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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 941

In the Matter of the Notice by )  
GTE Northwest Incorporated )  
to Withdraw PUC Oregon Tariff ) ORDER  
No. 15. )

**DISPOSITION: NOTICE OF TARIFF WITHDRAWAL REJECTED**

On August 9, 1999, GTE Northwest Incorporated (GTE) filed notice with the Public Utility Commission of Oregon withdrawing GTE PUC OR. Tariff No. 15. GTE Tariff No. 15 specifies the prices, terms and conditions under which telecommunications carriers may purchase building blocks (unbundled network elements or UNEs) from GTE. GTE claims that it is necessary to withdraw Tariff No. 15 in order to comply with the recent order of the federal district court in *MCI Telecommunications Corp. v. GTE Northwest Incorporated*, 41 F Supp 2d 1157, 1177 (D Or 1999). GTE maintains that the Court found that Tariff No. 15 conflicts with the Telecommunications Act of 1996 and is therefore preempted. It further argues that GTE is not obligated to provide UNEs to telecommunications carriers whose interconnection agreements make reference to Tariff No. 15.

GTE incorrectly interprets the Court's decision in *MCI Telecommunications Corp.* Addressing Tariff No. 15, the Court stated:

The court concludes that the challenged tariff is preempted by the Act, *to the extent that GTE is required to sell unbundled network elements or finished services to a CLEC that has not first entered into an interconnection agreement with GTE pursuant to the Act.* (Emphasis supplied.) 41 F Supp 2d at 1178.

The language of the Court clearly indicates that Tariff No. 15 is preempted *only to the extent* that it allows telecommunications carriers to purchase UNEs without first having executed an interconnection agreement. The tariff continues to apply to existing agreements that reference it.

Because Tariff No. 15 remains available to carriers with existing interconnection agreements, GTE is also incorrect when it states that agreements referencing the tariff no longer “provide for any UNEs.” The Court in *MCI Telecommunications Corp.* rejected a similar claim in its order rejecting GTE’s motion for reconsideration:

GTE seems to be contending that when [Federal Communications Commission] Rule 319 [specifying the UNEs incumbent local exchange carriers must provide] was struck down, GTE no longer was “required to make available any network elements at all.” GTE’s Memorandum at 6. The court disagrees. The [Telecommunications] Act remains in effect, as does the MCI-GTE Agreement. GTE must fulfill its existing contractual obligations to MCI unless, and until, a court (or the PUC, if appropriate) duly relieves GTE of those obligations. (Emphasis in original.) 41 F Supp 2d at 1190.

In rejecting GTE’s claim, the Court emphasized that “interrupting the flow of network elements to MCI or other CLECs . . . could seriously *harm* competitors while frustrating the Congressional mandate to promote competition for local telephone service in Oregon.” *Id.* This statement is consistent with the Court’s holding that Tariff No. 15 is not preempted where it is referenced in existing interconnection agreements.

As a final matter, the Commission observes that the decision in *MCI Telecommunications Corp.* has been appealed to the United States Court of Appeals for the Ninth Circuit. Absent a stay by the Ninth Circuit, the decision of the District Court remains in effect.

**ORDER**

IT IS THEREFORE ORDERED that:

1. This order is issued by the Commission pursuant to ORS 756.515(4).
2. The notice filed by GTE Northwest Incorporated withdrawing Tariff No. 15 is rejected.
3. PUC OR. Tariff No. 15 shall continue to apply to all interconnection agreements that incorporate the building blocks, prices, terms, and conditions set forth in the tariff.

4. GTE Northwest Incorporated may add language to Tariff No. 15 to restrict the availability of building blocks in accordance with the order of the Court in *MCI Telecommunications Corp., Id.* at 1178.

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

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**Ron Eachus**  
Chairman

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**Roger Hamilton**  
Commissioner

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**Joan H. Smith**  
Commissioner

Any party aggrieved by this order may request a hearing within 15 days pursuant to ORS 756.515(5).