

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Sprint)
Communications Company, L.P. for)
Arbitration of Interconnection Rates,) Docket No. UT-003006
Terms, Conditions and Related)
Arrangements with Qwest Corporation.)

REQUEST FOR APPROVAL

Pursuant to § 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* (the “Act”) and the Washington Utilities and Transportation Commission’s (“Commission”) Interpretive and Policy Statement issued in WUTC Docket No. UT-960269, as well as the Arbitrators’ Report and Recommendation (“Recommended Decision”) issued on July 5, 2000 as the Fourth Supplemental Order in the above-captioned matter. Sprint hereby requests the Commission approve the interconnection agreement (the “Agreement”) between Sprint Communications Company, L.P. (“Sprint”) and Qwest Corporation (“Qwest”) (previously U S WEST Communications, Inc.) filed contemporaneously herewith. In support of its Request for Approval, Sprint states as follows:

INTRODUCTION

The Agreement presented for approval here is the result of a lengthy negotiation process, as well as an arbitration proceeding resulting in the Recommended Decision. The Agreement provides the terms, conditions and prices under which Qwest agrees to provide services for resale as well as certain UNEs, ancillary functions and additional features to Sprint,

for Sprint to use in providing Telecommunications Services to end user customers. The Agreement also sets forth the terms, conditions and prices under which the Parties agree to provide Interconnection and reciprocal compensation for the exchange of Exchange Service (EAS/Local) and Exchange Access (IntraLATA Toll) traffic between Qwest and Sprint and Jointly Provided Switched Access (InterLATA and IntraLATA presubscribed/dial around) traffic between Qwest, Sprint and Interexchange Carriers (IXCs) for purposes of offering Telecommunications Services.

THE NEGOTIATED SECTIONS

Sprint and Qwest agreed upon the majority of the Agreement terms (with the exception of the sections listed below under “THE ARBITRATED SECTIONS”) through the negotiation process. The Agreement sets forth and describes in great detail the duties of each signatory, including: general and miscellaneous terms, the processes for resale of services; reciprocal compensation for traffic exchange; collocation; provision of service through UNEs; ancillary services; and rates.

Each of these negotiated sections complies with §§ 251 and 252 of the Act as well as with the relevant law of the state of Washington, including this Commission’s regulations and its rulings in previous interconnection arbitration and enforcement orders. The negotiated sections of this Agreement are nondiscriminatory in their intent and formulation, and as such are consistent with the public interest, convenience, and necessity. Accordingly, Sprint respectfully requests the Commission approve the negotiated sections of the Agreement submitted contemporaneously herewith.

THE ARBITRATED SECTIONS

Since Sprint and Qwest reached agreement on the majority of issues through the the negotiations that preceded and ran concurrently with the arbitration proceeding, the only disputed issues presented for arbitration were the following (the relevant sections in the Agreement are contained in parenthesis):

1. Should the parties be required to make reciprocal compensation payments for terminating ISP-bound traffic? (Section (C) 2.3.4.1.3).
2. Should Qwest's obligation to provide combinations of unbundled network elements ("UNEs") be limited to those currently combined and provided to a particular location? (Section (E) 1.16.).
3. Should Qwest be required to combine UNEs that are not currently combined within its network? (Section (E) 1.16.3).
4. Should Qwest be permitted to impose nonrecurring charges for each element to recover its costs when providing combined UNEs? (Section (E) 1.16.5.2).

The Recommended Decision gave concrete direction to Sprint and Qwest with regard to resolving each of these issues. Accordingly, Sprint and Qwest have incorporated into the Agreement language implementing the Recommended Decision, and have highlighted this language for the convenience of the Commission.

In particular, with regard to the issue of whether reciprocal compensation will be paid for ISP-bound traffic, the Recommended Decision determined that : 1.) Reciprocal compensation should be paid for ISP-bound traffic; and 2.) On an interim basis the parties should compensate each other at the reciprocal compensation rate for voice traffic.¹ This ruling is perfectly consistent with the prior determinations of this Commission and fully in compliance with both Washington and

¹ Fourth Supplemental Order, WUTC Docket No. UT-003006 at ¶ 50.

federal law. Accordingly, Sprint fully supports the Recommended Decision. As noted above, the parties have incorporated compliance language into the Agreement that meets the nondiscriminatory and public interests requirements for Commission approval, and Sprint thus respectfully requests the Commission approve Section (C) 2.3.4.1.3 of the contract.

Regarding the issues involving the combination of UNEs, (nos. 2 and 3 above), the parties have modified the relevant sections of the Agreement to comply with the Recommended Decision, and they now meet the standards required by Washington and federal law for their approval. Accordingly, Sprint respectfully requests the Commission approve Sections (E) 1.16.1 and (E) 1.16.3 of the Agreement as submitted.

In the intervening weeks since the issuance of the Recommended Decision, the Eighth Circuit Court of Appeals issued its ruling on remand from the Supreme Court in Iowa Utilities Board, et al. v. Federal Communications Commission, 2000 U.S. App. LEXIS 17234 (July 18, 2000). Because the Commission may have questions with regard to the impact of the Eighth Circuit Court's remand decision, Sprint points out that this decision's effect on the instant arbitration, in particular the UNE combination issues should be negligible for the following reasons.

First, the Recommended mandates that Sprint and Qwest "incorporate language into their interconnection agreement that is consistent with FCC Rule 315 in its entirety. Further, [Qwest] may not impose different standards when combining network elements for other carriers than those it employs for itself."² In light of these instructions, Sprint and Qwest have agreed on compliance language that meets this standard and that does not impose any obligation on Qwest that is not otherwise imposed upon them

² Fourth Supplemental Order, WUTC Docket No. UT-003006 at ¶ 62.

by state or federal law, and is thus valid, notwithstanding the Eighth Circuit Court of Appeals' decision. Moreover, the Eighth Circuit Court of Appeals decision does not affect this Commission's independent state authority to require UNE combinations in accordance with its own rules, statutes and prior orders.

Second, the Eighth Circuit Court's discussion regarding the combining rules is dicta (the original vacatur of FCC Rule 51.315(c)-(f) never came before the U.S. Supreme Court, and thus was not remanded to the Eighth Circuit). Therefore, the legal landscape upon which the Ninth Circuit based its U S WEST v. MFS Intelenet and MCI v. U S WEST decisions has not changed. The Act still does not currently mandate the combination of new elements, and the Ninth Circuit (whose jurisdiction covers the state of Washington and which has jurisdiction over federal law disputes arising in Washington) decisions remain valid for the purposes of interpreting the Commission's obligations under the Act in Washington.

As this Commission has already found, regardless of the past or present uncertainty surrounding FCC Rule 315(c)-(f), it has authority to order the ILEC to combine UNEs.³ Additionally, there is no compelling reason for this Commission to disturb its prior findings, as long as the requested combination of UNEs is technically feasible and does not prejudice the rights of other CLECs, which the proposed compliance language offer to the Commission today does not. At least until such time as a court of last resort (i.e. the United States Supreme Court) has spoken on the issue of FCC Rule 315(c)-(f) (or declines to do so), or the FCC adopts different rules, this Commission's policy should remain in place.

With regard to the non-recurring cost for already-combined UNEs issue, Sprint and Qwest have incorporated compliance language in to Section (E) 1.16.5.2 that conforms with the ALJs'

³ In the Matter of the Petition for Arbitration of an Interconnection Agreement Between American Telephone Technology, Inc and U S West Communications, Inc. Pursuant to 47 U.S.C. Section 252, WUTC Docket No. UT-990385; In the Matter of the Petition for Arbitration of an Interconnection Agreement Between American Telephone Technology, Inc. and GTE Northwest, Incorporated, WUTC Docket No. UT-990390.

Recommendation prohibiting Qwest from recovering more than its reasonable rate for combining UNEs, including the provision of pre-existing combinations, based on actual work performed. Section (E) 1.16.5.2 now meets the non-discriminatory and public interest requirements of the Act and Washington law. Accordingly, Sprint respectfully requests the Commission approve Section (E)1.16.5.2 of the Agreement.

CONCLUSION

As set forth above, Sprint respectfully requests the Commission approve the its Agreement with Qwest as submitted, including all negotiated terms and compliance language incorporated as the result of this Arbitration. This Agreement does not discriminate against any other telecommunications carrier, and if approved by the Commission, the Agreement will be subject to adoption by other interested carriers pursuant to 47 U.S.C. 252(i). Further, the Agreement is consistent with the public interest as identified in the pro-competitive policies of this Commission, the state of Washington, the FCC, and the United States Congress. The terms of the Agreement are equitable and commercially reasonable as demonstrated by the voluntary negotiations of the parties. And, as mentioned previously, the terms of the Agreement are consistent with applicable state law and the rules and regulations of the Commission.

Dated: August 3, 2000

Respectfully submitted,

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