

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Sprint Communica-) Application No. C-1417
tions Company, L.P. of Kansas City,)
Missouri, Petitioning for Arbitra-)
tion Pursuant to Section 252(b) of) Interconnection Agreement
the Telecommunications Act of 1996) Approved
of the Rates, Terms and Conditions)
of Interconnection with US West)
Communications, Inc.) Entered: August 26, 1997

APPEARANCES:

For Sprint Communications:
Bradford Kistler
Kinsey, Ridenour, Becker & Kistler
206 S. 13th, Suite 1301
Lincoln, Nebraska 68508
and
Julie Thomas Bowles and
Ken Ross
8140 Ward Parkway
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For US West Communications:
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1314 Douglas St., 15th Flr.
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For the Commission staff:
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For Langin-Hooper Associates:
Dr. Jerry Langin-Hooper
8031 N. Academy Blvd., #520
Colorado Springs, Colorado 80920

BY THE COMMISSION:

Sprint Communications Company, L.P. (Sprint) requested to negotiate an interconnection agreement with US West Communications, Inc. (USW) on April 15, 1996. Pursuant to Section 252(b)(1) of the Act, Sprint filed a petition for arbitration with the Commission on September 23, 1996. USW filed its reply to the petition October 21, 1996. On December 10, 1996, Sprint amended its petition and filed a motion requesting to use the same arbitration decisions on issues common to this proceeding as those involving AT&T and USW in Application C-1385. The motion was denied.

The Commission, in Docket C-1128/Progression Order No. 3, established the policies to be used concerning Section 252 arbitrations. Pursuant to Commission policy, the parties selected a mutually acceptable independent arbitrator, Dr. Jerry Langin-Hooper. The Arbitrator rendered a decision in this docket June 20, 1997. A proposed interconnection agreement was filed with the Commission July 24, 1997. In accordance with the Commission's policy, interested parties were allowed to submit written comments on the interconnection agreement. Comments were filed by the Nebraska Independent Telephone Association, AT&T of the Midwest and USW. A hearing was held to approve or reject the proposed inter-

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connection agreement pursuant to Section 252(e) of the Act in the Commission Hearing Room, August 12, 1997, with appearances as shown above.

On August 8, 1996, the Federal Communications Commission (FCC) issued Order 96-325 promulgating rules regarding Sections 251 and 252 of the Act. On October 15, 1996, pursuant to Iowa Utilities Board, et. al. v. Federal Communications Commission, et. al., Case No. 96-3321, et. seq., the U.S. Court of Appeals, Eighth Circuit stayed implementation of the FCC rules relating to pricing and the "pick and choose" provisions. On November 12, 1996, the United States Supreme Court issued a decision declining to set aside the stay. On July 18, 1997, the Eighth Circuit issued its ruling and vacated several provisions of the FCC's Order, including the pick and choose clause, as well as pricing provisions.

O P I N I O N A N D F I N D I N G S

Section 252(e) (1) of the Act requires that any interconnection agreement adopted by arbitration be submitted to the State commission for approval. Section 252(e) (2) (B) provides that State commissions may reject an agreement (or any portion thereof) adopted by arbitration only "if it finds that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251, or the standards set forth in subsection (d) of this section." Section 252(e) (3) further provides that a State commission may utilize and enforce state law in its review of agreements.

The Commission has reviewed the Arbitrator's decision, the proposed interconnection agreement and the parties' exceptions using the standards set out above. Except as indicated below, we conclude that the Arbitrator's decision comports with the requirements of the Act, applicable FCC rules and relevant state laws and regulations.

1. **Most Favored Nations (MFN) clause**

The Eighth Circuit ruled that a "pick and choose" MFN clause would undermine the intent of the Act to promote negotiations between incumbent carriers and new entrants and thus, vacated Rule 51.809. Section 252(I) of the Act is in effect and provides that a carrier may select, in its entirety, an interconnection agreement negotiated between other carriers. While a MFN clause must be rejected, Section 252(I) of the Act is applicable. The interconnection agreement should be interpreted accordingly.

2. **Sham Unbundling**

The Eighth Circuit vacated Rules 51.315(c) - (f) which required incumbent carriers to combine unbundled elements into finished ser-

vices for new entrants. The court left intact Rules 51.315(a) and (b). New entrants may purchase unbundled elements from incumbent carriers; however, new entrants must combine the elements. USW may willingly combine network elements for Sprint if it chooses. The interconnection agreement should be interpreted accordingly.

3. Interim Number Portability Access Revenues

USW and Sprint disagree on who should receive the access charges when calls are terminated to ported numbers assigned to Sprint subscribers. We uphold the Arbitrator's decision and approve his recommendation which states USW would receive shared compensation for performing a portion of the transport function and should recover the costs it experiences, including switching in serving numbers ported to Sprint through its remote call forwarding rate. If for some reason, USW is unable to recover its actual costs through its remote call forwarding rate, it may return to the Commission and ask for a review of this matter. We further leave this matter open to review in the Commission's generic cost docket involving USW, C-1415.

Lastly, USW alleges that discounted service packages and deregulated telecommunications services should not be subject to resale. Sprint has replied that the "double discount" issue should not be reviewed, as the parties previously agreed that pricing issues were not subject to arbitration. We clarify that no restrictions should be placed in the interconnection agreement regarding "double discounts" or deregulated services. On an interim basis, we uphold the Arbitrator's recommendation regarding the wholesale discount for residential service. We will review residential wholesale pricing in Docket C-1415 and impose a "true-up" to the rates to the extent that either party is financially harmed. The true-up period shall be limited to one year from the date when residential services are resold by Sprint to its customers.

Part of the Arbitrator's recommended decision has been inadvertently omitted from the interconnection agreement. Accordingly, consistent with the Arbitrator's recommendation, we require the parties to provide in the agreement that enhanced services are not available at wholesale rates, to the extent that such do not constitute telecommunications services. Further, the interconnection agreement should reflect the Arbitrator's decision restricting the resale of grandfathered services.

The remaining provisions of the interconnection agreement are fair, just and reasonable and should be approved. The interconnection agreement between USW and Sprint shall become effective, as described herein, September 8, 1997.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the proposed interconnection agreement between Sprint Communications Company, L.P. and US West Communications, Inc. submitted to the Commission on July 24, 1997, shall become effective, as described herein, on September 8, 1997.

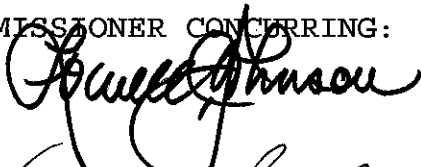
IT IS FURTHER ORDERED that original signatures of both companies, agreeing to the interconnection agreement as described, shall be filed with the Commission on or before September 8, 1997.

IT IS FINALLY ORDERED that the interconnection agreement be submitted to the Commission on diskette in either WordPerfect or Microsoft Word on or before September 8, 1997.

MADE AND ENTERED at Lincoln, Nebraska, this 26th day of August, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONER CONCURRING:



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

Chairman



ATTEST:



Executive Director