

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 96A-366T

RE: IN THE MATTER OF THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN U S WEST COMMUNICATIONS, INC. AND MCIMETRO ACCESS TRANSMISSION SERVICES, LLC.

**ORDER DISMISSING WITHOUT PREJUDICE REQUEST
FOR DECLARATORY ORDER OR, IN THE
ALTERNATIVE, MOTION FOR APPROVAL OF
NEGOTIATED AGREEMENTS/AMENDMENTS**

Mailed Date: May 14, 2004
Adopted Date: April 21, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Request for Expedited Declaratory Ruling, or in the Alternative, Motion for Approval of Negotiated Agreements/Amendments (Request for Declaratory Ruling) by MCI metro Access Transmission Services, L.L.C. (MCI metro). These requests were filed by MCI metro on April 9, 2004. MCI metro requests a declaratory ruling that a number of agreements between WorldCom, Inc., MCI WorldCom, Inc., or MCI WorldCom Network Services, Inc., and their affiliates (WorldCom) and Qwest Corporation and its affiliates (Qwest) are not interconnection agreements subject to Commission approval under 47 U.S.C. § 252(e). If we determine that these agreements are subject to approval under § 252(e), MCI metro alternatively requests that we approve them pursuant to the Commission's Rules Establishing Procedures Relating to the Submission for Approval of Interconnection Agreements, and any Amendments to Interconnection Agreements within Colorado by Telecommunications Carriers, 4 *Code of*

Colorado Regulations 723-44 (Interconnection Agreement Rules). Along with the Request for Declaratory Ruling MCImetro filed its Motion for Protective Order. Staff of the Commission (Staff) filed its Entry of Appearance and Request for Hearing on April 20, 2004. Now being duly advised in the matter, we dismiss the Request for Declaratory Ruling without prejudice. All pending motions are denied as moot.

2. The Request for Declaratory Ruling points out that WorldCom and Qwest¹ have entered into a number of agreements identified in the Request as MFS-01, MFS-02, MFS-03, MFS-04, MFS-07, MFS-09, MFS-11, and a Directory Assistance Database Letter Agreement.² Those agreements are between Qwest or its affiliates, and WorldCom and its affiliates and subsidiaries. In Docket No. 02I-572T,³ Staff, in its report, asserted that these agreements are interconnection agreements under § 252(e) and should have been filed with the Commission for approval. MCImetro, in the Request for Declaratory Ruling, states that it does not agree that any of these agreements are interconnection agreements under § 252(e). MCImetro now requests a declaratory order that these agreements are not subject to § 252(e) as asserted by Staff. Alternatively, MCImetro requests approval of the agreements pursuant to the Interconnection Agreement Rules.

3. As the Request for Declaratory Ruling points out, the question of whether the listed agreements are subject to the provisions of § 252(e) is being considered in Docket No. 02I-572T.⁴ That matter is presently pending before an Administrative Law Judge for the

¹ Some of the agreements subject to the Request for Declaratory Ruling were between WorldCom and Qwest's predecessor company, U S WEST Communications, Inc.

² This nomenclature for the agreements is that used by Staff in its report submitted in Docket No. 02I-572T.

³ In the Matter of the Investigation into Unfiled Agreements Executed by Qwest, Docket No. 02I-572T

⁴ The investigation in Docket No. 02I-572T also addresses other agreements, besides those between Qwest and WorldCom, which are discussed in the Request for Declaratory Ruling.

Commission. As such, the Commission will likely decide in that docket whether the agreements between WorldCom and Qwest required Commission approval under § 252(e).

4. We also point out that the Request for Declaratory Ruling is not properly filed under the Interconnection Agreement Rules. Those rules specify the procedures for Commission consideration of requests to approve interconnection agreements or amendments to interconnection agreements, and, therefore, do not apply to other requests for relief such as a request for a declaratory order. Notably, Rule 7.3 of the Interconnection Agreement Rules states that if the Commission does not act to approve or reject an agreement or amendment filed under the Rules within 90 days, the agreement or amendment is deemed approved by operation of law. The Request for Declaratory Ruling raises issues that may not be decided within 90 days. As stated above, Staff has filed a request for hearing in this matter. We conclude that it is not appropriate that MCImetro's requests in this case (*e.g.*, approval of the listed agreements) be determined by default (in the likely event that the Commission cannot decide the declaratory order issues within 90 days).

5. For these reason we dismiss the Request for Declaratory Ruling without prejudice. If MCImetro does not wish to await the outcome of Docket No. 02I-572T before seeking a Commission ruling on the listed agreements, it may file a new request for declaratory relief that is *not joined* with a request to approve agreements under the Interconnection Agreement Rules. That is, any request for a declaratory ruling should be filed separate from requests for approval under the Interconnection Agreement Rules.

6. Given our order of dismissal, all other pending motions and requests are denied as moot.

II. ORDER**A. The Commission Orders That:**

1. The Request for Expedited Declaratory Ruling, or in the Alternative, Motion for Approval of Negotiated Agreements/Amendments by MCImetro Access Transmission Services, L.L.C., is dismissed without prejudice.

2. All other pending motions and requests including the Motion for Protective Order and Staff of the Commission's Request for Hearing and for Extension of Response Time are denied as moot.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 21, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners