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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

ARB 165(1)

ARB 422(1)

In the Matter of )  
)  
MCIMETRO ACCESS TRANSMISSION )  
SERVICE, LLC, and GTE NORTHWEST )  
INCORPORATED )  
)  
First Amendment to Interconnection Agreement, )  
Submitted for Commission Approval Pursuant to )  
Section 252(e) of the Telecommunications Act of )  
1996. (ARB 165(1)) )

ORDER

In the Matter of )  
)  
MCI WORLDCOM COMMUNICATIONS, INC., )  
and VERIZON NORTHWEST INC. )  
)  
First Amendment to Interconnection Agreement, )  
Submitted for Commission Approval Pursuant to )  
Section 252(e) of the Telecommunications Act of )  
1996. (ARB 422(1)) )

**DISPOSITION: AMENDMENTS TO INTERCONNECTION  
AGREEMENTS APPROVED**

On February 26, 2004, MCImetro Access Transmission Services, LLC (MCIIm), and Verizon Northwest Inc. (Verizon) filed an Amendment to Interconnection Agreements covering numerous Interconnection Agreements between Verizon and entities controlled by MCIIm’s parent, including the agreement approved in ARB 165. The Amendment would “resolve their outstanding disputes pertaining to intercarrier compensation and...establish uniform terms governing intercarrier compensation arrangements for certain traffic exchanged between the Parties....”

On March 1, 2004, MCI WorldCom Communications, Inc. (MCI), and Verizon filed an Amendment to the Opt-in Agreement in ARB 422, identical to that filed in ARB 165 on February 26, 2004. The Parties seek our approval of the Amendments in both dockets.

**Background.** In ARB 165, MCI and GTE Northwest Incorporated (GTE) sought the Commission's approval of an Interconnection Agreement entered into by the Parties by filing Letters of Adoption of the terms of the arbitrated agreement between AT&T Communications of the Pacific Northwest, Inc. (AT&T), and GTE that was approved in Docket ARB 5. By Order No. 99-651, entered October 21, 1999, the Commission approved the agreement. Verizon Northwest Inc. is GTE's successor in interest to that agreement.

On April 11, 2002, MCI and Verizon jointly filed a Notice of Adoption of the ARB 5 agreement in Docket ARB 422. This opt-in agreement resolved issues before the Commission in ARB 392 and the docket was closed without an order pursuant to OAR 860-016-0025(3).

Subsequently, the entity controlling MCI and MCI entered bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York (Bankruptcy Court). As part of those proceedings, overall settlements, including those involving MCI and MCI, have been sought with parties with whom the parent corporation or its subsidiaries had disputes regarding intercarrier compensation. On December 29, 2003, the Bankruptcy Court approved the settlement agreement. The Parties to ARB 165(1) and ARB 422(1) now ask the Commission to approve the proposed amendments to their Interconnection Agreements pursuant to the standards set forth in 47 USC §252(e)(1) and (2). Comments were filed in Docket ARB 165(1) by Level 3 Communications, LLC (Level 3), on March 15, 2004, and by the Commission staff (Staff) on March 17, 2004. Comments were filed in Docket ARB 422(1) by Level 3 on March 15, 2004, and by Staff on March 19, 2004. Verizon filed a Response to Comments of Level 3 Communications on March 19, 2004, in both dockets.

**Positions of the Parties.** Level 3 filed one set of comments for both dockets. It does not object to Commission approval of the Amendments. However, it asks that the Commission declare, as part of its action, "its approval is limited to the unique circumstances relating to the negotiated settlement between Verizon and MCI, and does not create a precedent for any other carriers."<sup>1</sup>

Level 3 notes that the Amendments call for a "blended" rate of compensation that may allow MCI to collect a higher rate for delivery of dial-up Internet traffic than is available to other carriers for that traffic, because it is calculated on a nationwide basis using December 2003 traffic, mixing both voice and dial-up Internet traffic to arrive at the blended rate.<sup>2</sup>

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<sup>1</sup> *Comments of Level 3 Communications, Inc, LLC*, p. 3.

<sup>2</sup> *Id.*, p. 4.

Level 3 also notes that Voice Over Internet Protocol (VOIP) traffic will be defined as “telecommunications services” and treated as telecommunications traffic for intercarrier compensation, including access charges. Inclusion of VOIP in such definition may contradict federal law and be unenforceable, if the entity transmitting VOIP is determined not to be a carrier and subject to access charges even if the VOIP traffic is interstate in origin or destination.<sup>3</sup> Such private agreements, Level 3 acknowledges, are not illegal so long as they do not discriminate against third parties or are not contrary to the public interest, but they should not have weight as precedent to bind any other party.<sup>4</sup>

In Comments filed in both dockets, Staff makes a general recommendation that the proposed Amendments comply with the nondiscrimination and public interest standards and should be approved, but makes comment neither as to the particular circumstances of the Amendments nor as to their contents.

In its Response, Verizon states that the issue of precedent raised by Level 3 is premature and will only be ripe for Commission review in the context of some future proceeding. At that time, “all parties will have the right to advance arguments about the precedential value of this amendment as such arguments relate to matters at issue then.”<sup>5</sup> The Amendments, Verizon asserts, do not bind any nonparty and have no effect on any parties in current proceedings.<sup>6</sup>

Verizon also defends the use of the blended rate, relying on the FCC’s interim rate structure for Internet traffic adopted in its *Order on Remand*.<sup>7</sup> Furthermore, Verizon asserts that, even if the rates differ from FCC rules, Level 3 acknowledges that Verizon and MCI are free to negotiate such compensation terms.<sup>8</sup>

With respect to Level 3’s assertion that VOIP is not a telecommunications service, Verizon calls that assertion “pure speculation” on the outcome of the FCC’s rulemaking proceeding and that, in the event that Level 3’s prognostication proves to be correct, the Amendments provide for adherence to the outcome of the FCC proceedings.<sup>9</sup>

**Commission Decision.** All parties agree that the Amendments submitted in ARB 165(1) and ARB 422(1) may legally be entered into and do not discriminate against nonparties or otherwise contravene the public interest. The sole question is whether or not the Commission should make some declaration at this juncture as to the *sui generis* character of these proceedings and their lack of precedent upon future arbitration disputes touching upon the above-mentioned issues, should such disputes arise. Such concerns are premature. In approving these Amendments, we conclude that no party shall be prejudiced by our having

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<sup>3</sup> *Id.*, p. 5.

<sup>4</sup> *Id.*, p. 6.

<sup>5</sup> *Response*, p. 1.

<sup>6</sup> *Id.*, p. 2, fn. 2.

<sup>7</sup> *Id.*, p. 2, text and fn. 3 and cases cited therein.

<sup>8</sup> *Id.*, p. 3.

<sup>9</sup> *Id.*, pp. 3-4.

declined to make any ruling upon their precedential value. In the event of some future controversy, petitioners and intervenors will be free to make whatever arguments and martial whatever case law they deem relevant to the proceedings.

**ORDER**

IT IS ORDERED that the Amendments to the Interconnection Agreements between MCImetro Access Transmission Services, LLC, and GTE Northwest Incorporated (now known as Verizon Northwest Inc.) (ARB 165), and MCI WorldCom Communications, Inc., and Verizon Northwest Inc. (ARB 422), are APPROVED.

Made, entered, and effective \_\_\_\_\_.

\_\_\_\_\_  
**Lee Beyer**  
Chairman

\_\_\_\_\_  
**John Savage**  
Commissioner

\_\_\_\_\_  
**Ray Baum**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.