

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 96A-366T

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

ORDER SETTING A DATE FOR ORAL ARGUMENT

Mailed Date: September 7, 2004
Adopted Date: September 1, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the motion of MCImetro Access Transmission Services, L.L.C. (MCImetro) for approval of an Amendment to its Interconnection Agreement (Agreement) with Qwest Corporation, formerly known as U S WEST Communications, Inc. (Qwest). The Agreement was initially approved in Decision No. C97-858, adopted August 27, 1997, and subsequently amended.

2. MCImetro filed this Amendment on July 23, 2004, pursuant to 4 *Code of Colorado Regulations* (CCR) 723-44-4. In the amendment, MCImetro seeks Commission approval of a negotiated amendment between Qwest and MCImetro for elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts, as well as the QPP Master Service Agreement between Qwest and MCImetro.

3. Qwest filed an entry of appearance and notice of intervention on August 2, 2004. On August 3, 2004, Qwest filed a motion to dismiss the application and, on August 4, 2004, filed an errata to the motion to dismiss. MCImetro filed its reply to the motion to dismiss on

August 17, 2004. On August 31, 2004, Qwest submitted a motion for leave to file a reply in support of its motion to dismiss, along with a proposed reply. Qwest's motion to dismiss applies only to the QPP Master Services Agreement.

4. On August 9, 2004, AT&T Communications of the Mountain States, Inc., and TCG Colorado (collectively AT&T) filed an entry of appearance and notice of intervention as a matter of right, or in the alternative, a request for permissive intervention under Rule 4 CCR 723-1-64.

5. The issues presented by the parties are complex. Qwest's motion to dismiss and MCImetro's reply set forth the issue to be addressed, namely, whether the Master Services Agreement is subject to filing requirements set forth in 47 U.S.C. §§ 252(a) and (e) and the Commission's own rules, and whether federal law or the Federal Communications Commission (FCC) has preempted state filing requirements. Qwest's motion for leave to reply should be granted due to the nature of this matter, and because it presents helpful information to the Commission.

6. We note that none of the pleadings thus far address whether FCC Order 04-179 in WC Docket No. 04-313 (Released August 20, 2004) affects the jurisdiction of this Commission over the Master Services Agreement. Because this complicated matter appears to be one of first impression for this Commission, and because the questions presented are legal and not factual, we will ask the parties to present oral argument on September 28, 2004 at 1:30 p.m. We also ask the parties to submit supplemental briefs regarding the FCC order's effect on filing requirements by September 17, 2004.

7. AT&T has demonstrated grounds to intervene in this matter but has submitted no legal brief. AT&T may do so if it chooses, but no later than September 17, 2004.

II. ORDER

A. The Commission Orders That:

1. The request of AT&T Communications of the Mountain States, Inc., and TCG Colorado to intervene is granted.

2. Qwest Corporation's motion for leave to reply is granted.

3. The parties shall appear before the Commission for oral argument consistent with the discussion above at the following time and place:

DATE: September 28, 2004

TIME: 1:30 p.m.

PLACE: Colorado Public Utilities Commission
Logan Tower, Office Level 2
1580 Logan Street
Denver, Colorado

4. Supplemental briefs regarding the effect of Federal Communications Commission Order 04-179 on Commission jurisdiction over Qwest Corporation's Master Services Agreement shall be filed by September 17, 2004.

5. Any pleadings by AT&T Communications of the Mountain States, Inc., and TCG Colorado shall be filed by September 17, 2004.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 1, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners