

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition for Arbitration of an)	
Interconnection Agreement Between	)	DOCKET NO. UT-003006
)	
SPRINT COMMUNICATIONS COMPANY L.P.	)	FIFTH SUPPLEMENTAL ORDER
)	
and	)	COMMISSION ORDER DENYING
	)	ADMINISTRATIVE REVIEW;
U S WEST COMMUNICATIONS, INC.	)	APPROVING AND ADOPTING
	)	ARBITRATORS' REPORT AND
Pursuant to 47 U.S.C. Section 252.	)	DECISION; APPROVING
	)	NEGOTIATED AND ARBITRATED
	)	INTERCONNECTION
.....	)	AGREEMENT

I. SUMMARY

1 **PROCEEDINGS.** This proceeding concerns Sprint Communication Company L.P.’s petition for arbitration pursuant to Section 252(b)(1) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 et seq. (Act). Sprint filed its petition on January 11, 2000, following largely successful negotiations with U S WEST Communications, Inc. (now d/b/a Qwest Corporation; hereafter “Qwest”) aimed at establishing a formal interconnection agreement to govern their business relationships as CLEC and ILEC, respectively. Following a hearing on a paper record, as agreed by the Parties, co-arbitrators Lawrence Berg and Dennis J. Moss entered their Arbitrators’ Report and Decision on July 5, 2000, as the Fourth Supplemental Order in this docket.

2 **PETITION FOR REVIEW; REQUESTS FOR APPROVAL OF INTERCONNECTION AGREEMENT:** On August 4, 2000, Qwest petitioned the Commission to review and modify the Arbitrators’ Report and Decision. Qwest requests that the Commission reverse the Arbitrators’ determination that reciprocal compensation be paid for ISP-bound traffic and the Arbitrators’ rulings relating to Qwest’s obligation to combine UNEs for Sprint. Qwest requests that its proposed interconnection agreement language concerning these issues be adopted by the Commission.

3 Also on August 4, 2000, Sprint filed its Request for Approval, along with a complete interconnection agreement that reflects the numerous terms to which the parties agreed through negotiation and that is consistent with the Arbitrators’ Report insofar as the contested reciprocal compensation and UNE issues are concerned.

- 4 **PARTIES:** Eric Heath, in-house counsel to Sprint, appeared on behalf of his company. John Devaney and Mary Rose Hughes, Perkins Coie, LLP, Washington, D.C., appeared for Qwest. Lisa Anderl, in-house counsel to Qwest, also is on Qwest's brief.
- 5 **COMMISSION:** The Commission denies Qwest's Petition for Review. The Commission approves and adopts the Arbitrators' Report, and approves the negotiated and arbitrated interconnection agreement filed by Sprint.

II. MEMORANDUM

A. Background and Procedural History

- 6 On August 5, 1999, Sprint Communications Company, L.P. (Sprint), requested to negotiate an interconnection agreement with U S WEST Communications, Inc. (now d/b/a Qwest). On January 11, 2000, Sprint filed with the Commission a petition for arbitration pursuant to Section 252(b)(1) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 et seq. (Act).
- 7 The Commission entered an Order on Arbitration Procedure and appointed Arbitrators on January 21, 2000, and entered a Protective Order on March 6, 2000. Qwest filed its response on February 7, 2000. On February 16, 2000, a prehearing conference was held to establish a procedural schedule, and on February 28, 2000, Sprint and Qwest requested the Commission to extend the statutory deadline for resolving arbitration disputes pursuant to the Act from May 5, 2000, to July 5, 2000. A prehearing conference order was entered on March 9, 2000, and the request for extension was granted. Both parties filed direct testimony on April 26, 2000, and rebuttal testimony on May 10, 2000.
- 8 On May 23, 2000, the parties filed an agreement to cancel the evidentiary hearing scheduled in this arbitration and to have all disputed issues decided based on hearing transcripts from other Qwest/Sprint arbitrations, written testimony, exhibits, and a stipulation of fact. Pursuant to the agreement, both parties filed surrebuttal testimony on May 26, 2000, and post-hearing briefs on June 2, 2000.
- 9 Co-arbitrators Lawrence Berg and Dennis J. Moss entered their Arbitrator's Report and Decision on July 5, 2000, as the Fourth Supplemental Order in this docket. On August 4, 2000, Qwest petitioned the Commission to review and modify the Arbitrators' Report and Decision. Qwest requests that the Commission reverse the Arbitrators' determination that reciprocal compensation be paid for ISP-bound traffic and the Arbitrators' rulings relating to Qwest's obligation to combine UNEs for Sprint. Qwest requests that its proposed interconnection agreement language concerning these issues should be adopted by the Commission.

10 Also on August 4, 2000, Sprint filed its Request for Approval, along with a complete, fully executed interconnection agreement that reflects the numerous terms to which the parties agreed through negotiation and that is consistent with the Arbitrators' Report insofar as the contested reciprocal compensation and UNE issues are concerned.

11 The Commission heard oral argument on August 17, 2000.

B. Commission Discussion and Decision

12 We pause first to acknowledge the success Sprint and Qwest achieved in negotiating the vast majority of the terms that will govern their business relationships. The interconnection agreement crafted by these parties extends over 300 pages in length and includes nearly 100 interrelated provisions, only a few of which were submitted for arbitration. We also commend the parties for bringing the highest professional standards to the arbitration process, including excellent presentations through their briefs and oral argument.

13 Qwest and Sprint presented to the Commission the same arguments with respect to reciprocal compensation, and UNE combinations and compensation, as were presented to the arbitrators. Qwest urges us to depart from our consistent policies of requiring ILECs and CLECs to pay reciprocal compensation for ISP-bound traffic; requiring ILECs to perform the functions necessary to combine requested UNEs in any technically feasible manner either with other UNEs from their networks, or with network elements possessed by requesting carriers; and requiring that ILECs receive a just and reasonable rate for combining UNEs, including the provision of pre-existing combinations, based on actual work performed, but not allowing ILECs to impose a separate nonrecurring charge on a per element basis.

14 The rationale for accepting Sprint's arguments on these points is fully articulated in the Arbitrators' Report and Decision. Similarly, our reasons for rejecting Qwest's opposing arguments on its Petition for Review mirror those stated in the Arbitrators' Report and Decision. Accordingly, we find after careful consideration of the arguments presented and review of the full record in this proceeding, that we should approve and adopt the Arbitrators' Report and Decision. We incorporate the Arbitrators' Report and Decision by reference and attach it as an Appendix to this Order; it should be considered a part of our Order as if set forth in full as part of our discussion and decision.

III. FINDINGS OF FACT

15 Having discussed in detail the evidence concerning all material matters and having stated our findings of fact and conclusions of law in the text of the Order, including those parts incorporated by reference, the Commission now makes the following summary of those

comprehensive determinations. Those portions of the preceding detailed findings and conclusions pertaining to the Commission's ultimate findings and conclusions in this matter are incorporated by this reference.

- 16 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.
- 17 2) The Washington Utilities and Transportation Commission is authorized by the Telecommunications Act of 1996 to arbitrate and approve interconnection agreements between telecommunications carriers, pursuant to Section 252 of the Act. The Commission is specifically authorized by state law to engage in that activity. RCW 80.36.610.
- 18 3) U S WEST Communications, Inc. (now d/b/a Qwest Corporation), is engaged in the business of furnishing telecommunications services, including, but not limited to, basic local exchange service within the state of Washington, and is a local exchange carrier as defined in the Act.
- 19 4) Sprint Communications Company, L.P. (Sprint), is a telecommunications carrier as defined in the Act, operates within the state of Washington, and provides basic local exchange services within Qwest's service area.
- 20 5) On January 11, 2000, Sprint filed a petition for arbitration under 47 U.S.C. § 252(b).
- 21 6) On July 5, 2000, an Arbitrators' Report and Decision issued resolving disputes between the Parties.
- 22 7) Sprint filed a fully executed Local Interconnection Agreement (Agreement) consistent with the Arbitrator's Report on August 4, 2000. Qwest also requests approval of the Agreement, but simultaneously filed a Petition for Review requesting that the Commission modify certain terms in the Agreement related to reciprocal compensation for ISP-bound traffic and UNE combinations.
- 23 8) The Commission finds that the Agreement filed by Sprint should be approved as filed for the reasons set forth in the body of this Order, including the reasons stated in the Arbitrators' Report and Decision, which the Commission incorporates into this Order by reference.

IV. CONCLUSIONS OF LAW

- 24 1) The Commission has jurisdiction over the subject matter and parties to this proceeding.

- 25 2) This arbitration and approval process was conducted pursuant to and in compliance
with 47 U.S.C. § 252 and the Commission's Interpretive and Policy Statement Regarding
Negotiation, Mediation, Arbitration, and Approval of Agreements Under the
Telecommunications Act of 1996.
- 26 3) The negotiated terms of the Agreement are consistent with the public interest,
convenience, and necessity.
- 27 4) The negotiated terms of the Agreement do not discriminate against any other
telecommunications carrier.
- 28 5) The arbitrated provisions of the Agreement meet the requirements of Section 251 of
the Act, including the regulations prescribed by the FCC pursuant to Section 251, and the
pricing standards set forth in Section 252(d) of the Act.
- 29 6) The laws and regulations of the state of Washington, and Commission orders shall
govern the construction and interpretation of the Agreement. The Agreement shall also be
subject to the jurisdiction of the Commission and the Washington courts.

V. ORDER

THE COMMISSION ORDERS:

- 30 1) The reciprocal compensation arrangement that the Commission approves in this Order
is subject to further order of this Commission. The arrangement may be affected by orders
in Docket No. UT-003013 or proceedings following that docket, or FCC proceedings to
determine reciprocal compensation for ISP-bound traffic.
- 31 2) Qwest must perform and Sprint must pay for the functions necessary to combine
requested UNEs in any technically feasible manner either with other UNEs from Qwest's
network, or with network elements possessed by Sprint. However, Qwest need not
combine UNEs in any manner requested if not technically feasible, but must combine
UNEs ordinarily combined in its network in the manner they are typically combined.
- 32 3) The fully executed Local Interconnection Agreement filed by Sprint on August 4,
2000, in connection with the Parties' Requests for Approval, shall be effective as of the
date of this Order.
- 33 4) If the parties further revise, modify, or amend the agreement approved herein, the
revised, modified, or amended agreement shall be deemed a new negotiated agreement
under the Act and the parties must submit it to the Commission for approval, pursuant to

47 U.S.C. § 252(e)(1) and relevant provisions of state law, before the agreement may take effect.

- 34 5) The laws and regulations of the state of Washington, and Commission orders shall govern the construction and interpretation of the Agreement. The Agreement shall also be subject to the jurisdiction of the Commission and the Washington courts.
- 35 6) The Commission retains jurisdiction to enforce the provisions of this Order.

DATED at Olympia, Washington, and effective this day of August, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner