

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| In the Matter of the Petition for Arbitration) | DOCKET NO. UT-960347 |
| of an Interconnection Agreement Between) | |
| |) |
| SPRINT COMMUNICATIONS COMPANY L.P.) | COMMISSION ORDER |
| and U S WEST COMMUNICATIONS, INC.) | APPROVING INTERCONNECTION |
| |) AGREEMENT WITH |
| Pursuant to 47 USC ' Section 252.) | MODIFICATION |
|) | |

MEMORANDUM

I. Procedural History

On April 15, 1996, Sprint Communications Company L.P. ("Sprint") requested negotiations with U S WEST Communications, Inc. ("USWC") for interconnection under the terms of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56, codified at 47 USC ' 151 et seq. (the "1996 Act" or "the Act").

On September 20, 1996, Sprint timely filed with the Commission and served on USWC a request for arbitration pursuant to 47 USC ' 252(b)(1). The matter was designated Docket No. UT-960347. On October 10, 1996, the Commission entered an Order on Arbitration Procedure appointing Simon ffitch as arbitrator and establishing certain procedural requirements. USWC timely responded to Sprint's petition on October 15, 1996.

AFinal offer@arbitration was adopted for this arbitration. A hearing was held before the arbitrator on December 12, 1996, in the Commission's main hearing room in Olympia, Washington. Sprint was represented by Richard L. Goldberg, attorney, and USWC was represented by Lisa Anderl, attorney. Following the hearing, the parties filed final briefs and "last best offers" on January 3, 1997.

On January 15, 1997, the Arbitrator=s Report and Decision (ADecision@) was issued resolving the disputed issues presented in the final briefs and offers. In preparing the arbitration report in this matter, the arbitrator selected between the parties= last proposals as to each unresolved issue, selecting the proposal which was most consistent with the requirements of state and federal law and Commission policy. The arbitrator either chose either an entire proposal, or chose between parties= proposals on an issue-by-issue basis. In the event that neither proposal was consistent with law or

Commission policy, the arbitrator rendered a determination in keeping with those requirements. The parties were instructed to submit an Interconnection Agreement (IAgreement@) in accordance with the Decision within thirty days. The parties continued to negotiate and upon requests of the parties, for good cause stated, the Commission extended the filing deadline of the Agreement to May 19, 1997.

On May 19, 1997, each party filed a separate Request for Approval and Modification of the Agreement along with a signed copy of the Agreement. On June 13, 1997, the Commission convened an open meeting at its offices in Olympia, Washington, to consider the requests for approval of the Agreement. The Commission reviewed the record of the proceeding; the Arbitrator's Decisions; the Agreement; written comments by the parties; the written Commission Staff report; and all oral comments made at the open meeting by Richard L. Goldberg for Sprint, Lisa Anderl for USWC, Jeffrey Goltz of the Attorney General's Office, and by Jing Roth and Glenn Blackmon of Commission Staff. Commission Staff presented its recommendation that the Agreement be approved without any modification of the Arbitrator's Decision or revisions to proposed language by the parties.

At the conclusion of the open meeting, the Commission adopted the Arbitrator's Decision and approved the Agreement subject to the modification and language changes which are discussed below. The Commission directed that a written order be prepared in accordance with its decision.

II. Modification of the Arbitrator's Decision

Sprint requested that language in the Agreement which related to the Arbitrator's Decision on the issue of Centrex resale restrictions be modified in order to further clarify the Decision. Staff stated its position that the Arbitrator's Decision on this issue was clear and that no clarification was necessary. USWC opposed the modification as being inconsistent with the Arbitrator's Decision. Sprint modified its request for clarification and proposed that the following language be included in the Agreement in Section 31.2.5.1:

Centrex type services may only be sold to customers qualified to purchase those services pursuant to the USWC tariff.

The Commission determined that to the extent that the USWC Centrex tariff may be subject to contrasting interpretations when considered in the abstract, the availability of Centrex services for resale should be determined by the actual qualification of customers by USWC.

Commission Staff also recommended that all other requests for modification of the Arbitrator's Decision by the parties be denied. Sprint requested that the Commission interpret the MFN provisions as set forth in 47 USC ' 252(i) to encompass a pick and choose approach. Sprint also requested that the Commission modify the Arbitrator's Decision by replacing the requirement that additional service measurements should be negotiated in a bona fide request (ABFR) process. USWC requested that the Arbitrator's Decision be modified to forward the carrier common line charge to Sprint for remote call forwarding when a Sprint customer retains a previous local phone number. USWC also requested that the Arbitrator's Decision be modified to prevent a requesting carrier to combine unbundled network elements for the purpose of providing a telecommunications service.

III. Generic Pricing Proceeding

On October 23, 1996, the Commission entered an order in this and other arbitration dockets declaring that a generic proceeding, UT-960369, et. al., 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 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.

IV. Application of Rates and Charges

¹Order on Sprint's Petition to Intervene and to Establish Generic Pricing Proceeding (October 23, 1996; AGeneric Pricing Order)

The negotiated agreement between the parties regarding the application of rates and charges for interconnection, resold services, and unbundled network elements is that where no state-specified permanent or interim rates exist, they agree to use the ordered and approved American Telephone & Telegraph (AT&T) rates as interim rates until such time as the Commission issues an order in a generic proceeding, implementing approved rates, whether those approved rates are interim or final. The parties agree that the term *Arates* includes rate structure, and that upon issuance of an order in the generic case, USWC will move Sprint to such approved rates and true up the amounts charged up to that point in time.

In Washington, the AT&T interim rates shall be established in Docket No. 960309 which is presently pending before the Commission. Sprint and USWC agree to file those rates (which are incorporated into the Agreement by reference) in this proceeding within ten days of the Commission's order approving the arbitrated interconnection agreement in Docket No. 960309.

V. 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. However, the stay 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 Agreement, the requests for approval and modification 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.

FINDINGS OF FACT

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 *AMFN* rule in which the FCC interpreted the statutory provision regarding availability of contracted terms to other parties.

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. 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, pursuant to Sections 251 and 252 of the Act.

3. USWC was, until recently, the de facto monopoly 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.

4. Sprint provides switched intraLATA and interLATA exchange service in Washington and seeks to provide competitive local exchange service in the intrastate territory of USWC.

5. On September 20, 1996, Sprint filed a Petition for Arbitration of an interconnection agreement with USWC pursuant to the Act. USWC responded to Sprint's petition on October 15, 1996. A hearing on the disputed issues was conducted by arbitrator Simon ffitch on December 12, 1996.

6. 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 dated October 10, 1996.

7. On January 15, 1997, the arbitrator issued an Arbitrator's Report and Decision resolving the disputed issues between the parties to this proceeding. The parties were instructed to submit an interconnection agreement in accordance with the Decision within thirty days. Upon the request of the parties, for good cause, extensions of time were granted by the Commission to May 19, 1997.

8. On May 19, 1997, Sprint filed its Request For Approval and Modification of Negotiated/Arbitrated Agreement and an unsigned Agreement for the State of Washington. On that same date, USWC filed its Request For Approval and Modification of Arbitrated Agreement and the same proposed Agreement. Both parties requested modification of the Arbitrator's Decision and stated their respective positions regarding

disputed language in the Agreement.

9. On June 13, 1997, the Commission held an open meeting at its Main Hearing Room in Olympia, Washington to consider the requests for approval of the Agreement. Commission Staff presented its recommendations regarding modification and adoption of the Arbitrator's Decision, and approval of the Agreement. Counsel for Sprint made comments relating to modification of the Arbitrator's Decision on the issue of Centrex resale restrictions. USWC opposed the modification as being inconsistent with the Arbitrator's Decision. Sprint modified its request and proposed that the following language be included in Section 31.2.5.1 of the Agreement:

Centrex type services may only be sold to customers qualified to purchase those services pursuant to the USWC tariff.

10. Sprint requested that the Commission interpret the MFN provisions as set forth in 47 USC ' 252(i) to encompass a "pick and choose" approach. Sprint also requested that the Commission modify the Arbitrator's Decision by replacing the requirement that additional service measurements should be negotiated in a bona fide request (ABFR) process. USWC requested that the Arbitrator's Decision be modified to forward the carrier common line charge to Sprint for remote call forwarding when a Sprint customer retains a previous local phone number. USWC also requested that the Arbitrator's Decision be modified to prevent a requesting carrier to combine unbundled network elements for the purpose of providing a telecommunications service. Commission Staff recommended that all requests for modification of the Arbitrator's Decision by the parties be denied.

11. The negotiated agreement between the parties regarding the application of rates and charges for interconnection, resold services, and unbundled network elements is that where no state-specified permanent or interim rates exist, they agree to use the ordered and approved American Telephone & Telegraph (AT&T) rates as interim rates until such time as the Commission issues an order in a generic proceeding, implementing approved rates, whether those approved rates are interim or final. The parties agree that rates include rate structure, and that upon issuance of an order in the generic case, USWC will move Sprint to such approved rates and true up the amounts charged to that point. In Washington, the AT&T interim rates shall be established in Docket No. 960309 which is presently pending before the Commission. Sprint and USWC agree to file those rates (which are incorporated into the Agreement by reference) in this proceeding within ten days of the Commission's order approving the arbitrated interconnection agreement in Docket No. 960309.

12. The Commission has reviewed and analyzed the Commission Staff's recommendations, the Arbitrator's Report and Decision, the proposed Agreement, the

filings of the parties and the record herein, including the oral comments made at the open meeting. The Commission hereby adopts and incorporates by reference the findings and conclusions of the Arbitrator's Report and Decision, subject to the modifications which are Ordered herein.

13. At an open meeting on April 1, 1997, the Commission approved Sprint's request that the following language be included in Section 31.2.5.1 of the Agreement:

Centrex type services may only be sold to customers qualified to purchase those services pursuant to the USWC tariff.

14. The Commission approved the proposal of the parties to use the ordered and approved American Telephone & Telegraph (AT&T) rates as interim rates until such time as the Commission issues an order in a generic proceeding, and that USWC move Sprint to such approved rates and true up the amounts charged up to that point in time. In Washington, the AT&T interim rates shall be established in Docket No. 960309 which is presently pending before the Commission. The Commission also approved the agreement between Sprint and USWC to file those rates in this proceeding within ten days of the Commission's order approving the arbitrated interconnection agreement in Docket No. 960309, and the Commission approved the incorporation of those terms into the Agreement by reference.

15. Other than the inclusion of Sprint's proposed language in Section 31.2.5.1, the Commission denied the parties other requests for modification and adopted the Commission Staff recommendation that the Agreement be approved.

CONCLUSIONS OF LAW

1. The provisions of the Agreement meets the requirements of Section 251 of the Telecom Act, 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 Agreement do not discriminate against a telecommunications carrier not a party to the agreement, and it is accepted as consistent with the public interest, convenience, and necessity.

3. The contract language proposed by Sprint in Section 31.2.5.1 of the Agreement is consistent with the Arbitrator's decision and should be incorporated into the Agreement.

4. The proposal of the parties to use the ordered and approved American Telephone & Telegraph (AT&T) rates as interim rates until such time as the Commission issues an order in a generic proceeding, and that USWC move Sprint to such approved rates and true up the amounts charged is reasonable and is consistent with the public interest, convenience, and necessity. In Washington, the AT&T interim rates shall be established in Docket No. 960309 which is presently pending before the Commission. It is also reasonable that Sprint and USWC file those rates in this proceeding within ten days of the Commission's order approving the arbitrated interconnection agreement in Docket No. 960309, and that those terms are incorporated into the Agreement by reference.

5. The parties failed to establish a proper foundation in support of their other requests for modification, and the Commission Staff recommendation that the other requests be denied is well founded.

6. The Agreement is otherwise consistent with Washington law and with the orders and policies of this Commission.

ORDER

THE COMMISSION ORDERS:

1. The Agreement filed by the parties on May 19, 1997, is approved subject to the inclusion of Sprint's proposed language in Section 31.2.5.1.

2. USWC shall file a revised Agreement or revised pages for insertion into the Agreement within ten days. The revised agreement shall be integrated and conform with the Commission's modification of the Arbitrator's Decision.

3. In the event that the parties revise, modify or amend the agreement approved herein, the revised, modified, or amended agreement shall be deemed to be a new negotiated agreement under the Telecommunications Act and shall be submitted to the Commission for approval, pursuant to 47 U.S.C. ' 252(e)(1) and relevant provisions of state law, prior to taking effect.

4. The Agreement approved in this Order shall be effective in thirty days.

DATED at Olympia, Washington, and effective this 18th day of

June 1997.

WASHINGTON UTILITIES AND TRANSPORTATION CC

SHARON L. NELSON, Chairman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner