

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration)	
of an Interconnection Agreement Between)	DOCKET NO. UT-960309
)	
AT&T COMMUNICATIONS OF THE PACIFIC)	COMMISSION ORDER
NORTHWEST, INC. and U S WEST)	MODIFYING ARBITRATOR'S
COMMUNICATIONS, INC.)	REPORT; REJECTING
)	AGREEMENT; IDENTIFYING
Pursuant to 47 U.S.C. Section 252.)	DEFICIENCY; AND
.....)	REQUIRING REILING

Procedural history. On March 1, 1996, AT&T Communications of the Pacific Northwest, Inc. ("AT&T") requested negotiations with U S WEST Communications, Inc. ("USWC") for an agreement relating to interconnection under terms of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56, codified at 47 U.S.C. Sec. 151 ff. (1996). In this decision we will refer to the law simply as "the Act" or as "the Telecom Act."

On July 25, 1996, AT&T filed with the Commission and served on USWC a petition for arbitration pursuant to 47 U.S.C. Sec. 252(b)(1). The petition was designated Docket No. UT-960309. On August 5, 1996, the Commission entered an Order on Arbitration Procedure appointing an arbitrator for the proceeding and establishing procedures. A hearing was held on October 21 and 22, 1996, at Olympia, Washington. AT&T was represented by Dan Waggoner, Patricia Raskin, and Susan Proctor, attorneys at law. USWC was represented by Edward T. Shaw, Lisa Anderl, and Doug Owens, attorneys at law. Following the hearing, the parties filed final briefs and final or "last best" offers on November 5, 1996.

On November 27, 1996, an Arbitrator's Report and Decision ("Decision") was issued in this docket. On December 6, 1996, AT&T filed a Petition for Partial Reconsideration of Arbitrator's Report and Decision. The arbitrator agreed to review the Decision to correct errors of fact or law, or ministerial errors. Two issues were identified as appropriate for reconsideration: (1) pay phone resale; and (2) customer transfer charges. The Arbitrator's Supplemental Order addressing these issues was filed on January 16, 1997. The deadline for the parties to submit an agreement incorporating the determinations in the Decision and the Supplemental Order was reset for January 27, 1997.

On January 22, 1997, the parties were allowed an extension of time to February 11, 1997, to file an arbitrated agreement and request for approval. AT&T filed one agreement and USWC filed two agreements in response to the Arbitrator's Order. Each party also filed a request for approval of their respective agreements, expressing objections to the arbitrator's order and the provisions of the resulting agreements, and requesting modifications of the Decision and agreements to coincide with their

positions. Copies of the requests for approval were served on the Commission's service list for this proceeding to allow for comment by interested persons. On February 24, 1997, USWC filed comments in response to AT&T's filing. No other person filed comments. On March 3, 1997, AT&T filed a response to USWC comments and it filed a revised interconnection agreement.

Commission Staff and the parties addressed the request for approval at an open public meeting on March 5, 1997. The Commission reviewed the record of the proceeding; the arbitrator's Decision; the agreements filed pursuant to the Decision and the requests for approval and modification; USWC's Comments; AT&T's Reply; the written Commission Staff report; and all oral comments made at the open meeting by Lisa Anderl for USWC, by Daniel Waggoner for AT&T, by Jeffrey Goltz of the Attorney General's Office, and by Jing Roth and Glenn Blackmon of Commission Staff.

Staff recommended that the Decision by the arbitrator be modified to allow collocation of remote switching units ("RSUs") as requested by AT&T, but that all other requests for modification by the parties be denied. Following discussion, the Commissioners stated their tentative positions to adopt Staff's recommendation regarding requests for modifications. Furthermore, the Commission concluded that the agreements submitted by the parties contained negotiated language which was not agreed to and arbitrated language which did not fully and accurately comply with the arbitrator's Decision. Consequently the Commission rejected the agreements on public interest grounds; directed the parties to continue to negotiate in good faith; directed the parties to submit a completed agreement within 60 days; directed the arbitrator to assist the parties; and directed the parties to report on the status of their negotiations at the first open meeting in April, at which point in time the Commission would review the 60-day deadline, if necessary. The Commission deferred resolution on the requests of the parties for modification until such time that a completed agreement is submitted for approval.

Generic Pricing Proceeding. On October 23, 1996, the Commission entered an order in this and other arbitration dockets declaring that a generic proceeding would be initiated in order to review costing and pricing issues for interconnection, unbundled network elements, transport and termination and resale.¹ The Commission stated that rates adopted in the pending arbitrations would be interim rates, pending the completion of the generic proceeding. Accordingly, the price proposals made in this arbitration have been reviewed with the goal of determining which offers a more reasonable interim rate, more closely based on what we believe to be accurately determined cost levels based on evidence specifically submitted in this docket, our recent prior actions regarding cost studies, and our expertise as regulators. The findings and conclusions with respect to price proposals and supporting

¹Order on Sprint's Petition to Intervene and to Establish Generic Pricing Proceeding, Docket Nos. UT-960369, -960370, -960371 (October 23, 1996; "Generic Pricing Order")

information are made in this context and do not indicate Commission approval or rejection of cost and price proposals for purposes of the generic case.

The Eighth Circuit Order and the FCC Rules. The FCC rules² implementing local competition provisions of the Telecom Act have been appealed and the rules relating to costing and pricing have been stayed by the United States Court of Appeals for the Eighth Circuit.³ The Arbitrator's Report and Decision and the Commission in this order comply with those provisions of the FCC order and rules that are not subject to stay. Those provisions which are subject to stay do not require compliance pending resolution of the federal appeal. The stay however does not preclude reference by the Commission to the rationale or analysis underlying those provisions, for whatever value such information may have on its own merits.

Having considered the Arbitrator's Report and Decision, the several interconnection agreements, requests for modification and approval filed by the parties to this arbitration, the entire record herein, and all written and oral comments made to the Commission, the Commission makes and enters the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate in the public interest the rates, services, facilities and practices of telecommunications companies in the state.

2. AT&T Communications of the Pacific Northwest, Inc. and U S WEST Communications, Inc. are each engaged in the business of furnishing telecommunications service with the state of Washington as public service companies.

3. The Washington Utilities and Transportation Commission is designated by the Telecommunications Act of 1996 as the agency responsible for arbitrating and approving interconnection agreements between telecommunications carriers within the State of Washington, pursuant to Sections 251 and 252 of the Act.

4. USWC was, until recently, the exclusive provider of switched local exchange service in its Washington exchanges, is an incumbent local exchange carrier, and is currently the dominant provider of switched local services within the territory of its Washington exchanges.

²*In the Matter of the Implementation of the Local Competition Rules of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (August 8, 1996), Appendix B- Final Rules.

³*Iowa Utilities Board et al. v. FCC*, No. 96-3321, Order Granting Stay Pending Judicial Review (8th Cir. Oct. 15, 1996). The order also stays the "MFN" rule in which the FCC interpreted the statutory provision regarding availability of contracted terms to other parties.

5. AT&T provides switched intraLATA and interLATA exchange service in Washington and seeks to competitively provide local exchange service in the intrastate territory of USWC.

6. On July 25, 1996, AT&T filed a Petition for Arbitration of an interconnection agreement with USWC pursuant to the federal Telecommunications Act of 1996 ("Act"). USWC responded to AT&T's petition on August 19, 1996. An arbitration hearing on the disputed issues was conducted by Administrative Law Judge Simon ffitich on October 21 and 22, 1996.

7. This arbitration and approval process was conducted pursuant to and in compliance with the Commission's *Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996*, Docket No. UT-960269, June 27, 1996. The arbitrator's adoption of "best offer" arbitration was reasonable and was consistent with the authority delegated to the arbitrator in the Commission's Order on Arbitration Procedure, June 28, 1996. No party objected to adoption of "best offer" arbitration.

8. On November 27, 1996, pursuant to the Commission's Order On Arbitration Procedure in this docket, the arbitrator issued an Arbitrator's Report and Decision resolving the disputed issues between the parties to this proceeding, AT&T and USWC.

9. On February 11, 1997, AT&T and USWC submitted unsigned arbitrated interconnection agreements to the Commission for approval, although each asked that the submitted agreements be rejected and modified, in part. The agreements do not properly incorporate the decisions of the arbitrator as to the disputed issues, they include language which the parties agreed to in principle but for which they presently disagree in substance, and they include language of terms and conditions which are neither negotiated nor arbitrated.

10. The Commission has reviewed and analyzed the Commission Staff recommendation, the Arbitrator's Report and Decision, the several interconnection agreements, the filings of the parties, and the record herein, including the oral comments made at the open meeting. The Commission should defer adoption of the findings and conclusions within the Arbitrator's Report and Decision, including final decision on the requests for modifications by the parties, until the parties submit a complete agreement for approval.

11. In open meeting on March 5, 1997, the Commission adopted the recommendation of Commission Staff that the interconnection agreements as filed by the parties be rejected. In doing so, the Commission rejected the agreements on public interest grounds; directed the parties to continue to negotiate in good faith; directed the parties to submit a completed agreement within 60 days; directed the arbitrator to assist the parties; and directed the parties to report on the status of their

negotiations at the first open meeting in April, at which point in time the Commission would review the 60-day deadline, if necessary.

II. CONCLUSIONS OF LAW

1. The provisions of the parties' several interconnection agreements do not meet the requirements of Section 251 of the Telecommunications Act of 1996, including the regulations prescribed by the Federal Communications Commission pursuant to Section 251 which have not been stayed, and the pricing standards set forth in Section 252(d) of the Act.

2. The negotiated provisions of the several interconnection agreements do not discriminate against a telecommunications carrier not a party to the agreement, but are rejected as not consistent with the public interest.

3. The arbitrated provisions of the several interconnection agreements are not consistent with Washington law and with the orders and policies of this Commission.

4. The parties should be directed to continue to negotiate in good faith and to submit a completed agreement within 60 days. The arbitrator should be directed to assist the parties, and the parties should be directed to report on the status of their negotiations at the first open meeting in April, at which point in time the Commission would review the 60-day deadline, if necessary. The Commission should defer adoption of the findings and conclusions within the Arbitrator's Report and Decision, including final decision on the requests for modification by the parties, until such time that a completed agreement is submitted for approval pursuant to the Telecom Act.

ORDER

THE COMMISSION ORDERS That:

1. The several arbitrated interconnection agreements for the State of Washington between AT&T Communications of the Pacific Northwest, Inc., and US WEST Communications, Inc., are rejected. The deficiencies in the provisions of the parties' several interconnection agreements are that they do not meet the requirements of Section 251 of the Telecommunications Act of 1996, the negotiated provisions are not accepted as consistent with the public interest, and the arbitrated provisions are not consistent with Washington law and with the orders and policies of this Commission.

2. The parties are ordered to continue to negotiate in good faith and to submit a completed agreement within 60 days. The arbitrator is ordered to assist the parties, and the parties are ordered to report on the status of their negotiations at the

first open meeting in April, at which point in time the Commission will review the 60-day deadline, if necessary. The Commission hereby defers adoption of the findings and conclusions within the Arbitrator's Report and Decision, including final decision on the requests for modification by the parties, until such time that a completed agreement is submitted for approval pursuant to the Telecom Act.

DATED at Olympia, Washington and effective this *22nd* day of March 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner