

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration)	
of an Interconnection Agreement Between)	DOCKET NO. UT-960326
)	
TCG SEATTLE and)	COMMISSION ORDER
U S WEST Communications, Inc.)	REJECTING AGREEMENT;
)	IDENTIFYING DEFICIENCY;
Pursuant to 47 U.S.C. Section 252.)	REQUIRING REFILEING
)	
.....)	

Procedural history. On February 8, 1996, TCG Seattle (TCG) requested negotiations with US 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 17, 1996, TCG 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-960326. On July 31, 1996, the Commission entered an Order on Arbitration Procedure appointing the undersigned as arbitrator for the proceeding and establishing procedures. Hearing was held on September 25 and 26, 1996, at Olympia, Washington. TCG was represented by Greg Kopta, attorney, Seattle and USWC was represented by Edward T. Shaw and Lisa Anderl, attorneys, Seattle. The parties filed final offers and briefs.

The arbitrator issued a Report and Decision on November 8, 1996, in which he used the "final offer" arbitration method consented to by the parties. TCG petitioned for reconsideration requesting a new look at all issues decided. The arbitrator denied reconsideration. The parties sought and the Commission granted a one-week extension of time to file an agreement pursuant to the arbitration.

The parties did file on December 16, 1996, an agreement pursuant to the Arbitrator's Order. Each also filed a request for approval of the agreement, expressing objections to the arbitrator's order and the provisions of the resulting agreement, and requesting modifications of the agreement to coincide with its 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 December 26, 1996, USWC filed comments in response to TCG's December 16 filing. No other person filed comments.

Commission Staff and the parties addressed the request for approval at an open public meeting on January 13, 1997. The Commission reviewed the record of the proceeding; arbitrator's report; the agreement filed pursuant to that report and the requests approval and modification; USWC Comments; the written Commission Staff

report; and all oral comments made at the open meeting by Edward T. Shaw for USWC, by Gregory Kopta for TCG, by Brooks Harlow for MCI, and by Jing Roth and Glenn Blackmon of Commission Staff. Following discussion, the Commission determined under pertinent legal standards to approve the agreement as filed, with one exception. Consequently the Commission rejected the agreement; directed that a revision be made, consistent with its decision; and directed that the revised document be filed for approval within seven days.

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 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 Arbitration Interconnection Agreement and accompanying requests for 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.

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

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.

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. TCG Seattle 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.

5. TCG provides switched local exchange service in the territory of certain of USWC's exchanges in competition with USWC.

6. On July 18 1996, TCG filed a Petition for Arbitration of an interconnection agreement with USWC pursuant to the federal Telecommunications Act of 1996 ("Act"). USWC responded to TCG's petition on August 12, 1996. An arbitration hearing on the disputed issues was conducted by Administrative Law Judge C. Robert Wallis on September 24 and 25, 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 8, 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, TCG and USWC. It is attached to this document as Appendix A and is incorporated into this order by this reference.

9. On December 16, 1996, TCG and USWC submitted a signed Arbitrated Interconnection Agreement ("Agreement") to the Commission for approval, although each asked that it be rejected and modified, in part. The Agreement includes both terms that have been negotiated and terms that were arbitrated. The Agreement properly incorporates the decisions of the arbitrator as to the disputed issues, with the exception specified below. To the extent the final provisions vary from specific decisions of the arbitrator, pursuant to agreement of the parties, the provisions are treated as negotiated provisions.

10. The Commission has reviewed and analyzed the Commission Staff recommendation, the Arbitrator's Report and Decision, the Arbitrated Interconnection Agreement, the filings of the parties, and the record herein, including the oral comments made at the open meeting. The Commission hereby adopts as its own and incorporates by reference the findings and conclusions within the Arbitrator's Report and Decision, except as modified herein.

11. The provisions of the Interconnection Agreement that purport to prohibit resale of private line services that USWC offers at retail are improper and should be rejected. A provision would be acceptable that permits resale; that prohibits use or resale of private lines for the purpose of providing special access services; and that sets the price of resold private line service at the tariffed rate less the "wholesale" or avoided cost discount that the Commission adopts herein. The parties should be directed to resubmit the agreement, with the specified change, within seven days after the date of this order.

12. In open meeting on January 13, 1997, the Commission adopted the recommendation of Commission Staff that the Arbitrated Interconnection Agreement be approved as submitted, with the modification specified above.

II. CONCLUSIONS OF LAW

1. As modified pursuant to the terms of this order, the provisions of the parties' Interconnection Agreement 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 Interconnection Agreement do not discriminate against a telecommunications carrier not a party to the agreement and are accepted as consistent with the public interest, convenience, and necessity.

3. The arbitrated provisions of the Interconnection agreement, as modified, are consistent with Washington law and with the orders and policies of this Commission.

4. The parties should be directed to correct the deficiency in the proffered Agreement in accordance with this order and to resubmit the Agreement within seven days of the date of this order for approval pursuant to the Telecom Act.

ORDER

THE COMMISSION ORDERS That:

1. The Arbitrated Interconnection Agreement for the State of Washington between TCG Seattle, Inc., and US WEST Communications, Inc., is rejected. The sole deficiency in the document is the exclusion of private lines from resale, on condition that they not be resold to provide special access services. The parties to the agreement are directed to correct the deficiency to be consistent with the terms of this order and to refile the corrected agreement for approval within seven days after the date of this order.

2. The prices contained in the Agreement are interim prices, subject to replacement by prices adopted in the Commission's generic cost and price proceeding, Docket Nos. UT-960369 et al.

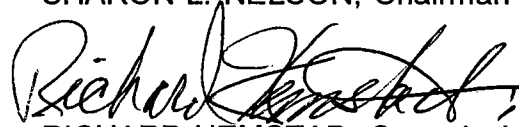
3. In the event that the parties revise, modify or amend the Agreement approved herein, the revised, modified, or amended Agreement shall be deemed a new negotiated agreement under the Telecommunications Act and shall be submitted to the Commission for approval, pursuant to 47 U.S.C. § § 252(e)(1) and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

DATED at Olympia, Washington and effective this 14th day of January 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner


WILLIAM R. GILLIS, Commissioner

APPENDIX "A"