BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of AT&T Communications of the Midwest, Inc. of Denver, Colorado Petitioning for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an Interconnection Agreement with US West Communications, Inc.	Application No. C-1385 PETITION FOR RECONSIDERATION GRANTED IN PART, DENIED IN PART Entered: August 5, 1997

BY THE COMMISSION:

AT&T Communications of the Midwest, Inc. (AT&T) requested to negotiate an interconnection agreement with US West Communications, Inc. (USW) on March 1, 1996. AT&T subsequently filed for arbitration pursuant to Section 252 of the Telecommunications Act of 1996 (the Act). Arbitration hearings were conducted by Dr. Jerry Langin-Hooper. A hearing to approve or reject the proposed interconnection agreement was held in the Commission Hearing Room on March 20, 1997. On April 8, 1997, the Commission entered an Order remanding the interconnection agreement back to the Arbitrator. On July 1, 1997, the Commission entered an Order approving the proposed interconnection agreement as modified.

On July 13, 1997, USW filed a petition for reconsideration and rehearing on several issues. AT&T subsequently filed a motion with the Commission objecting to holding an oral argument on the petition for reconsideration. On July 28, 1997, the Commission sustained AT&T's objection to the extent that an oral argument was not required. Instead, parties were directed to file written briefs on or before August 1, 1997. The briefs were to address issues raised by the Eighth Circuit Court of Appeals ruling made July 18, 1997 in Iowa Utilities Board v. FCC., Nos. 96-3321, 96-3406, 96-3411.

On August 1, 1997, USW filed a letter requesting the Commission delay approving the interconnection agreement until it is able to review and consider the implications of the Eighth Circuit decision on the document.

On August 4, 1997, both AT&T and USW filed letters requesting the Commission to clarify the issue of allocation of non-recurring costs. The parties stated they were unable to agree on the correct interpretation on this portion of the Commission's July 1, 1997 Order.

D E C I S I O N

USW sets forth several issues in its petition. We examine each issue contained in the petition and provide a resolution thereof.

A. The Agreement Is a One Sided, Perpetual Agreement That Is Not in the Public Interest.

We agree with USW that the length of the agreement is unfair and against the public interest. The interconnection agreement currently cannot be terminated by USW at any time. Therefore, we find the contract term should be changed to be made effective for a period of three (3) years. The interconnection agreement should be modified accordingly.

B. The Arbitrated Agreement Unlawfully Allows Sham Unbundling.

The Eighth Circuit Court of Appeals ruled on this issue in Iowa Utilities Board and required incumbent local exchange carriers to unbundle network elements; however, the court clearly stated it is not the responsibility of the incumbent interexchange carrier to rebundle the elements for the competitor. In fact, the court vacated Sections 51.315c through 51.315f. The court left in effect, however, Sections 51.315a and 51.315b. In light of the Eighth Circuit's decision, the interconnection agreement should be modified accordingly.

C. AT&T and USW Should be Allowed to Determine Their Own Standards in Electronic Interfaces.

USW asserts that it is close to achieving a voluntarily-negotiated agreement with AT&T on this issue. USW's petition states ". . . because the parties are so close to an agreement, US West requests that the Commission reconsider its Order of July 1, 1997 . . ." We find it is preferable to have the parties voluntarily negotiate acceptable terms for their interconnection agreement. Indeed, Congress recognized the value of voluntarily-negotiated contracts in the Act by mandating that parties first negotiate for a period of time before requesting arbitration. Therefore, we find that an additional 60 days should be allotted to allow the parties to finalize the standards of electronic interfaces. If after the expiration of 60 days an acceptable agreement cannot be reached, the dispute resolution process shall apply. The contract should be modified accordingly.

D. The Agreement Unlawfully Requires USW to Unbundle Dark Fiber.

We disagree with USW's interpretation on this issue and affirm our previous decision.

E. There Is No Evidentiary Support for the Technical Standards, Performance Standards and Business Practice Requirements in the Arbitrated Agreement.

The Eighth Circuit ruled that an incumbent local exchange carrier must provide the same level of service to interconnecting competitors as it provides to itself. The incumbent is not required to provide a higher level of service. To the extent we previously permitted AT&T to request higher service levels from USW, provided AT&T was willing to pay for such service, we vacate that portion of our July 1, 1997 order. The interconnection agreement should be modified to reflect that service provisioning, business practices and performance standards are to be nondiscriminatory and equal to those which USW provides itself. We fully expect USW to make a prompt and thorough disclosure of the performance standards, technical standards and business practices which it currently applies to its own operations.

We note we have opened an investigative docket in C-1128 (Progression Order No. 5) to establish proper technical and performance standards that an incumbent carrier must offer competitive carriers. We will implement fair and uniform standards that USW owes all competitive carriers, not just AT&T. In the docket, it is integral that the technical standards, performance standards and business practices USW provides itself are disclosed. This docket will be completed as expeditiously as possible.

F. The Arbitrated Agreement Unlawfully Requires USW to Make Packaged Services and Deregulated Services Available for Resale to End Uses at Wholesale Rates.

The Eighth Circuit ruled that packaged services and deregulated services must be made available for resale. Our previous Order is affirmed in that regard.

G. Residential Services Should Be Resold With an Avoided Discount Set at Zero Until Such Time as Residential Services Are Priced Above Cost.

We uphold our previous decision and find that Docket C-1415 will determine ultimate prices for USW. Our July 1, 1997 Order has included a "true-up" to correct any pricing errors that may arise if the calculations included in this docket are in error and improperly compensate either party. We find the claims made by USW in its petition are not ripe.

H. The Wholesale Discount Rates the Arbitrator Has Imposed in the Arbitrated Agreement Would Prevent US West from Recovering Its Costs and Violates the Act.

That issue is disposed of along with Issue G above.

I. The Pricing Standard Found in Part IV of the Arbitrated Agreement at Section 49.4 is Incorrect.

That issue is disposed of along with Issue G above.

J. The Rates in the Arbitrated Agreement for Unbundled Loops and Other Unbundled Elements Violate the Act's Mandate That US West be Permitted to Recover Its Costs.

That issue is disposed of along with Issue G above.

In order to resolve the dispute raised by the parties regarding the allocation of non-recurring costs, we provide the following clarification. It was our intention to include USW into the cost recovery mechanisms. We believe it is fair, reasonable, in the public interest and competitively neutral to require USW to bear its fair share of the cost of facilities enhancement or collocation features that USW uses.

In its August 4, 1997 letter, AT&T submitted language to resolve this dispute. We do not accept the proposed language for Part A, Section 8.1.1. This language pertains to requesting higher service levels than what USW provides itself. As discussed earlier in Section E, USW is under no obligation to provide higher levels of service than it provides itself. We do however, approve the language submitted by AT&T regarding Part A, Section 49.11. This language correctly reflects the Commission's ruling on July 1, 1997. The interconnection agreement should be submitted accordingly.

In reference to USW's claim that the Eighth Circuit's decision requires delaying approval of this interconnection agreement, we disagree. The court's ruling was made July 18, 1997 and both parties were given opportunity to comment on this issue in briefs submitted to the Commission on August 1, 1997. These issues have been fully examined and there is no need to delay implementation of the agreement. Accordingly, the interconnection agreement shall become effective, with the changes made herein, August 8, 1997.

Except as is specifically altered herein, the Order entered on July 1, 1997 is affirmed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the interconnection agreement between US West

Communications and AT&T of the Midwest shall become effective, with the changes incorporated herein, on August 8, 1997.

IT IS FURTHER ORDERED that the sections modified herein shall be refiled with the Commission on or before August 29, 1997.

MADE AND ENTERED at Lincoln, Nebraska this 5th day of August, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

//s//Rod Johnson
//s//Frank E. Landis
//s//Daniel G. Urwiller

ATTEST:

Executive Director