BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 6(15)

In the Matter of	)
	)
MCIMETRO ACCESS TRANSMISSION SERVICES, LLC and QWEST CORPORATION.	)MCI RESPONSE TO STAFF'S)NOVEMBER 4 COMMENTS
	)
	)
Fifteenth Amendment to the Interconnection Agreement Submitted for Commission Approval Pursuant to Section 252(e) of the Telecommunications Act of 1996.	)))))

MCImetro Access Transmission Services, LLC ("MCI") hereby responds to the Commission Staff comments filed in this docket on November 4, 2004. MCI asks this Commission to deny Staff's recommendation to reject the fifteenth amendment to the interconnection agreement between MCI and Qwest Corporation ("Qwest"). As grounds therefor, MCI states as follows.

1. On July 29, 2004, MCI filed its Request for Approval of Amendment of Interconnection Agreement between MCI and Qwest. MCI included several documents in this filing, including (1) the pleading entitled, Request for Approval of Amendment of Interconnection Agreement Between MCI and Qwest; (2) Carrier to Carrier Agreement Checklist; (3) Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts, with Attachment A Batch Hot

Cut Process; and (4) Qwest (Platform Plus) Master Services Agreement ("QPP/MSA"), with Exhibit 1, Exhibit 1 Attachment A and QPP Rate Sheets.

2. On August 2, 2004, Qwest made a similar filing but did not include the QPP/MSA and its exhibits.

3. On August 23, 2004, Commission Staff filed comments recommending that the Commission approve Qwest's filing.

4. On September 3, 2004, Qwest filed a Motion to Dismiss MCI's Request for Approval to the extent MCI included the QPP/MSA and its attachments in its filing. Qwest contends that the Master Services Agreement is not an agreement subject to Section 252 filing requirements.

5. On September 20, 2004, Staff filed comments opposing Qwest's Motion to Dismiss, requesting that the Motion be denied. MCI and AT&T also filed comments opposing Qwest's Motion to Dismiss.

6. Contrary to its earlier comments, on November 4, 2004, Staff filed comments recommending that the Commission reject the Amendment as presented in both the Qwest and the MCI filings, stating that its previous recommendation for approval was filed in error. Staff cites to Section 4.0 of the Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts as the basis for its more recent recommendation. Staff argues that eliminating UNE-P elements from the interconnection agreement is contrary to law and the public interest. Staff additionally argues that the language of Section 4 provides, "no assurance that future QPPs will be filed for Commission approval."

7. Section 4.0 of the Amendment provides as follows:

> Agreement Not to Order. During the term of this Agreement Qwest shall not offer or provide to MCI, and MCI shall not order or purchase from Qwest, unbundled mass market switching, unbundled enterprise switching or unbundled shared transport, in combination with other network elements as part of the unbundled network element platform ("UNE-P") out of its existing interconnection agreement(s) with Qwest, a Qwest SGAT or any other interconnection agreement governed by 47 U.S.C. Sections 252 and 252 that MCI or one of its affiliates may in the future enter into with Qwest and MCI waives any right under applicable law in connection therewith. Notwithstanding the foregoing, nothing in this Section shall prevent Qwest from offering or providing QPP services to MCI or MCI from ordering or purchasing QPP services from Qwest. The agreement not to order UNE-P services embodied in this Section shall remain in effect for the Term of this Amendment, and for the avoidance of doubt, shall no longer be binding on MCI or otherwise enforceable in a particular state if the QPP MSA is terminated as to that state (other than for reason of material breach by MCI).

8. MCI disagrees with Staff's interpretation and evaluation of the Amendment. First, the parties' agreement to discontinue MCI's ordering of UNE-P pursuant to former interconnection agreements is not contrary to the law and the public interest. MCI and Qwest, recognizing the uncertainty of the law relating to the provision of UNE-P, entered into an agreement for a definite period of time, until July 31, 2008, to address such uncertainty and to create a stable arrangement for the continued availability to MCI from Qwest of services technically and functionally equivalent to the June 14, 2004 UNE-P arrangements, regardless of whether the law ultimately continues to obligate Qwest to provide UNE-P to MCI.

9. That technically and functionally equivalent UNE-P service is known as Qwest Platform Plus ("QPP"). Use of QPP allows MCI to continue to provide local services to residential and small business end users in Oregon, as well as the other 13 states in Qwest's traditional local service region. Without the amendment, MCI's ability to continue to provide local services to these categories of end users would be dependent

upon the Federal Communications Commission's ("FCC's") decision in the Triennial Review Order Remand proceeding. One can only speculate as to whether the FCC will continue to obligate incumbent carriers to provide UNE-P and if it does, for what period of time. Providing certainty to MCI and its end users as to the availability of UNE-P through July of 2008 promotes stability and the maintenance of competition in the local market.

10. Moreover, the agreement reached between MCI and Qwest resulted specifically from the FCC's request that industry participants engage in "good faith negotiations to arrive at commercially acceptable arrangements for the availability of unbundled network elements."[1] Undoubtedly, the FCC envisioned that unbundling obligations contained in interconnection agreements on June 15, 2004 would be modified, and perhaps, eliminated pursuant to these "commercially acceptable arrangements." In fact, in its Interim Unbundling Order, the FCC specifically exempted voluntarily negotiated agreements, like that between MCI and Qwest, from the requirement that ILECs continue to provide UNE-P under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004.[2] For these reasons, Staff's claim that the Agreement is contrary to law and public policy is without merit.

11. Staff argues that the language above usurps the Commission's jurisdiction to review and approve the Agreement pursuant to Section 252 of the Act. MCI strongly disagrees. In Section 4.0 above, the parties agreed that MCI would no longer *order* and

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[1] *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, WC Docket No. 04-313, CC Docket No. 01-338 (rel. August 20, 2004) ("Interim Unbundling Order") at para. 7 and n. 23.

[2] *Id. at para. 16.*

Qwest would no longer *provision*, UNE-P pursuant to the former terms of the parties' interconnection agreement but instead, the elements that constitute UNE-P would be known as QPP, and ordered pursuant to the QPP/MSA and the Batch Hot Cut Amendment. Section 4 does not address filing requirements. The parties did not agree to usurp this Commission's jurisdiction to require that the Agreement be filed pursuant to Section 252. On the contrary, Section 23 of the QPP/MSA acknowledges that the parties reserve their rights as to filing requirements. In fact, MCI included the QPP/MSA and its exhibits in its filing, and requested in its "Wherefore" clause that the Commission review and approve both the Batch Hot Cut Amendment and the QPP/MSA, thereby allowing the Commission to review it and make its own determination as to whether the QPP/MSA is an interconnection agreement that is required to be approved by this Commission pursuant to Section 252 of the Act.

12. In its response to Qwest's Motion to Dismiss, MCI reiterated its belief that the QPP/MSA was a voluntarily negotiated interconnection agreement to be filed under Section 252(e) of the federal Telecommunications Act of 1996. MCI also argued that the QPP/MSA was an integral part of the arrangement between Qwest and MCI to allow MCI to purchase QPP in lieu of UNE-P as it existed on June 14, 2004. At no time and no where within either agreement has MCI agreed with Qwest that the QPP/MSA is not an interconnection agreement. Moreover, no where within either agreement has MCI implicitly or overtly sought to usurp the Commission's jurisdiction to review and approve the Agreement pursuant to Section 252 of the Act. Such an assertion by Staff is completely contrary to the obvious course of conduct exhibited by MCI by filing the

QPP/MSA in the first place, by reserving MCI's legal position in Section 23 of the QPP/MSA, and by seeking denial of Qwest's Motion to Dismiss.

13. Staff also argues that Section 4 allows the parties to avoid the Section 252 filing requirements as to any updates to the Qwest Master Services Agreement. MCI disagrees. If the Commission were to determine that the QPP/MSA is an interconnection agreement that is required to be filed under Section 252, updates or amendments would be amendments to an interconnection agreement that would be required to be filed as well. Section 4 contains no language to prohibit or circumvent any such ruling by the Commission.

For all of these reasons, MCI respectfully requests that this Commission deny the Staff's recommendation that Commission reject the proposed Amendment.[3]

Dated this 8th day of November 2004.

MCImetro ACCESS TRANSMISSION
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[3] As Staff notes in its comments, this Commission must act to approve or reject an amendment reached through voluntary negotiation within 90 days of filing. If the Commission does not act, it is deemed approved. Section 252(e) (4). The Amendment for which Staff recommends rejection was filed by Qwest on August 2, 2004. Thus, it was deemed approved on or about November 1, 2004.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I served a true and exact copy of the within mci Response to Staff's November 4 Comments, upon the following, either by hand delivery, first class mail or e-mail, as stated below:

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Dated: November 8, 2004

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