

SERVICE DATE

OCT 23 1996

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration)	
of an Interconnection Agreement Between)	DOCKET NO. UT-960307

AT&T COMMUNICATIONS OF THE)
PACIFIC NORTHWEST, INC. and)
GTE NORTHWEST INCORPORATED)

Pursuant to 47 USC Section 252.)
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In the Matter of the Petition for Arbitration)	
of an Interconnection Agreement Between)	DOCKET NO. UT-960309

AT&T COMMUNICATIONS OF THE PACIFIC)
NORTHWEST, INC. and U S WEST)
COMMUNICATIONS, INC.)

Pursuant to 47 USC Section 252)
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In the Matter of the Petition for Arbitration)	
of an Interconnection Agreement Between)	DOCKET NO. UT-960310

MCIMETRO ACCESS TRANSMISSION)
SERVICES, INC. and U S WEST)
COMMUNICATIONS, INC.)

Pursuant to 47 USC Section 252.)
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In the Matter of the Petition for Arbitration)	
of an Interconnection Agreement Between)	DOCKET NO. UT-960323

MFS Communications Company, Inc. and)
U S WEST Communications, Inc.)

Pursuant to 47 USC Section 252.)
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In the Matter of the Petition for Arbitration of an Interconnection Agreement Between)	
)	DOCKET NO. UT-960326
TCG SEATTLE)	
)	
for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with U S WEST Communications, Inc.)	
.....))	
)	
In the Matter of the Petition for Arbitration of an Interconnection Agreement Between)	DOCKET NO. UT-960332
)	
TCG SEATTLE and GTE NORTHWEST INCORPORATED)	ORDER ON SPRINT'S PETITION TO INTERVENE AND TO ESTABLISH GENERIC PRICING PROCEEDING
)	
Pursuant to 47 USC Section 252.)	
.....))	

On September 17, 1996, Sprint Communications Company L.P. (Sprint) filed a Petition to Intervene on a Limited Basis in the above captioned dockets. U S WEST Communications, Inc. (USWC), filed its response to the motion on September 25, 1996. Responses were filed by GTE Northwest Inc. (GTE), MCImetro Access Transmission Services, Inc. (MCI), AT&T Communications Company of the Pacific Northwest, Inc. (AT&T), and MFS Communications Company Inc. (MFS).

The Commission advised all parties by letter of September 23, 1996, that "[b]ecause this matter spans all the arbitrations in which the motion is filed, and because it appears to require a consistent result, the Commission intends to resolve it promptly in consultation with the arbitrators for consistency in all of the affected dockets."

PARTIES POSITIONS

Sprint's motion requests that it be permitted to intervene in the pending arbitrations for the limited purpose of requesting removal of costing and rate issues¹ from the arbitrations to a generic proceeding. Sprint argues that treatment of these issues in a separate proceeding is imperative, given the importance of the issues to be

¹Costing issues include charges for interconnection, unbundled network elements, transport and termination, and resale. 47 USC § 252(d).

decided, the volume and complexity of the cost studies submitted, and the relatively short time frame allowed by the Telecommunications Act² for arbitration proceedings, as well as the need for participation by all affected parties. Sprint further recommends that the Commission adopt the proxy rates set out in the FCC Interconnection Order³ as interim rates, pending resolution of the generic cost proceeding.

USWC, GTE, AT&T, and MCI oppose the motion. USWC argues that it has the right to present its cost evidence in the individual arbitration proceedings, and that the request is untimely and would prejudice USWC. GTE argues that the petition does not meet the Commission's intervention standards, that the federal proxy rates are now stayed by the United States Court of Appeals for the Eighth Circuit,⁴ and that default proxy rates amount to an unconstitutional taking because they significantly underestimate GTE's actual costs.

AT&T argues that a generic pricing proceeding may be so lengthy as to effectively delay or curtail the development of competition in Washington. AT&T asserts that the costing methodologies presented by USWC and GTE in the arbitrations are familiar to the Commission and have been previously analyzed in other dockets.⁵ AT&T further argues that the opening of a generic case would be prejudicial because it has completed and filed studies on incremental costs, based on the Hatfield model, and on avoided costs in its pending arbitrations. MCI argues that MCI and USWC have a right to have rates and costs determined in their arbitration and that the Commission is mandated by statute to do so.

MFS supports the Sprint motion.⁶ MFS argues that the Commission's ability to make a decision based on a full and fair record will be impaired if a generic

²47 USC § 252(b)

³*In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (August 8, 1996), Appendix B - Final Rules, 47 CFR § 51.505(e), 51.513, 51.611, 51.707.

⁴*Iowa Utilities Board et al. v. FCC*, No. 96-3321 et al. (8th Circ., October 15, 1996), Order Granting Stay Pending Judicial Review.

⁵Citing *Washington Utilities and Transportation Commission et al. v. USWC*, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints in Part, Docket Nos. UT-941464, UT-941464, UT-950146, and UT-950265 (October 31, 1995) at pp. 87-92.

⁶The Commission notes, in addition, that MFS and TCG each filed motions similar to the Sprint motions in the context of their own arbitrations. In the MFS/USWC arbitration, the arbitrator denied a motion to strike the USWC cost study prior to hearing, but allowed MFS to reassert its argument for interim proxy rates at the hearing. Docket No. UT-960323, Arbitrator's Seventh Procedural Order. In TCG/USWC, the matter is under advisement. Docket No. UT-960326.

proceeding is not held allowing all affected parties to participate. MFS asserts that due process requires that it and other parties have an adequate opportunity to examine and rebut the studies. MFS argues that the burden of proof is on the incumbent to prove that its proposed rates are appropriate. Because there is inadequate time for new entrants to examine and rebut the studies in individual arbitrations, the burden is shifted to the new entrant.

Both Sprint and MFS direct the Commission’s attention to decisions by other state commissions which have opened generic proceedings and adopted proxy rates in the interim.

DISCUSSION

Intervention

Sprint’s motion asks leave to intervene in the above-captioned arbitrations for the limited purpose of urging initiation of a generic proceeding. The Commission has been disinclined to allow intervention in arbitration proceedings under the Act.⁷ A number of parties argue that Sprint has not, as a procedural matter, successfully shown the existence of a “compelling public interest” as a basis for intervention. The central thrust of Sprint’s motion, however, is the request to the Commission to initiate a generic pricing proceeding, not the request to intervene as a party on an ongoing basis. We will so interpret the motion.

Generic Pricing Proceeding

The Commission concludes that a generic pricing proceeding should be initiated in order to conduct a full and fair review of the cost studies proposed. There are a number of reasons why we choose this course. Consideration of company cost studies and prices in a generic proceeding affords greater protection to the interests of all affected parties by allowing all to participate in the cost and price analysis, to comment, and to provide rebuttal or alternative approaches. This ability is not present in the context of an individual arbitration. The generic approach will also assist the Commission by allowing more efficient use of staff resources and by providing the Commission with broader input from affected carriers.

The cost studies which are being proposed are voluminous and complex and are not susceptible of thorough review in the time frames, or with the resources,

⁷*In the Matter of the Implementation of Certain Provisions of the Telecommunications Act of 1996*, Docket No. UT-960269, Interpretive and Policy Statement, p. 4.

available for arbitration.⁸ In addition to their magnitude, the studies for interconnection, unbundled elements, and transport and termination are based on a methodology announced by the FCC for the first time on August 8, 1996 - the Total Element Long Run Incremental Cost (TELRIC) methodology. While TELRIC is related to the TSLRIC methodology previously employed by this Commission, TELRIC is a new approach created by the FCC for purposes of pricing elements rather than services. This Commission has not previously been presented with a TELRIC study, nor has it conducted an analysis of such a study. Furthermore, given the stay of the FCC's rules entered by the Eighth Circuit, parties may wish to re-examine the methodology, or propose alternatives. The avoided cost studies submitted also present new issues arising from need to determine a level of wholesale rates which complies with the 1996 Act, a task not previously conducted by the Commission. The quality of the cost review performed by the Commission and the parties will be enhanced if it is conducted in a more reasonable time frame, with broader participation.

The Commission does not anticipate that the generic pricing proceeding should effectively delay or curtail the development of local competition in Washington. As discussed in the following section, arbitrations under the 1996 Act will continue. Parties will be able to begin implementation of approved agreements. The Commission intends that the generic proceeding itself be concluded not later than mid-1997.

Interim Rates

Related to the decision to open a generic pricing proceeding is the question of how rates for interconnection, unbundling, transport and termination, and resale should be set before the conclusion of the generic case. Rather than set an interim or proxy rate in this order as some parties advocate, however, the Commission believes the appropriate forum for that decision is in the arbitration process. Because the generic proceeding will eventually result in final adoption of a cost methodology and prices, the rates determined in the individual arbitrations are by definition interim rates. The incumbent companies have filed the same basic cost and price information in each of their arbitrations. The Commission anticipates that the arbitrators will arrive at reasonably consistent decisions with regard to interim pricing for incumbents, where prices are in dispute. As a practical matter, "interim" rates for the incumbents will emerge from this arbitration process. The Commission will monitor the arbitration decisions through the agreement approval process and, if necessary, provide guidance to the parties and arbitrators to the extent necessary on interim pricing issues.

⁸The Commission notes that cost studies have been filed in arbitrations, not only by incumbent carriers, but also by potential competitors such as AT&T and MCI. Proper consideration of these proposals in a single arbitration docket, simultaneously with incumbent studies is extremely difficult.

The Eighth Circuit Decision

On October 15, 1996, the United States Court of Appeals for the Eighth Circuit issued a stay of the FCC pricing rules and the "pick and choose" rules.⁹ The court's purpose, in large part, was to protect the state's "discretion in determining the just and reasonable rates in arbitrations required under subsection 252(d)(1)." Further, the court recognized the success that state commissions and private parties have had in implementing local competition under state laws which foreshadowed the federal Act. This Commission, as it has previously stated,¹⁰ will continue to implement local competition in Washington state, not only in accordance with the federal Act, but consistent with its announced policies and orders. Decisions regarding pricing policy will be made on this basis and the Commission will not limit its deliberations in the generic case or the pending arbitrations to methodologies adopted by the FCC. The Eighth Circuit order makes clear that this is the correct approach

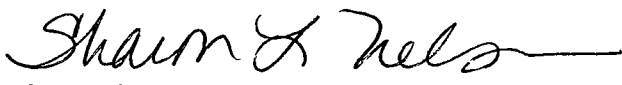
ORDER


THE COMMISSION ORDERS:

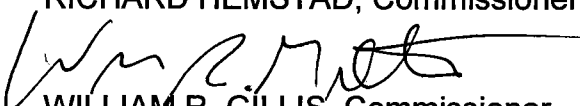
1. The motion of Sprint Communications Company, L.P. is granted in part. The Commission will grant the request to establish a generic pricing proceeding to establish a cost methodology and prices for interconnection, unbundled elements, transport and termination, and resale. The Commission will issue a separate order establishing the generic proceeding and scheduling a prehearing conference.
2. Sprint's motion to intervene in the above-captioned dockets is denied.

DATED at Olympia, Washington and effective this 23rd day of October 1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


 SHARON L. NELSON, Chairman


 RICHARD HEMSTAD, Commissioner


 WILLIAM R. GILLIS, Commissioner

⁹Iowa Utilities Board et al. v. FCC, supra.

¹⁰See, e.g., Interpretive and Policy Statement, supra, p. 12