

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In The Matter of Western Wireless ) Application No. C-1409  
Corporation's Petition for Arbitration )  
Pursuant to Section 252(b) of the Telecom- ) Motion Granted  
munications Act of 1996 of the Rates, Terms, )  
and Conditions of Interconnection with US )  
West. ) Entered October 28, 1996

Appearances:

For US West Communications:  
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For Western Wireless:  
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OPINION AND FINDINGS

On September 6, 1996, Western Wireless Corporation (Western Wireless) filed with the Commission a petition for arbitration pursuant to Section 252(b)(1) of the Telecommunications Act of 1996. This petition identified the open issues for resolution by the Commission. On September 30, 1996, US West Communications (US West) filed a motion with the Commission to dismiss Western Wireless' first "open" issues for arbitration. That issue asked:

Whether Western Wireless and US West must use the FCC's default proxy rates, as opposed to the rates specified in their current interconnection contract, during the course of this arbitration and until this Commission develops new interconnection rates?

An opposition to US West's motion was filed by Western Wireless and oral arguments were heard on October 23, 1996 in the Commission Library, with Commission Landis chairing the proceeding.

The Federal Communications Commission's (FCC's) Local Competition First Report and Order issued August 8, 1996, states that the rates an incumbent local exchange carrier may charge in the future for terminating local calls originating on another carrier's network should be based on the incumbent LEC's total element long run incremental cost (TELRIC). In its Order, the FCC acknowledged that it might take incumbent LECs some time to develop TELRIC cost studies for use in negotiations and arbitrations and additional time for state commissions to review

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those studies. Consequently, the FCC established interim "default proxies" which a state commission could use until it established new rates based on TELRIC studies.

The FCC, at paragraph 1094 of its Order states it did not intend the interim default proxies to be used with commercial mobile radio service (CMRS) providers like Western Wireless which generally have pre-existing interconnection contracts with incumbent LECs, like US West.

Paragraph 1094 states:

We conclude that CMRS providers that are party to pre-existing agreements with incumbent LECs that provide for non-mutual compensation have the option to renegotiate these agreements with no termination liabilities or other contract penalties. Pending the successful completion of negotiations or arbitration, symmetrical reciprocal compensations provisions shall apply, with the transport and termination rate that the incumbent LEC charges the CMRS provider from the pre-existing agreement applying to both carriers, as of the effective date of the rules we adopt pursuant to this order.

Based on the language in the above paragraph, we find the FCC determined that CMRS providers, with pre-existing interconnection contracts, should continue to pay the rates specified in their current contract until state commissions establish new TELRIC-based rates.

We also note Paragraph 1067, cited by Western Wireless in the oral argument, furthers this conclusion. In this paragraph, the FCC states it believes it has authority to establish interim regulations that address the "just and reasonable" rates for reciprocal compensation. Further, the FCC states it has authority to set interim rates subject to a later "true-up" when final rates are established. However, the FCC Order in Paragraph 1068 goes on to clarify the following:

Cincinnati Bell asserts that interim mechanisms are not required because large corporations are not disadvantaged by unequal bargaining power in negotiations with small and mid-size incumbent LECs. We do not adopt Cincinnati Bell's position because some entrant, regardless of their size, that do not already have interconnection agreements with incumbent LECs may face delays in initiating service solely because of the need to negotiate transport and termination agreements with the incumbent LEC.

Paragraph 1066 of the FCC Order provides:

In states that have neither set rates consistent with the default price ceilings and ranges nor reviewed or conducted forward-looking economic cost studies, we must establish an interim default price in order to facilitate rapid competition in the local exchange market.

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The Nebraska Commission has not set forward-looking rates, therefore, arguably the proxy mechanism is intended for use in our state. However, we conclude that the FCC developed this mechanism to facilitate rapid entry for competitors. Since Western Wireless and US West have an existing interconnection agreement, we do not need to rely on proxy models in order for Western Wireless to begin providing service. We acknowledge that the FCC has stated interim mechanisms are permissible in circumstances wherein the CMRS provider does not have an existing interconnection agreement with the incumbent LEC.

Since Western Wireless and US West have an existing interconnection agreement in place, we find that the first issue referenced in C-1409 is not an open issue for arbitration and therefore, should be dismissed.


ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the motion filed by US West to dismiss the first open issue for arbitration with Western Wireless in Application C-1409 be, and it is hereby granted.

MADE AND ENTERED at Lincoln, Nebraska this 28th day of October, 1996.


NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
 //s//Rod Johnson  
 //s//Frank E. Landis  
 //s//James F. Munnelly

Chairman

ATTEST:

  
 Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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