authority to the Executive Secretary. *See WAC 480-07-903, -904, -905.*

- 9 (2) Qwest is engaged in the business of furnishing telecommunications services including, but not limited to, basic local exchange service within the state of Washington.
- 10 (3) Verizon Access is authorized to provide telecommunications services to the public in the state of Washington.
- 11 (4) The Commission approved an interconnection agreement between the parties on October 11, 2006. The Commission ordered that in the event the parties amended their agreement, the amended agreement would be deemed a new agreement under the Telecom Act and must be submitted to the Commission for approval.
- 12 (5) On March 22, 2007, the parties filed with the Commission a joint request for approval of a fourth amendment to the previously approved interconnection agreement, pursuant to the Telecom Act. The Executive Secretary signed an order approving the amendment on March 28, 2007, as a delegated matter pursuant to RCW 80.01.030 and WAC 480-07-904(1).
- 13 (6) On April 10, 2007, Commission Staff filed a request for review of the Executive Secretary's approval of the amendment, requesting consolidation of the amendment in Docket UT-063055 with consideration of the pending settlement agreement in Docket UT-063038.
- 14 (7) At the Commission's regular open meeting of April 27, 2007, the Commission considered Staff's requested review of the delegated order in accordance with WAC 480-07-904(3).
- 15 (8) Any commissioner or any person affected by a decision on a matter delegated to the Executive Secretary may ask the Commission to review the matter. *RCW 80.01.030*. Following such a request, the Commission must review any

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decision delegated under RCW 80.01.030 and WAC 480-07. *RCW 80.01.030; WAC 480-07-904(3).*

- 16 (9) The Commission's review of delegated decisions of the Executive Secretary is *de novo* and must be heard at an open meeting. *WAC 480-07-903(5); WAC 480-07-904(3).*
- 17 (10) 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:
- (i) the agreement (or any 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.
- 18 (11) State laws and regulations and Commission orders govern the construction and interpretation of the Amended Agreement. The Amended Agreement is subject to the jurisdiction of the Commission.
- 19 (12) The facts and principles of law at issue in Dockets UT-063055 and UT-063038 are related.
- 20 (13) After examining Commission Staff's request for review filed on April 10, 2007, and giving consideration to all relevant matters and laws, the Commission finds the delegated order of the Executive Secretary approving the proposed Amended Agreement must be reviewed under RCW 80.01.030 and should be consolidated with Docket UT-063038 under WAC 480-07-320 to consider the Amended Agreement and settlement agreement concurrently.

- 21 (14) The Commission finds the Amended Agreement should remain in effect between Qwest and Verizon Access pending consideration of the amendment.
- 22 (15) Pending resolution of issues in Docket UT-063038 and the Commission's decision regarding the Amended Agreement, WECA's opportunity to recover revenues that it otherwise may be eligible to receive should be preserved without prejudice.

ORDER

THE COMMISSION ORDERS:

- 23 (1) Commission Staff's petition for review of the delegated order of the Executive Secretary in Docket UT-063055 approving pursuant to WAC 480-07-904 the fourth amendment to the interconnection agreement between MCI metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services (Verizon Access) and Qwest Corporation (Qwest) is granted.
- 24 (2) Commission Staff's motion to consolidate the Commission's decision in UT-063055 concerning the limited issue of the fourth amendment to the interconnection agreement between Verizon Access and Qwest with the pending adjudication of the parties' proposed settlement agreement in Docket UT-063038 is granted.
- 25 (3) The fourth amendment to the interconnection agreement between Verizon Access and Qwest shall continue in effect between the parties pending the Commission's *de novo* review of the Executive Secretary's decision approving the amendment.
- 26 (4) Pending resolution of issues in Docket UT-063038 and the Commission's decision regarding the Amended Agreement, WECA's opportunity to recover revenues that it otherwise may be eligible to receive is preserved without prejudice.

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DATED at Olympia, Washington, and effective May 8, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner