

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 6

In the Matter of)	
)	
MCIMETRO ACCESS TRANSMISSION)	
SERVICES, L.L.C., and QWEST)	
CORPORATION)	ORDER
)	
For Approval of a Negotiated Agreement)	
Under the Telecommunications Act of)	
1996.)	

**DISPOSITION: PETITION FOR RECONSIDERATION GRANTED;
ORDER REVERSED IN PART, AFFIRMED IN PART**

On January 10, 2005, MCImetro Access Transmission Services, LLC (MCI) filed a petition for reconsideration of Order No. 04-661. The Order denied a motion to dismiss MCI's Request for Approval of an amendment to an interconnection agreement approved in Order No. 97-341 and rejected a voluntary interconnection agreement and amendment between MCI and Qwest Corporation (Qwest). MCI does not take issue with the denial of the motion to dismiss, but requests the Commission to reconsider its decision rejecting the fifteenth amendment (Amendment) to the interconnection agreement (Agreement) between MCI and Qwest.

In its petition, MCI argues that the Order should be reconsidered on two grounds. First, MCI argues that the Commission erred in concluding that the Amendment and Agreement are contrary to the public interest, convenience, and necessity. Second, MCI states that the Commission's Order is legally deficient because the Commission failed to approve or reject the amendment and agreement within 90 days after they were submitted to the Commission.

The Commission may grant reconsideration only under certain circumstances, set out in OAR 860-014-0095(3):

The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is:

- (a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;

- (b) A change in the law or agency policy since the date the order was issued, relating to a matter essential to the decision;
- (c) An error of law or fact in the order which is essential to the decision; or
- (d) Good cause for further examination of a matter essential to the decision.

MCI's First Argument.

MCI asserts that the Commission, through Staff's recommendation, misunderstands the comprehensive agreement that MCI entered into with Qwest. MCI also states that Staff appears to have misread the section of the agreement it relied upon in making its argument on which the Commission relied.

Section 4.0 of Qwest and MCI's Agreement provides:

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 agreements with Qwest, a Qwest SGAT or any other interconnection agreement governed by 47 U.S.C. Sections 252 and 252 (sic) 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.

The Commission rejected the amendment because it removes all aspects of UNE-P, mass market switching and shared transport from the agreement and states that those elements are available in a separate agreement, Qwest Platform Plus™ (QPP). Staff concluded, and the Commission agreed, that the amendment did not comply with the filing requirements as stated in FCC Order No. 04-179, released August 20, 2004. The FCC's order, in partial response to the decision in *USTA II*¹, creates a temporary rule that provides that unbundled access to switching, enterprise market loops, and dedicated transport remains an obligation under Section 251(c) of the Telecommunications Act of 1996 (Act).

MCI and Qwest disagreed as to whether the QPP is an interconnection agreement that must be filed for Commission approval. MCI did file the QPP for Commission approval, but Qwest filed a motion to dismiss the application because Qwest

¹ *U.S. Telecom Ass'n v. FCC*, 359 F3d 554 (D.C. Cir. March 2, 2004).

believed that the QPP was not subject to filing obligations under Section 252 of the Act.² Commission Staff expressed its concern that regardless of MCI's recent QPP filing, the proposed amendment to the Agreement would contain "no assurance that future QPPs will be filed for Commission approval".³

In its request for reconsideration, MCI states that the QPP is Qwest's replacement product for UNE-P. Further, since MCI did file the QPP for Commission approval, the Commission should not reject the agreement on the theory that "the QPP should be filed". MCI also states that Order No. 04-661 clearly ruled that the QPP is an interconnection agreement that is required to be filed under Section 252 of the Act.

The Commission agrees that Order No. 04-661 clearly states that the QPP is an interconnection agreement that must be filed for Commission approval under Section 252 of the Act. This ruling, considered together with the fact that MCI did file the QPP, alleviates the Commission's concern that future QPPs may not be filed. MCI's request for reconsideration is therefore granted pursuant to OAR 860-014-0095(3)(d). The Commission finds that the amendment is not contrary to law or public interest. The Commission ruling that rejected the fifteenth amendment to the interconnection agreement between MCI and Qwest should be reversed.

MCI's Second Argument.

MCI argues that Order No. 04-661 should be reconsidered because the Commission issued the Order more than 90 days from the date it was submitted to the Commission. Therefore, MCI argues, the amendment and QPP were approved by operation of law under Section 252(e)(4) of the Act. MCI states that the amendment and QPP were filed on July 29, 2004, and the Commission issued Order No. 04-661 on November 9, 2004.

Commission records indicate that MCI's July 29, 2004, electronic filing was unacceptable because two documents, the Carrier to Carrier Agreement Checklist and the QPP Port Rate Increases, were inconsistent with hardcopy versions filed by MCI. Commission Staff informed MCI that the July 29, 2004, filing was not accepted by the Commission. Commission Staff continued to work with MCI staff to resolve the inconsistency and obtain correct versions of the two documents. MCI filed the required versions of the two documents with the Commission on August 12, 2004.⁴ November 9, 2004, the date Order No. 04-661 was issued, is within 90 days after August 12, 2004. The Commission's conclusion that Order No. 04-661 was timely issued is therefore affirmed.⁵

² Qwest's Motion to Dismiss Application for Review of Negotiated Commercial Agreement, Docket No. Arb 6, September 2, 2004.

³ Order No. 04-661 at 5, November 9, 2004.

⁴ See, Cover letter from MCI signed by Michael Rivera, August 11, 2004.

⁵ MCI does not take issue with the ruling in Order No. 04-661 that denied Qwest's motion to dismiss MCI's request for approval. Therefore, that ruling is not reconsidered in this matter.

Conclusion.

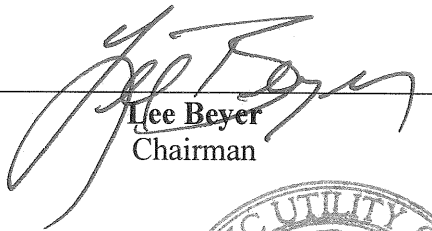
MCI's request for reconsideration of Order No. 04-661 is granted. The fifteenth amendment to the interconnection agreement between MCI and Qwest is not contrary to law or the public interest, and is approved. The Commission's conclusion that Order No. 04-661 was timely issued is affirmed.

ORDER

IT IS ORDERED that:

1. The Request for Reconsideration filed by MCImetro Access Transmission Services, L.L.C is granted.
2. The fifteenth amendment to the Interconnection Agreement between Qwest Communications and MCImetro Access Transmission Services, L.L.C, is approved.

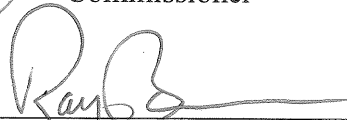
Made, entered, and effective MAR 03 2005



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.