

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NEXTLINK WASHINGTON, INC.,)	
)	Docket No. UT-990340
Petitioner,)	
)	NEXTLINK COMMENTS ON
v.)	RECOMMENDED DECISION
)	
U S WEST COMMUNICATIONS, INC.,)	
)	
Respondent.)	
_____)	

Pursuant to the Sixth Supplemental Order in this docket, NEXTLINK Washington, Inc. ("NEXTLINK"), provides the following Comments regarding the recommended decision of Administrative Law Judge Berg ("Recommended Decision"). NEXTLINK generally supports the Recommended Decision, but requests that the Commission order U S WEST Communications, Inc. ("U S WEST") to implement the reciprocal compensation provisions ordered in the Recommended Decision as of no later than May 5, 1999, the date on which NEXTLINK filed its Petition for Enforcement.

DISCUSSION

The Recommended Decision properly concludes that U S WEST is obligated to pay reciprocal compensation to NEXTLINK under the terms of the Parties' interconnection agreement ("Agreement") as modified by the reciprocal compensation provisions of the agreement between U S WEST and MFS Intelenet of Washington, Inc. ("MFS Agreement").

Both the Telecommunications Act of 1996 ("Act") and the FCC require that U S WEST and other incumbent local exchange companies make just such terms and conditions of approved interconnection agreements readily available to requesting carriers as an important means of ensuring nondiscriminatory treatment. The Recommended Decision properly implements federal law by requiring U S WEST to provide the same reciprocal compensation rates, terms, and conditions to NEXTLINK that U S WEST provides to other carriers, including compensation for terminating traffic to Internet Service Providers. The Recommended Decision also fulfills the intent of the Act and FCC rules by giving full and meaningful effect to Section 252(i) and FCC Rule 809.

NEXTLINK's primary concern with respect to the Recommended Decision, however, is the date on which the Parties' reciprocal compensation obligation becomes effective. The Recommended Decision interprets the Agreement and Commission requirements to make the relief NEXTLINK requested effective only after the Commission has approved the Agreement as modified to include the reciprocal compensation provisions from the MFS Agreement. This aspect of the Recommended Decision not only denies NEXTLINK compensation for the costs it has incurred to terminate calls originated by U S WEST end-users since November 1998, but it rewards U S WEST for refusing to recognize its legal obligations and using all means available to delay the effectiveness of those obligations.

NEXTLINK began to measure the traffic exchanged with U S WEST in November 1998 and became aware of the traffic imbalance between the parties the following month.

NEXTLINK continued to measure significant traffic imbalances in December 1998 and January

1999 and requested reciprocal compensation from U S WEST in February 1999. Williams Aff. ¶¶ 3-4. On March 10, 1999, NEXTLINK provided U S WEST with the reciprocal compensation provisions of the MFS Agreement that NEXTLINK sought to apply. Paulson Decl. ¶ 5. Even if the Agreement is not interpreted to require reciprocal compensation as of November 1998 when NEXTLINK detected the traffic imbalance, NEXTLINK should be entitled to reciprocal compensation beginning on the date that NEXTLINK requested such compensation, pursuant to the provisions of 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809. The Recommended Decision, however, would delay the effectiveness of that relief until after the Commission approves a modified Agreement -- in practical terms, no earlier than September 1999.

The FCC was concerned with just such delays in carriers' ability to obtain terms and conditions from approved interconnection agreements. As the FCC explained,

We further conclude that a carrier seeking interconnection, network elements, or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis. We find that this interpretation furthers Congress's stated goals of opening up local markets to competition and permitting interconnection on just, reasonable, and nondiscriminatory terms, and that we should adopt measures that ensure competition occurs as quickly and efficiently as possible. *We conclude that the nondiscriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement.*

In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, First Report and Order ¶ 1321 (August 8, 1996) (emphasis added).

The Commission has adopted an expedited process for handling petitions for enforcement of interconnection agreements, WAC 480-09-530, and the presiding officer properly used that process to address NEXTLINK's reciprocal compensation claims. Under the circumstances of this case, however, the Recommended Decision would not afford NEXTLINK the timely relief the FCC envisioned, largely due to U S WEST's actions. U S WEST denied NEXTLINK its rights to reciprocal compensation, forcing NEXTLINK to petition the Commission to compel U S WEST to satisfy its legal obligations. U S WEST then raised numerous jurisdictional and other legal arguments, all of which the presiding officer rejected but only after considerable time and party resources had been expended. Tying the effectiveness of the relief in the Recommended Decision to final Commission approval of a modified Agreement thus would deny NEXTLINK the same reciprocal compensation U S WEST routinely has provided to other carriers for at least *six months* after NEXTLINK requested such compensation and over *nine months* after the traffic imbalance was first measured.

The Commission should not reward U S WEST for its recalcitrance. NEXTLINK does not propose to limit U S WEST's ability to present its position to the Commission, but the Commission should not permit U S WEST to use the legal process to impose additional costs on competitors and to delay compliance with its legal responsibilities. NEXTLINK has terminated hundreds of thousands of dollars worth of traffic originated by U S WEST since May 5, 1999,

when NEXTLINK filed its Petition for Enforcement. If the Commission authorizes U S WEST to avoid paying NEXTLINK for this service, NEXTLINK will suffer substantial economic injury, and U S WEST will have a powerful economic incentive to resist and delay future compliance with otherwise applicable legal requirements.

Accordingly, the Commission should conclude that U S WEST is obligated to pay reciprocal compensation to NEXTLINK as of May 5, 1999, if not November 1998. Based on NEXTLINK's March 10, 1999, demand to use the MFS Agreement's reciprocal compensation provisions and the Commission's dedication to approving agreements within 30 days of submission, a modified Agreement between U S WEST and NEXTLINK would have been completed and approved by May 5, 1999. NEXTLINK should not be penalized -- nor U S WEST rewarded -- because U S WEST successfully delayed Commission approval of a modified Agreement by raising unsuccessful legal arguments.

CONCLUSION

The Commission, therefore, should adopt the Recommended Decision but should order U S WEST to pay reciprocal compensation as of May 5, 1999, if not November 1998. At a bare minimum, the Commission should require U S WEST to pay reciprocal compensation as of the date of the Commission order adopting the Recommended Decision.

DATED this 19th day of August, 1999.

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