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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

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AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED

NOV 10 2004

DOCKETED BY	<i>CKR</i>
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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 SERVICE  
AGREEMENT.

DOCKET NO. T-01051B-04-0540  
DOCKET NO. T-03574A-04-0540

PROCEDURAL ORDER

**BY THE COMMISSION:**

On July 28, 2004, MCI metro Access Transmission Services, LLC ("MCI") filed an application with the Arizona Corporation Commission ("Commission") seeking approval of a negotiated amendment to an Interconnection Agreement between MCI metro and Qwest Corporation ("Qwest")<sup>1</sup>, for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts, and for approval of a QPP Master Service Agreement.

On August 6, 2004, Qwest filed a Motion to Dismiss Application for Review of Negotiated Commercial Agreement (with Alternative Request for Intervention). Qwest argues that the QPP Master Service Agreement ("QPP Agreement") is a Commercial Agreement that does not alter the terms of the existing Interconnection Agreement between Qwest and MCI metro and does not create any terms or conditions for services that Qwest must provide under Sections 251(b) and (c) of the Telecommunications Act. Qwest contends, therefore, that the QPP Agreement is beyond the scope of the Commission's jurisdiction and should be excluded from consideration in MCI metro's pending application.

On August 13, 2004, Qwest filed a Request for Suspension of 30-Day Time Clock pursuant to A.A.C. R14-2-1508<sup>2</sup>. Qwest requested suspension of the applicable time clock rules so that the

<sup>1</sup> The underlying Interconnection Agreement between MCI metro and US WEST Communications, Inc., was approved by the Commission in Decision No. 60308 (July 31, 1997).  
<sup>2</sup> A.A.C. R14-2-1508 provides that amendments to interconnection agreements that are not rejected by the Commission within 30 days of filing will become effective.

1 Commission would have sufficient time to consider Qwest's Motion to Dismiss.

2 On August 17, 2004, AT&T Communications of the Mountain States, Inc. and TCG Phoenix  
3 ("AT&T") filed a Motion to Intervene and a Response to MCI's Application for Review and  
4 Approval and Qwest's Motion to Dismiss. AT&T argues that the QPP Agreement was properly  
5 submitted for the Commission's approval in accordance with the Telecommunications Act and  
6 Commission rules. AT&T also contends that a number of other state commissions have required  
7 similar agreements to be submitted for approval. Accordingly, AT&T asks that Qwest's Motion to  
8 Dismiss be denied.

9 On August 24, 2004, MCI filed a Response to Qwest's Motion to Dismiss. MCI argues that  
10 the QPP Agreement was properly submitted for the Commission's approval under Section 252 of the  
11 federal Telecommunications Act of 1996 ("1996 Act"), as well as under the Commission's rules  
12 governing approval of interconnection agreements.

13 By Procedural Order issued August 25, 2004, Qwest's Motion for Suspension of the Time  
14 Clock was granted. The Procedural Order also granted intervention to both Qwest and AT&T, and  
15 directed MCI and the Commission's Utilities Division Staff ("Staff") to file responses to Qwest's  
16 Motion to Dismiss by September 10, 2004<sup>3</sup>.

17 Staff filed its Response to Qwest's Motion to Dismiss on September 10, 2004. Staff agreed  
18 with MCI and AT&T that the QPP Agreement was properly submitted for the Commission's  
19 approval under Section 252 of the 1996 Act. Staff also asserts that the Commission retains  
20 jurisdiction to review the QPP Agreement under Section 271 of the 1996 Act, and that there is no  
21 federal preemption of the Commission's authority regarding this matter.

22 On September 20, 2004, Qwest filed a Joint Reply to the Responses submitted by AT&T,  
23 MCI, and Staff. Qwest reiterated its arguments that the QPP Agreement is a commercial agreement  
24 that is not subject to state Commission approval under either Section 252 or 271 because the Federal  
25 Communications Commission ("FCC") has exclusive authority over such agreements.

26 On October 4, 2004, MCI filed Supplemental Authority in the form of an Order by the Utah  
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28 <sup>3</sup> As stated above, MCI's Response was filed on August 24, 2004.

1 Public Service Commission denying a similar Motion to Dismiss filed by Qwest in Utah. Utah  
2 Public Service Commission Docket No. 04-2245-01, *Order Denying Motion to Dismiss* (September  
3 30, 2004) (“*Utah Order*”).

4 On October 8, 2004, Staff filed a Notice of Filing Supplemental Authority attaching a recent  
5 Order issued by the United States District Court for the Western District of Texas regarding filing  
6 requirements of a commercial agreement between Sage Telecom, L.P. and SBC Texas. *Sage*  
7 *Telecom v. Public Utility Comm’n of Texas*, Case No. A-04-CA-364-SS (rel. October 7, 2004)  
8 (“*Sage*”).

9 On October 25, 2004, Staff filed Supplemental Authority in the form of a Decision by the  
10 Washington State Utilities and Transportation Commission (“Washington UTC”) approving an  
11 amended ICA, including the QPP Master Service Agreement, between MCI and Qwest. Washington  
12 UTC Docket No. UT-960310, et al., *Order Approving Negotiated Interconnection Agreement in its*  
13 *Entirety* (October 20, 2004).

14 On October 29, 2004, AT&T and TCG Phoenix filed a Motion for Leave to Withdraw as  
15 Intervenors. AT&T and TCG state that they will no longer actively market consumer local exchange  
16 and interexchange service and can no longer expend their limited resources in this docket.

17 On November 2, 2004, Qwest filed a Motion for Leave to File Simultaneous Supplemental  
18 Briefs Concerning Qwest’s Motion to Dismiss and Request for Oral Argument. Qwest seeks an  
19 Order permitting the parties the opportunity to file briefs, and make oral arguments, regarding the  
20 Supplemental Authority submitted in this docket.

21 On November 5, 2004, Staff submitted additional Supplemental Authority in the form of  
22 recent Orders issued by state regulatory commissions in South Dakota and Wyoming. Public Utilities  
23 Commission of South Dakota, Docket No. TC04-144, *Order Denying Motion to Dismiss; Order*  
24 *Approving Agreement* (October 29, 2004); Public Service Commission of Wyoming, Docket No.  
25 70027-TK-04-38, et al., *Order* [Approving Amendment to Interconnection Agreement and Qwest  
26 Master Service Agreement] (November 1, 2004).

27 IT IS THEREFORE ORDERED that simultaneous supplemental briefs shall be filed, by no  
28 later than November 22, 2004, regarding the various Supplemental Authority filings submitted in this

1 docket.

2 IT IS FURTHER ORDERED that an oral argument regarding Qwest's Motion to Dismiss  
3 shall be scheduled for November 30, 2004, at 1:30 p.m., at the offices of the Commission. Parties  
4 may participate in the oral argument telephonically by calling (602) 542-9007 at the designated time,  
5 in lieu of participating in person.

6 IT IS FURTHER ORDERED that AT&T Communications of the Mountain States, Inc. and  
7 TCG Phoenix shall be permitted to withdraw as intervenors.

8 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,  
9 amend, or waive any portion of this Procedural Order by subsequent Procedural Order or by ruling at  
10 hearing.

11 DATED this 10<sup>th</sup> day of November, 2004.

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14 DWIGHT D. NODES  
15 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing mailed/delivered  
17 this 10 day of November, 2004 to:

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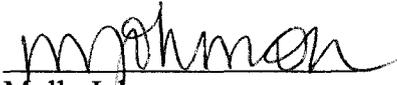
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