

Before the Washington Utility and Transportation Commission

In the Matter of the Petition of Sprint)
Communications Company L.P. for)
Arbitration of Interconnection Rates,) Docket No. _____
Terms, Conditions and Related)
Arrangements with U S WEST)
Communications, Inc.)

**Petition of Sprint Communications Company L.P.
For Arbitration of Interconnection Rates, Terms, Conditions
and Related Arrangements With U S WEST Communications, Inc.**

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TABLE OF CONTENTS

PETITION FOR ARBITRATION	3
CERTIFICATE OF SERVICE	16
PROPOSED INTERCONNECTION AGREEMENT	EXHIBIT 1
SECTION E OF PROPOSED INTERCONNECTION AGREEMENT	EXHIBIT 2
JOINT ISSUES MATRIX	EXHIBIT 3
CORRESPONDENCE REGARDING REQUEST FOR ARBITRATION	EXHIBIT 4

**PETITION OF
SPRINT COMMUNICATIONS COMPANY L.P. FOR ARBITRATION OF
INTERCONNECTION RATES, TERMS, CONDITIONS AND RELATED
ARRANGEMENTS WITH U S WEST COMMUNICATIONS, INC.**

Sprint Communications Company L.P. ("Sprint") hereby petitions the Washington Utility and Transportation Commission ("Commission") for arbitration of certain terms, conditions, and prices for interconnection and related arrangements from U S WEST Communications, Inc. ("USW"), pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"). Sprint requests that the Commission adopt Sprint's proposed interconnection agreement, attached hereto as Exhibits 1 and 2. Sprint makes this request in accordance with the Commission's Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996 in Docket No. UT-960269 ("Interpretive and Policy Statement").

INTRODUCTION

The legal name of the Applicant is Sprint Communications Company, a Delaware Limited Partnership, which has its principal place of business at 2330 Shawnee Mission Parkway, Westwood, Kansas 66203. Requests for information and other correspondence should be addressed to:

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Sprint is a national provider of long distance interexchange service that provides local telecommunications service in several USW region markets, including Seattle, Washington. The Commission granted Sprint authority to provide local service in Washington as a Competitive Local Exchange Company ("CLEC") in Docket No. UT-971048.

Since commencing interconnection negotiations, Sprint and USW have engaged in numerous and extensive face-to-face meetings and telephone conference calls. Nevertheless, the parties have been unable to reach a comprehensive agreement through negotiations as contemplated by Section 252 of the Act. The issues presented by Sprint for arbitration are those that Sprint believes are best resolved through the arbitration process.

Sprint will continue its negotiations with USW during the arbitration process and may be able to resolve matters that are the subject of this Petition prior to the issuance of the arbitrator's decision. To the extent that USW and Sprint are able to resolve one or more contested issues through continuing negotiations, Sprint will promptly submit to the Commission materials memorializing such understandings.

PROCEDURAL MATTERS

For the purposes of this Petition for Arbitration, Sprint began negotiations with USW pursuant to Section 252 of the Act on August 5, 1999. The 135th day after the first day of interconnection negotiations was December 18, 1999. The 160th day after receipt is January 12, 1999. Under the Act, the Commission's ruling on the instant Petition is due nine months from August 6, 1999, which date will be May 6, 2000.

The attached Exhibits 1-4 contain the relevant documentation concerning the unresolved issues and, to the best of its knowledge, the position of each party with respect to those issues. Exhibit 1 is the interconnection agreement in its present form, except Section E, the Unbundled Network Elements section for which USW recently halted discussions, with the disputed language of both Sprint and USW highlighted for the Commission's reference. Exhibit 2 is Sprint's proposed Section E, which is provided separately for the Commission's consideration, but which Sprint requests the Commission incorporate into the agreement. In addition, the companies have developed a list of issues during the negotiation process, which have been incorporated into a joint issues matrix, attached hereto as Exhibit 3. This matrix sets forth for each issue the specific area of disagreement between the parties and each company's position. To the extent that USW does not agree with the characterization of issues in the matrix, Sprint requests that USW make its disagreement known in its response to this Petition for Arbitration so that these issues may be appropriately dealt with in the arbitration.

Photocopies of the letters initiating and acknowledging this request are attached as Exhibit 4.

In anticipation of providing the Commission with supplemental information on this issue, Sprint will commence discovery as soon as possible after the filing of this Petition.

ISSUES FOR ARBITRATION

Summary of the Issues

Sprint has identified five main issues that require resolution by this Commission. The following general subjects are at issue, some of which may contain sub-issues: (1) unbundled network elements ("UNEs"); (2) XDSL resale pricing; (3) notice of change or discontinuance of resold products; (4) reciprocal compensation; and (5) compensation for recording failures on local measured service. These issues are addressed in detail in the pages that follow.

Unbundled Network Elements

USW has unilaterally halted negotiations on all UNE issues. As a result, Sprint has been unable to narrowly define the issues in the UNE section of the Sprint/USW interconnection agreement for the Commission's consideration. USW's failure to discuss UNEs in the context of an interconnection negotiation is arguably a violation of its obligation to negotiate in good faith under the Act.¹ In addition, USW's position in this regard is contrary to the Commission's Interpretive and

¹ The Telecommunications Act of 1996, Sections 252(c)(1) and 252(b)(5); 47 C.F.R. Part 51.

Policy Statement.

Because USW refuses to negotiate the terms of the UNE section, Sprint's proposed Section E remains the only alternative for the Commission's consideration. Sprint submits that its proposed Section E complies with all federal and state laws as well as with the Orders and policies of this Commission. Accordingly, Sprint requests its version of the UNE section of the Sprint/USW interconnection agreement be incorporated into the agreement (attached hereto as Exhibit 2).

XDSL Resale Pricing

XDSL is the generic name for specific technologies such as ADSL, HDSL, VDSL and SDSL. Sprint will utilize XDSL technologies to provide local business and residential customers high-speed data services, which are classified by the FCC as advanced wireline services. USW has refused to agree to sell such services to Sprint at the wholesale discount despite the fact that pursuant to the Act, this Commission ordered that the standard avoided cost discount (14.69%) applies to all retail telecommunications services, including discounted products and deregulated services.² Sprint submits that XDSL services are sold at retail by USW and thus clearly fall within the parameters of the discount requirement.

Further, the FCC has ordered incumbent local exchange companies (ILECs) to resell advanced services at a discount.³ The FCC addressed this issue in its Advanced Services Order, stating:

[W]e conclude that advanced services sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4)

² 8th Supplemental Order in Docket Nos. UT-960369, UT-960370, UT-960371 at ¶406; The Telecommunications Act of 1996, at Section 251(c)(4).

³ CC Docket No, 98-147, In the Matter of Deployment of Wireline Services Offering Advanced Communication Capability, Second Report and Order, Released November 9, 1999.

discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service. This finding reinforces the resale requirement of the Act by ensuring that resellers are able to acquire advanced services at wholesale rates.⁴

Given the FCC's clear ruling on the ILECs' obligation to resell advanced services at a discount, in addition to this Commission's 8th Supplemental Order in Docket Nos. UT-960369, UT-960370, and UT-960371, USW's position has no merit and contravenes Section 251 of the Act. Accordingly, Sprint respectfully requests the Commission order Sprint's proposed language for XDSL resale incorporated into the agreement and USW be required to apply the standard avoided cost discount of 14.69% to such services.

Notice of Change or Discontinuance in Resold Products

Sprint requests USW to provide it with 60 days notice of change or discontinuance of its resold services in order to allow it sufficient time to modify its own billing systems and avoid financial harm. USW has refused, instead offering to give Sprint the same notice of change or discontinuance that USW currently gives to state Commissions.

Sprint counters that the Commission's tariff and price list notice intervals were not designed to be used in a competitive environment for notification of an incumbent local exchange carrier's wholesale customers. A 30-day notice interval may be sufficient to allow the Commission to evaluate the proposed change and inform the public of such changes. Thirty days does not, however, provide wholesale customers of USW enough time to make changes to their own systems in order to avoid loss of profits and operational problems. By the time USW makes a filing with the Commission to change a tariff or price

⁴ Id.

list, it has already had time to program its billing system to allow the implementation of the requested changes upon Commission approval of its request. Sprint should be afforded the same opportunity to prepare its systems for pending changes in resold service offerings.

Sprint has drafted contract language to address this issue:

Sprint: USW must provide a sixty (60) calendar day notice period for changes/discontinuation of services so that Sprint has an opportunity to make the necessary modifications to Sprint's ordering, billing, and customer service systems, and so that it can provide sufficient customer notification regarding any changes. If the notice period is insufficient as determined by Sprint, Sprint may file a petition to intervene in USW's tariff filing to obtain more time.

Absent 60 day advance notice of resold service and price changes, USW will be able to change services or increase prices before Sprint can make system changes to conform with USW's new or changed offering. As a result, Sprint may be unable to compete with USW in a timely fashion, and Sprint's profit margins will shrink for a period of time during which USW's will be maintained. Imposing such a handicap on Sprint's competitive efforts could compel it to leave the local resale market.

Sprint believes that a 60-day notice interval is reasonable and conforms to sections 251 and 252 of the Act. USW's proposed public notice interval would expose Sprint's customers to incidental or deliberate anti-competitive behavior by USW and would permit USW to negatively impact Sprint's relationship with its customers. Therefore, Sprint respectfully requests this Commission enter an order in its favor and adopt Sprint's proposed contract language regarding this issue in the ultimate interconnection agreement.

Reciprocal Compensation

USW contends it is not required to pay reciprocal compensation for traffic delivered

to a Sprint local customer who is an enhanced service provider such as an internet service provider. Sprint contends that the Commission has already ruled on this very issue in several other dockets and that USW's position contravenes the relevant Commission Orders and must be rejected.

The juxtaposed language appears under Section C(2) and reads as follows:

Sprint: Internet traffic is considered local traffic for completion compensation purposes and is therefore subject to reciprocal compensation.

USW: As set forth above, the Parties agree that reciprocal compensation only applies to Local Traffic and further agree that the FCC has determined that traffic originated by either Party (the "Originating Party") and delivered to the other Party, which in turn delivers the traffic to an enhanced service provider (the "Delivering Party") is primarily interstate in nature. Consequently, the Delivering Party must identify which, if any, of this traffic is Local Traffic. The Originating Party will only pay reciprocal compensation for the traffic the Delivering Party has substantiated to be Local Traffic. In the absence of such substantiation, such traffic shall be presumed to be interstate.

In the 17th Supplemental Order in Docket Nos. UT-960369, UT-960370, and UT-930371, this Commission considered the issue of reciprocal compensation for internet traffic and ruled as follows:

This Commission has authority to resolve this issue pending a FCC rule requiring one outcome or another. The FCC currently exempts ISP-bound traffic from access charges (footnote omitted) so the resolution most consistent with existing FCC rules is to require reciprocal compensation. The FCC's conclusion that ISP-bound traffic is primarily interstate is not dispositive because neither the Act nor FCC rules preclude interstate traffic from reciprocal compensation. The Commission concludes that ISP-bound traffic should remain subject to reciprocal compensation.⁵

Sprint further notes that this ruling is consistent with other decisions by the Commission on this issue.⁶

⁵ ¶ 54, 8th Supplemental Order, Docket Nos. UT-960369, UT-960370, UT-960371.

⁶ See, *WorldCom, Inc., f/k/s MFS Intelenet of Washington, Inc. v. GTE Northwest, Inc.*, Docket

USW's proposed language improperly limits the applicability of reciprocal compensation for local traffic and imposes undue burdens on Sprint. Accordingly, USW's proposal should be rejected. In contrast, Sprint's proposed language incorporates recent Commission rulings on this issue, including rulings specific to USW, and should be adopted.

Compensation for Recording Failures on Local Measured Service.

Sprint asserts that USW should bear the responsibility for its failure to record local measured service (LMS) that it either resells to Sprint or provides to Sprint on an unbundled basis. Sprint contends that, in a situation where Sprint relies on USW for billing records, USW should compensate Sprint for lost profits that result from USW's inability to provide the necessary billing records. USW has not explained its specific objections to Sprint's proposed language other than to state it is reviewing the language for consistency with the limitation of liability section. Sprint believes its proposed language, set forth below, is consistent with the limitation of liability section of the agreement. Sprint's proposed language appears beneath subsection (G)11.10 and reads as follows:

Sprint: (G)11.10.4. Recording Failures

(G)11.10.4.1. Sprint Recorded Usage Data determined to have been lost, damaged or destroyed as a result of an error or omission by USW in its performance of the recording function or due to an aberrant switch overload of limited duration and frequency, shall, upon Sprint's request, be recovered by USW at no charge to Sprint. If USW discovers such failures, USW shall notify Sprint upon discovery. In the event the data cannot be recovered by USW, USW shall estimate the messages and associated revenue, with assistance from Sprint, based upon the method described

No. UT-980338 and *In the Matter of the Petition for Arbitration for an Interconnection Agreement Between MFS Communications Company, Inc., and US West Communications, Inc.*, Docket No. UT-960323.

below. This method will be applied on a consistent basis, subject to modifications agreed to by USW and Sprint. This estimate will be used by the Parties to determine any amounts owed to Sprint. USW will provide this amount to Sprint via a check accompanied by a statement that clearly identifies the purpose of the check.

(G)11.10.4.2. Partial Loss.

USW shall review its daily controls to determine if data has been lost. When there has been a partial loss, actual message and minute volumes shall be reported, if possible. Where actual data are not available, a full day shall be estimated for the recording entity, as outlined in Section 6.1.3 following. The amount of the partial loss is then determined by subtracting the data actually recorded for such day from the estimated total for such day.

(G)11.10.4.3. Complete Loss.

Estimated message and minute volumes for each loss consisting of an entire AMA tape or entire data volume due to its loss prior to or during processing, loss after receipt, degaussed before processing, receipt of a blank or unreadable tape, or lost for other causes, shall be reported.

(G)11.10.4.4. Estimated Volumes.

From message and minute volume reports for the entity experiencing the loss, USW shall secure message/minute counts for the four (4) corresponding days of the weeks preceding that in which the loss occurred and compute an average of these volumes.

(G)11.10.4.5. Exceptions.

If the day of loss is not a holiday but one (1) (or more) of the preceding corresponding days is a holiday, use additional preceding weeks in order to procure volumes for two (2) non-holidays in the previous two (2) weeks that correspond to the day of the week that is the day of the loss. If the loss occurs on a weekday that is a holiday (except Christmas), USW shall use volumes from the two (2) preceding Sundays. If the loss occurs on Mother's Day, Christmas or the Monday after Thanksgiving, U S WEST shall use volumes from that day in the preceding year, unless Sprint volumes have

changed over the prior year, in which case the estimate change will be factored in.

(G)11.10.4.6. Net Loss Calculation.

The amount due to Sprint will be calculated based on the Average Revenue Per Minute (ARPM) minus the average charge per minute (ACPM) that Sprint would have paid to USW, times the estimated lost minutes. The parties shall agree upon the appropriate ARPM and ACPM to apply.

Sprint contends that since USW controls these records, the absence of specific contract language designed to protect Sprint's interests presents a barrier to Sprint's entry into the LMS market. USW has offered no viable alternative to Sprint's proposal. Therefore, Sprint respectfully requests the Commission enter an order approving Sprint's proposed language as set forth herein.

OTHER ISSUES

Sprint reserves the right to amend this Petition to address any additional issues raised by USW's response to this document which were not negotiated or discussed previously or matters arising as a result of discovery. In addition, Sprint requests a prehearing conference to address any preliminary matters raised by this Petition and to establish a procedure and a schedule for this proceeding.

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WHEREFORE, Sprint requests the Commission arbitrate the outstanding issues discussed above and order the incorporation of its proposed language into the interconnection agreement pursuant to Section 252(b) of the Act.

Dated this ____ day of January, 2000.

Respectfully submitted,

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