

Agenda Date: April 27, 2007
Item Number: A1

Docket: UT-063055
Company: Qwest Corporation

Staff: Will Saunders, Assistant Director, Telecommunications
Bob Williamson, Engineer
Jonathan Thompson, Assistant Attorney General

Recommendation

Review the Executive Secretary's March 28, 2007 Order Approving Interconnection Agreement Amendment in Docket UT-063055 between Qwest Corporation and MCImetro Access Service LLC., and consolidate consideration of approval of the amendment with Qwest and Verizon's proposed settlement in Docket UT-063038.

Discussion

Qwest and MCImetro negotiated the interconnection agreement (ICA) amendment at issue in this docket partly as a means of resolving, between themselves, Qwest's complaint in Docket UT-063038 regarding the legality of "virtual NXX" (VNXX) practices.¹ In its complaint, Qwest 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.

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

¹ 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.

On March 7, 2007, Qwest and MCImetro 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 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”). Following the Commission’s procedures for filing negotiated interconnection agreements, Qwest filed with the Commission the amendment to the interconnection agreement between Qwest and MCImetro in a separate docket. Under the Commission’s delegation rule, the Commission delegates approval of fully negotiated telecommunications interconnection agreements to the Executive Secretary. *See* WAC 480-07-904(1)(d)(i).

On March 28, 2008, the commission’s Executive Secretary, acting under delegated authority and upon the inadvertent recommendation of the commission staff, issued an Order Approving Interconnection Agreement Amendment in this docket.

Qwest and MCImetro presented witnesses in support of the settlement at the conclusion of the cross examination hearings in Docket UT-063038. Staff presented a witness in partial opposition to the settlement. The hearing on the proposed settlement took place on April 26. ²

The commission must make two very similar, if not identical, decisions in two separate dockets: (1) whether the ICA filed in Docket UT-063055 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 believes these decisions should be made together, and that the commission should allow the decision on the amendment to the interconnection agreement to be made concurrently with the decision on the settlement agreement, preferably by consolidating the two dockets for decision.

Rules & Application

47 U.S.C. Sec. 252(e)(4) requires a state commission to approve or reject a fully negotiated ICA within 90 days of submission.

RCW 80.01.030 allows the commission to “delegate to designated assistants any of the powers and duties vested in or imposed upon the commission by law except matters governed by chapter 34.05 RCW” provided that “Any such matter shall be heard or reviewed by commissioners at the request of any commissioner or any affected person.”

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

² *See* Notice of Additions to Schedule, Docket UT-063038 (April 4, 2007).

date of the posting. WAC 480-07-904 provides that review of decisions of the executive secretary is to occur at an open meeting.

Staff is an affected party, and timely filed a request for review of the Executive Secretary's March 28 order in Docket UT-063055. The matter is now presented for consideration at an open meeting. Accordingly, the commission now has until June 20, 2007, to approve or disapprove the interconnection agreement.

Conclusion

The commission must review the delegated order regarding the interconnection agreement, and should consolidate review and 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).