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BEFORE THE ARIZONA CORPORATION CO

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2004 OCT 25 P 2: 18

AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF MCImetro ACCESS TRANSMISSION SERVICES, LLC, FOR APPROVAL OF AN AMENDMENT FOR ELIMINATION OF UNE-P AND IMPLEMENTATION OF BATCH HOT CUT PROCESS AND QPP MASTER SERVICES

Docket No. T-01051B-04-0540
T-03574A-04-0540

Arizona Corporation Commission
DOCKETED
OCT 25 2004
DOCKETED BY

STAFF'S NOTICE OF FILING

The Arizona Corporation Commission Staff ("Staff") hereby files, as supplemental authority in this case, the attached Order of the Washington State Utilities and Transportation Commission approving the negotiated Interconnection Agreement between MCImetro and Qwest, including a portion denominated "Master Service Agreement for the Provision of Qwest Platform Plus ("QPP").

RESPECTFULLY submitted this 25th day of October, 2004.

ARIZONA CORPORATION COMMISSION

By Maureen A. Scott

Maureen Scott
Attorney, Legal Division
1200 West Washington
Phoenix, AZ 85007
Telephone (602) 542-3402

Original and 13 copies of the foregoing filed this 25th day of October, 2004, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Copy of the foregoing mailed this 25th day of October, 2004, to:

Timothy Berg
Theresa Dwyer
Fennemore Craig
3003 N. Central, Suite 2600
Phoenix, AZ 85012

Norman G. Curtright
Qwest Corporation
4041 North Central, Suite 1100
Phoenix, AZ 85012

Thomas H. Campbell
Michael T. Hallam
Lewis and Roca, LLP
40 North Central Avenue
Phoenix, AZ 85004
Attorneys for MCImetro

Thomas F. Dixon
707 17th Street, Suite 4200
Denver, CO 80202
Attorneys for MCImetro

Joan S. Burke
Osborn Maledon
2929 N. Central Avenue, Suite 2100
Phoenix, AZ 85012-2794

Richard S. Wolters
AT&T
1875 Lawrence Street, Suite 1503
Denver, CO 80202-1870

Deborah R. Amaral

[Service Date October 20, 2004]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Request of	)	
	)	DOCKET NO. UT-960310
MCIMETRO ACCESS	)	
TRANSMISSION SERVICES, LLC	)	DOCKET NO. UT-043084
	)	
and	)	ORDER NO. 01
	)	
QWEST CORPORATION	)	
	)	
For Approval of Negotiated	)	ORDER APPROVING
Interconnection Agreement, in its	)	NEGOTIATED
Entirety, Under the	)	INTERCONNECTION
Telecommunications Act of 1996	)	AGREEMENT IN ITS ENTIRETY
. . . . .	)	

1 ***Synopsis:*** *The Commission grants the request of MCImetro for approval of the Thirteenth Amendment to the negotiated interconnection agreement between MCImetro and Qwest, including a portion denominated "Master Service Agreement for the Provision of Qwest Platform Plus." The QPP and Thirteenth Amendment are parts of an integrated agreement. The agreement does not discriminate against any carrier not a party to the agreement, is consistent with state and federal law, and is consistent with the public interest, convenience, and necessity.*

I. INTRODUCTION

2 This Order concerns approval of a negotiated interconnection agreement between Qwest Corporation and MCImetro Access Transmission Services, LLC, after Qwest objected to Commission review of a part of the agreement and asserted the Commission lacks jurisdiction to require filing and review of that part of the agreement.

3 The Commission took up this matter at a regularly scheduled Open Meeting held on October 13, 2004, after due and proper notice. The Commission has jurisdiction over the matter pursuant to RCW 80.01.040, Chapter 80.04 RCW, and RCW 80.36.610(1). This decision is permitted and contemplated for a state commission by Section 252(e) of the federal Telecommunications Act of 1996 (Act). *47 U.S.C. § 252(e).* The Commission's administrative rules for review and approval of all interconnection agreements under the Act are set forth in WAC 480-04-640.

4 The Commission approved an interconnection agreement between the parties on August 18, 1997, a first amended agreement on December 29, 1999, a second amended agreement on March 28, 2001, a third amended agreement on October 31, 2001, a fourth amended agreement on November 28, 2001, a fifth amended agreement on October 30, 2002, a sixth amended agreement on November 15, 2002, a seventh amended agreement on December 31, 2002, an eighth amended agreement on March 26, 2003, a ninth amended agreement on April 30, 2003, a tenth amended agreement on September 10, 2003, an eleventh amended agreement on March 24, 2004, and a twelfth amended agreement on June 30, 2004. 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.

II. QUESTIONS PRESENTED

5 MCImetro Access Transmission Services, LLC, (MCI) has requested the Commission approve under Section 252(e) the *Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts* (hereafter *Thirteenth Amendment*)[1] and also approve the Qwest Platform

[1] The *Thirteenth Amendment* adds terms and conditions for a batch hot cut process, and stipulates that Qwest will not offer, and MCI will not order, unbundled mass market switching, unbundled enterprise switching or unbundled shared transport as part of the unbundled network element

Plus Master Service Agreement (QPP)[2] between MCI and Qwest as a part of an interconnection agreement between the two companies.

6 Qwest requests approval of the *Thirteenth Amendment*, but opposes approval of the QPP on the basis that the QPP is not a negotiated interconnection agreement but a "commercial agreement" beyond the jurisdiction of the Commission. Qwest also contends the Commission is preempted from reviewing the QPP.

7 The questions before the Commission are: (1) whether the QPP is part of a negotiated interconnection agreement, and (2) whether the negotiated interconnection agreement is nondiscriminatory, consistent with state and federal law, and consistent with the public interest, convenience, and necessity.

III. POSITIONS OF PARTIES

A. Qwest

8 Qwest asserts that the QPP contains terms for providing switching and shared transport elements that Qwest is no longer required to provide pursuant to Section 251 (as a result of the *USTA II* decision[3]), but that Qwest is nonetheless required to provide under Section 271(c)(2)(B). Qwest argues that it is therefore not required to file such an agreement with a state commission and the state commission lacks authority under Section 252 to review and approve the

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platform out of the existing interconnection agreement or other agreement governed by 47 U.S.C. §§ 251 and 252, and addresses the availability of line splitting.

[2] The QPP is composed of the "Master Services Agreement," the "Service Exhibit 1 –Qwest Platform Plus™ Service," and the "QPP Rate Page – Washington."

The QPP offers local switching and shared transport for residential and business service, as well as Centrex, payphone access lines, and to serve PBXs. *QPP ¶ 1.1.* Local switching and shared transport are network elements. The QPP is a six-page description of how network elements and associated services will be provided. The "QPP Rate Page – Washington" contains in excess of one hundred separate rates for itemized elements and services.

[3] *United States Telecom Ass'n v. Federal Communications Comm'n,* 359 F.3d 554 (D.C. Cir. 2004).

agreement. *Id. at ¶ 11.* It bases its argument, *Id. at ¶¶ 12-14,* on a footnote to the *Qwest Declaratory Order,*[4] in which the FCC stated (in footnote 26):

> We therefore disagree with the parties that advocate the filing of all agreements between an incumbent LEC and a requesting carrier. See Office of the New Mexico Attorney General and the Iowa Office of Consumer Advocate Comments at 5. Instead, we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1). Similarly, we decline Touch America's suggestion to require Qwest to file with us, under section 211, all agreements with competitive LECs entered into as "settlements of disputes" and publish those terms as "generally available" terms for all competitive LECs. Touch America Comments at 10, citing 47 U.S.C. § 211.

9 Qwest also argues that agreements that make switching and shared transport available are subject to exclusive federal jurisdiction. *Id. at ¶ 15-20.*

B. AT&T

10 AT&T refutes Qwest's argument that only agreements adopted under Sections 251(b) and (c) of the Act need be filed for Commission approval. AT&T states that the QPP is an "interconnection agreement adopted by negotiation" subject to the filing requirement under Section 252(e)(1) and that Section 252(e)(1) is clear on its face and requires "any" interconnection agreement to be filed. *AT&T Response, at 3.* Further, AT&T states the QPP and the *Thirteenth Amendment* constitute an agreement that creates an "ongoing obligation" and is therefore the type of agreement the FCC requires to be submitted to a state commission. *Id. at 3-6.*

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[4] *In the Matter of Qwest Communications International Inc.'s Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1),* 17 FCC Rcd. 19337 (October 4, 2002).

11 AT&T states its concern that if Qwest is not required to file the QPP, then the QPP and similar negotiated agreements will not be examined to determine if they are discriminatory. AT&T takes issue with Qwest's contention that the agreement was not entered into "pursuant to Section 251." AT&T notes that all carriers have a duty to interconnect under Section 251(a)(1) and therefore the QPP is entered into in fulfillment of that Section 251 duty; if Qwest had balked at providing the network elements, MCI could have invoked its right to arbitrate under Section 252. AT&T states that even if that were not true, the QPP is still a negotiated agreement with the meaning of Section 252(a)(1) even if it was negotiated "without regard to the standards in [§ 251(b) and (c).]" *Id. at 8-9.*

12 AT&T also rebuts Qwest's assertion that because Qwest is providing the elements in the QPP pursuant to Section 271(c)(2)(B) and not Section 251(c) it is not required to file the QPP. AT&T points out that under Section 271, Qwest's authority to provide in-region long distance service in Washington is conditioned on Qwest offering competitive checklist items pursuant to "binding agreements that have been approved under section 252 . . . ." *Id. at 10-11.* AT&T cites language from a Section 271 application case in which the FCC stated that a Bell Operating Company is only "providing" a checklist item if it has a "concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item." *Id. at 12.*

13 Finally, AT&T points out that other state commissions, namely Texas, Michigan, Ohio, and Kansas have found that such agreements must be filed with state commissions. *Id. at 13-14.*

C. MCI

14 MCI also rebuts Qwest's arguments in opposition to its request for approval. MCI states that the FCC historically has taken a broad view of the Section

252(a)(1) filing requirement and recently has provided, in the *Qwest Declaratory Order*,[5] a broad definition of what constitutes an interconnection agreement that must be filed pursuant to Section 252(a)(1). *MCI Response at ¶¶ 7-8.* MCI also cites a recent FCC order issued in August of 2004, and a concurring statement by FCC Commissioner Abernathy, for the proposition that the FCC has not settled the issue of whether commercially negotiated agreements for access to network elements that are not required to be unbundled under Section 251(c)(3) should fall within Section 252. *Id. at ¶¶ 9-11.* MCI states that the FCC has left the first determination of what is an interconnection agreement to the states, and in any case, did not address the more general Section 252(e) filing requirement (as opposed to the Section 252(a)(1) filing requirement) in the declaratory ruling on which Qwest relies for its theory. *Id. at ¶¶ 14-15.*

15 MCI points out that the Commission's rule, WAC 480-07-640, requires all agreements that are required to be filed under Section 252 to be filed with and approved by the Commission, including all attachments and appendices. *Id. ¶¶ 16-17.* MCI states that, at a minimum, the QPP is an attachment to the documents that even Qwest agrees constitute an amendment to an interconnection agreement that must be filed with and approved by the Commission. *Id. at ¶ 17.* MCI indicates that if approved, the agreement would be available to other carriers as provided for in Section 252(i). *MCImetro Request, at 7.*

D. Commission Staff

16 Commission Staff states the QPP is subject to the Section 252 filing requirement because it offers network elements and services that are contemplated by Section

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[5] *In the Matter of Qwest Communications International Inc.'s Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd. 19337 (October 4, 2002).

252 of the Act. *Open Meeting Memo, at 5.* Commission Staff asserts the FCC has never suggested that agreements resulting from commercial negotiations should be regarded as anything other than interconnection agreements. Commission Staff asserts the FCC has stated in several decisions that state commissions are in the best position to determine which agreements must be filed. *Id. at 5-6.* Commission Staff also asserts approval of the QPP, which would permit other carriers to adopt it as an agreement, would provide more certainty to carriers than is provided by Qwest's posting the QPP on Qwest's wholesale website. *Id. at 6.* Commission Staff asserts there is no exception to Section 252(e) filing requirements for negotiated interconnection agreements offering network elements not required to be offered under Section 251(d), or those offered to fulfill Section 271 obligations. *Id.* Commission Staff also contends that filing the QPP is necessary for MCI and Qwest to meet the "completeness" requirement of the Commission's interconnection agreement filing rule, WAC 480-07-640.

17 Commission Staff states it has reviewed the QPP and the *Thirteenth Amendment* and determined that they do not discriminate against carriers that are not parties to the agreement, that the QPP and *Thirteenth Amendment* are consistent with state and federal law, and that the QPP and *Thirteenth Amendment* are consistent with the public interest, convenience, and necessity.

IV. COMMISSION DISCUSSION AND DECISION

18 The federal Telecommunications Act of 1996 (the Act) states "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." *47 U.S.C. § 252(e)(1).* RCW 80.36.610(1) grants the Commission authority "to take actions, conduct proceedings, and enter orders as permitted or contemplated . . . under the federal telecommunications act of 1996."

19 Congress provided state commissions the authority to reject a negotiated interconnection agreement that discriminates against carriers not a party to the agreement, and to reject a negotiated interconnection agreement that is not consistent with the public interest, convenience, and necessity. *47 U.S.C. § 252(e)(2)(A).*

20 In its *Qwest Declaratory Order,*[6] the FCC stated:

> Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an "interconnection agreement" and, if so, whether it should be approved or rejected.

21 It is unnecessary for us to decide whether Section 252(a)(1) and (e) would apply to an agreement that pertained solely to the provision of a network element that was not required to be unbundled pursuant to FCC rules implementing sections 251(c), because we conclude that the *Thirteenth Amendment* and the QPP are part of one integrated agreement pertaining to matters that indisputably are subject to the Section 252 filing and approval requirements for negotiated interconnection agreements.

22 Qwest concedes that the *Thirteenth Amendment* is a fully negotiated interconnection agreement. *MCImetro Request for Approval, at 1; Qwest Request for Approval, at 1.* [7]

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[6] *In the Matter of Qwest Communications International Inc.'s Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd. 19337, ¶ 10 (October 4, 2002).

[7] Qwest submitted its August 4, 2004, request on a form approved by the Commission. The form states the request is for approval of a "fully negotiated amendment to an interconnection agreement."

23 Both the *Thirteenth Amendment* and the QPP state that Qwest and MCI contemporaneously entered into the QPP and the *Thirteenth Amendment* to provide MCI with "services technically and functionally equivalent" to the unbundled network element platform (UNE-P) arrangements as they existed under the companies' interconnection agreements on June 14, 2004 (just prior to the expiration of the *USTA II* court's stay of its vacatur of the FCC's unbundling rules for switching and dedicated transport). *Qwest Master Services Agreement, at 2 (recitals); Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts, at 1 (recitals).*

24 As explained by the *Thirteenth Amendment* and the QPP themselves, the combination of network elements commonly known as UNE-P includes not only the port, switching and transport elements, but also the local loop, *Id.*, which incumbent local exchange carriers are still required to provide on an unbundled basis pursuant to FCC rules that implement Section 251(c). *See 47 C.F.R. § 51.319(a)(1).* There is no dispute that ongoing obligations pertaining to an ILEC's provision of the local loop element are subject to state commission review and approval under Section 252(e).

25 The whole purpose of the QPP is to provide the port, switching, and shared transport elements *in combination with* the local loop element, which is provided under Qwest's existing interconnection agreement with MCI. According to the Service Exhibit 1 to the Qwest Master Services Agreement, Qwest:

> QPP™ services shall consist of the Local Switching Network Element (including the basic switching function, the port, plus the features, functions, and capabilities of the Switch including all compatible and available vertical features, such as hunting and anonymous call rejection, provided by the Qwest Switch) and the Shared Transport Network Element in combination, at a minimum to the extent available on UNE-P under the applicable

> interconnection agreement or SGAT where MCI has opted into an SGAT as its interconnection agreement (collectively, "ICAs") as the same existed on June 14, 2004.
>
> * * *
>
> As part of the QPP™ service, Qwest shall combine the Network Elements that make up the QPP™ service with Analog/Digital Capable Loops, with such Loops (including services such as line splitting) being provided pursuant to the rates, terms and conditions of the MCI's ICAs as described below.
>
> * * *
>
> The Loop will be provided by Qwest under the applicable ICAs in effect between Qwest and MCI at the time the order is placed. As part of the QPP™ Service, Qwest shall as described below combine the Local Switching and Shared Transport Network Elements with the Loop provided pursuant to the terms and conditions of MCI's ICAs.

Service Exhibit 1-Qwest Platform Plus Service, Sec. 1.1, 1.2.

26 There can be no serious question that the ongoing obligations concerning rates, terms and conditions for the provision of network elements in the *Thirteenth Amendment* and the QPP are part of a single integrated, non-severable agreement. The Qwest Master Services Agreement at Section 23 provides that:

> In the event the FCC, a state commission or any other governmental authority or agency rejects or modifies any material provision of this Agreement, either Party may immediately upon written notice to the other Party terminate this Agreement and any interconnection agreement amendment executed concurrently with this Agreement.

27 The Joint Request also reflects integrated pricing in combination of the two agreements, which have to be considered together in order for one to understand the entire agreement between the two parties. This integrated pricing also makes it apparent that the bargain struck by the parties encompasses both the QPP and the *Thirteenth Amendment.*

28 In addition to addressing line splitting, and striking certain network elements from the existing interconnection agreement, the *Thirteenth Amendment* provides for a batch hot cut process. An important function of a batch hot cut process is to enable migration of CLEC customers from service provided over UNE-P to service that is provided over the CLEC's own switch but still using the ILEC's loop. Under the QPP, the recurring charge for the port element is to increase each year—but only if Qwest meets its obligations related to implementation of a batch hot cut process under the *Thirteenth Amendment*. The QPP states:

> Provided that Qwest has implemented the Batch Hot Cut Process in a particular state pursuant to the terms and conditions of the Amendment to MCI's ICAs entered into contemporaneously with this Agreement, the monthly recurring rates for the switch port in the attached Rate Sheets shall increase incrementally by the amount of the applicable QPP™ Port Rate Increases for that state will not go into effect until such time as Qwest is able to process Batch Hot Cut orders in that state, and in the event of any such delay in the effective date of the QPP™ Port Rate increases, there shall be no subsequent true up of the QPP™ Port Rate Increases.

29 Thus, the *Thirteenth Amendment* and the QPP represent an integrated combination of rates, terms and conditions for the provision of a combination of unbundled network elements, which must be taken together in order for one to understand the entirety of the interconnection agreement between the two

parties. In order to determine whether the *Thirteenth Amendment* discriminates against other parties and whether it is in the public interest, it is critical to have the entirety of the agreement before us. Only then can we can understand how Qwest treats its wholesale customers for local interconnection. Also, because the *Thirteenth Amendment* and the QPP must be read together to understand the entirety of the amended interconnection agreement, it is clear that the QPP is an interconnection agreement subject to the filing, approval, and adoption requirements under Section 252 of the Act.

30 One provision of the QPP in particular demonstrates the danger to the Act's anti-discrimination policy if we were to accept Qwest's theory that filing and approval requirements apply only to select portions of interconnection agreements that pertain to Section 251(c) network elements. Although the QPP provides that the loop element will be provided pursuant to MCI's interconnection agreements with Qwest at the rates set forth in those agreements,

> [t]o the extent that the monthly recurring rate for the loop element in a particular state is modified on or after the Effective Date, the QPP™ port rate for that state in the Rate Sheet will be adjusted (either up or down) so that the total rate applicable to the QPP™ service and loop combination in that state . . . remains constant.

Service Exhibit 1-Qwest Platform Plus Service, Sec. 3.2.

31 Thus, the terms of the agreement ensure that, as between these two parties, a change in the loop rate or in the pricing zone designations by this Commission will be offset by a commensurate increase or decrease in the charges that will apply under the purportedly separate QPP agreement. By this device (and there are undoubtedly countless mechanisms that an ILEC and a favored CLEC might

potentially employ to similar ends[8]) the parties have bargained a different price for a Section 251 element than would apply to another CLEC that is not a party to the QPP and which lacks the right to opt-in to the integrated *Thirteenth Amendment* and QPP under Section 251(i).

32 As the court held in *Sage v. P.U.C. of Texas,*[9] "If the parties were permitted to file for approval on only those portions of the integrated agreement that they deem relevant to § 251 obligations, the disclosed terms of the filed sub-agreements might fundamentally misrepresent the negotiated understanding of what the parties agreed." That is the case with the *Thirteenth Amendment*. Accordingly, we find that the QPP is part of the negotiated interconnection agreement between MCI and Qwest. Because the QPP is part of the negotiated interconnection agreement, it is subject to our jurisdiction and to our review. *47 U.S.C. 252(e).*

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[8] As the court stated in *Sage Telecom, LP v. Public Util. Comm'n of Texas*, Case No. A-04-CA-364-SS, at 11-12 (W.D. Tex. Oct. 7, 2004), in rejecting a similar argument by Southwestern Bell:

> For instance, during the give-and-take process of a negotiation for an integrated agreement, an ILEC might offer § 251 unbundled network elements at a higher or lower price depending on the price it obtained for providing non-§ 251 services. Similarly, the parties might agree that either of them would make a balloon payment which, although not tied to the provision of any particular service or element in the comprehensive agreement, would necessarily impact the real price allocable to any one of the elements or services under contract.
>
> Without access to all terms and conditions, the PUC could make no adequate determination of whether the provisions fulfilling § 251 duties are discriminatory or otherwise not in the public interest. For example, while the state terms of a publicly filed sub-agreement might make it appear that a CLEC is getting a merely average deal from an ILEC, an undisclosed balloon payment to the CLEC might make the deal substantially superior to the deals made available to other CLECs. Lacking knowledge of the balloon payment, neither the State commission nor the other CLECs would have any hope of taking enforcement action to prevent such discrimination.

[9] *Id.* at 11.

A. Approval of Negotiated Interconnection Agreement

1. Procedure

33 Our procedure for review and approval of negotiated interconnection agreements is that we will consider a request at a regularly or specially scheduled open public meeting. *WAC 480-07-640(2)(b).* We may hear oral argument from parties, from members of the public, or both. *Id.* The Commission will enter an order approving or rejecting a fully negotiated agreement within ninety days after the date on which the request for approval and interconnection agreement are filed. *Id.* This procedure is authorized by the Act. *47 U.S.C. § 252(e)(3) and (4).*

2. Standard of Approval

34 The standard of approval is that we must approve a request unless the agreement or a portion of it discriminates against a telecommunications carrier not a party to the agreement, or unless the agreement or a portion of it is not consistent with the public interest, convenience, and necessity. *47 U.S.C. § 252(e)(2).* The Commission has added, consistent with the Act, a requirement that agreements be consistent with state and federal law. *WAC 480-07-640(2)(a)(i); 47 U.S.C. § 252(e)(3).*

3. MCI Filed a Complete Agreement that Is Not Discriminatory, Is Consistent with State and Federal Law, and Is Consistent with the Public Interest, Convenience, and Necessity.

35 MCI and Qwest each assert the *Thirteenth Amendment* is not discriminatory and is consistent with the public interest. MCI asserts the same for the QPP. *Open Meeting Memo, at 5-6.* Commission Staff states it has reviewed the *Thirteenth Amendment* and the three QPP documents and determined they do not contain

terms, conditions, or prices that discriminate against any other carrier; determined they are consistent with state and federal law; and also determined they are consistent with the public interest, convenience, and necessity. *Id. at 6.* On the record before us, we conclude the negotiated interconnection agreement (the *Thirteenth Amendment* together with the QPP) must be approved consistent with 47 U.S.C. § 252(e) and WAC 480-07-640. Accordingly, we grant the request of MCI and approve the negotiated interconnection agreement filed by MCI on July 29, 2004, in Docket No. UT-960310. Other carriers may adopt the negotiated interconnection agreement. *47 U.S.C. § 252(i).*

V. FINDINGS OF FACT

36 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact.

37 (1) The QPP is composed of the "Master Services Agreement," the "Service Exhibit 1 –Qwest Platform Plus™ Service," and the "QPP Rate Page – Washington."

38 (2) MCImetro Access Transmission Services, LLC requested approval of the *Thirteenth Amendment* to the negotiated interconnection agreement between MCImetro Access Transmission Services, LLC and Qwest Corporation, and requested approval of the QPP on July 29, 2004.

39 (3) Qwest Corporation objected to MCImetro Access Transmission Services, LLC's request for approval of the QPP and asserted the Commission lacks jurisdiction to review the QPP on August 4, 2004.

40 (4) The *Thirteenth Amendment* and the QPP together constitute a negotiated interconnection agreement.

41 (5) The *Thirteenth Amendment* and the QPP do not discriminate against any carrier not a party to the agreement.

42 (6) The *Thirteenth Amendment* and the QPP are consistent with state and federal law.

43 (7) The *Thirteenth Amendment* and the QPP are consistent with the public interest, convenience, and necessity.

VI. CONCLUSIONS OF LAW

44 (1) The Commission has jurisdiction over the subject matter of the request of MCImetro Access Transmission Services, LLC and negotiated interconnection agreements.

45 (2) The Commission is not required by the Act or by any provision of state law to hold an adjudicative proceeding or other hearing prior to approving a negotiated interconnection agreement in its entirety.

46 (3) Commission approval of the QPP is permitted and contemplated for a state commission by Section 252 of the federal Telecommunications Act of 1996.

47 (4) A complete agreement is filed with the Commission when all documents containing terms, conditions, and rates (prices) that apply to provision of any network element, service, or other item or activity related to interconnection are filed.

48 (5) Commission approval of the *Thirteenth Amendment* and the QPP will not result in discrimination against any telecommunications carrier that is not a party to the agreement.

49 (6) Commission approval of the *Thirteenth Amendment* and the QPP is consistent with state and federal law.

50 (7) Commission approval of the *Thirteenth Amendment* and the QPP is consistent with the public interest, convenience, and necessity.

VII. ORDER

51 This order decides issues in a non-adjudicative proceeding. Based on the foregoing, the Commission orders:

52 (1) The Commission grants the request of MCImetro Access Transmission Services, LLC for review and approval of the QPP negotiated between MCImetro Access Transmission Services, LLC and Qwest Corporation.

53 (2) The Commission grants the request of MCImetro Access Transmission Services, LLC for review and approval of the *Thirteenth Amendment* to the negotiated interconnection agreement between MCImetro Access Transmission Services, LLC and Qwest Corporation.

54 (3) 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 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.

55 (4) The laws and regulations of the State of Washington and Commission Orders govern the construction and interpretation of the *Thirteenth Amendment* to the Agreement, including the QPP, between MCImetro Access Transmission Services, LLC and Qwest Corporation. The *Thirteenth Amendment*, including the QPP, is subject to the jurisdiction of the Commission.

DATED at Olympia, Washington, and effective this 20th day of October 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

PATRICK J. OSHIE, Commissioner