

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 6(19)

In the Matter of)	
)	
MCI METRO ACCESS TRANSMISSION)	STAFF COMMENTS
SERVICES LLC and QWEST)	
CORPORATION,)	
)	
Nineteenth Amendment Submitted For)	
Commission Approval Pursuant to Section)	
252(e) of the Telecommunications Act of 1996.)	

RECOMMENDATION: DENY AMENDMENT

On April 22, MCI Metro Access Services LLC, and Qwest Corporation filed a nineteenth amendment to the interconnection agreement previously approved by the Public Utility Commission of Oregon (Commission). The parties seek approval of this amendment under Section 252(e) of the Telecommunications Act of 1996. The Commission provided notice by posting an electronic copy of the amendment on the World Wide Web, at: <http://www.puc.state.or.us/caragmnt/>. The Commission Staff (Staff) offers these comments.

Under the Act, the Commission must approve or reject an agreement reached through voluntary negotiation within 90 days of filing. The Commission may reject an agreement only if it finds that:

- (1) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (2) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

ARB 6(19) is nearly the same as ARB 6(7) which was filed October 20, 2002. Qwest withdrew ARB 6(7) on November 29, 2002. Staff did not intend to recommend approval of ARB 6(7) based on apparent discriminatory language within the amendment. ARB 6(19) has modified the language, but Staff still believes it to be discriminatory in nature. .

ARB 6(19) states in Attachment 1 at Section 1.3: "...and is not applicable to any other Party as referenced in Attachment 2, paragraph 2.1, unless another party's actual traffic patterns with Qwest are substantially similar to the traffic patterns between Qwest and MCI WorldCom Communications, Inc." Attachment 2, paragraph 2.1 states: "...The specific traffic characteristics of this exchange of traffic are unique to the traffic patterns between each other and the factors set forth below are not applicable, nor valid with any other Party, unless another party's actual traffic patterns with Qwest are substantially similar to the traffic patterns between Qwest and MCI WorldCom Communications, Inc."

The language attempts to limit the availability of the amendment for adoption. OAR 860-016-00025(1) states: "If a requesting telecommunications carrier decides to adopt an identical agreement or identical individual arrangement contained in an agreement...." There is no language in the rule to suggest that adoptions can be limited to "similarly situated" carriers. The limitation discriminates against other carriers who are not parties to the agreement.

The amendment also states that it "...shall be deemed effective as of June 29, 2001." This date is almost four years ago. Backdating an interconnection agreement also appears to be discriminatory. The effective date of an interconnection agreement or amendment thereto is a forward-looking date and should not be applied to past transactions. Staff notes that an interconnection agreement or amendment thereto has no effect or force until approved by a state Commission. *See* 47 U.S.C. Sections 252 (a) and (e). Accordingly, Staff points out that the effective date of this filing will be the date the Commission signs an order approving it, and that any provision stating that the parties' agreement is effective prior to that date is not enforceable.

Staff also notes that the body of ARB 6(19) refers to MCI WorldCom Communications, Inc. and not MCI Metro Access Transmission Services, LLC

For the above stated reasons, Staff recommends denial of the amendment. Staff concludes that the amendment to the previously approved agreement discriminates against telecommunications carriers who are not parties to the agreement and appears to be inconsistent with the public interest, convenience, and necessity.

Dated at Salem, Oregon, this 13th day of May, 2005.

Celeste Hari
Telecommunications Analyst