BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Cox Nebraska Telecom, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with U.S. West Communications, Inc.	)	Application No. C-1473 INTERCONNECTION AGREEMENT MODIFIED Entered: November 18, 1997

APPEARANCES:

For Cox Nebraska Telecom:
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For US West Communications:
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For the Commission Staff
John A. Doyle
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BY THE COMMISSION

On August 5, 1996, Cox Nebraska Telecom (Cox) filed a request for negotiation of an interconnection agreement with US WEST Communications Inc. (USW). Cox filed a petition for arbitration with the Commission on January 10, 1997. The parties selected David J. Blair to arbitrate the proceeding. The Arbitrator's decision was rendered on or about May 1, 1997 and an interconnection agreement was filed with the Commission on June 16, 1997. A hearing was held to approve or reject the interconnection agreement in the Commission Hearing room on July 1, 1997. On July 15, 1997, the Commission entered an Order approving in part and denying in part the proposed interconnection agreement. Pursuant to the Commission's July 15, 1997 Order, a modified interconnection agreement was to be submitted on or before August 1, 1997 to become effective August 8, 1997.

On August 1, 1997, separate interconnection agreements were submitted by Cox and USW. Separate agreements were filed with the Commission because parties could not agree on the contents of Appendix A attached to the interconnection agreement. Consequently, the Commission entered an Order on August 5, 1997, granting the parties 30 days from August 8, 1997 to negotiate mutually acceptable interim wholesale discount rates for Appendix A. If the parties could not resolve the issue within the 30 days period, the Commission directed the parties to enter into dispute resolution under the terms dispute resolution under the terms of Section 18.17 of the parties interconnection agreement.

The parties notified the Commission on September 8, 1997, that they had been unable to reach agreement. Accordingly, a hearing was held in the Commission Hearing Room on October 1, 1997 with Commissioner Lowell Johnson chairing the proceeding to determine the appropriate interim wholesale discount rates for the parties interconnection agreement. Appearances were made as shown above.

THE EVIDENCE

During the hearing, USW submitted two separate cost studies supporting proposed interim wholesale discount rates. The first study, sponsored by Robert H. Brigham, utilizes a forward-looking Total Service Long Run Incremental Cost (TSLRIC) methodology. Mr. Brigham testified that the Telecommunications Act of 1996 (Act) does not specify whether the avoided costs must be developed using a forward-looking or an embedded cost methodology. However, since the Act requires that the discounts be based on costs that "will be avoided" by the local exchange carrier when a retail service is provided to a reseller rather than to an end-user customer, Mr. Brigham stated that a forward-looking study is the appropriate one to use because it identifies the future costs that will be avoided.

Mr. Brigham further testified that USW's TSLRIC study looks at each expense account and estimates the portion of the account that will be avoided. Some retail costs, such as product advertising and sales expense, are considered to be entirely avoided when the service is sold to a reseller. Other costs, such as product management expense, are considered to be partially avoided since USW will still incur some of these expenses even when retail services are provided on a wholesale basis to resellers.

Lastly, Mr. Brigham testified that USW has employed a model that provides discounts for five separate groups of services rather than a single composite discount for all wholesale services. Mr. Brigham stated that because the cost characteristics vary significantly between these service groups, if a single discount were developed for all services, these cost differences would be lost, resulting in an average discount that would not accurately reflect the costs that are avoided.

USW's second study, presented by Ms. Marti Gude, utilizes an embedded avoided cost methodology to determine interim wholesale discounts. Ms. Gude testified that USW was furnishing the embedded study in order to provide the Commission a means of comparing historical avoided costs with the forward-looking historical costs resulting from the TSLRIC study. Ms. Gude stated that some of the more significant attributes of the embedded study are (1) that it is based on 1996 actual Nebraska operating results; (2) the study removes all costs associated with non-resale services in compliance with the Act; (3) that the study incorporates the impacts of jurisdictional adjustments for items such as state specific depreciation; (4) that the study analyzes USW costs in detail to develop avoided cost percentages rather than relying on broad-brush or FCC "proxy" cost avoidance factors which are unsupportable; and (5) that the study, like USW's TSLRIC study, provides avoidable discount percentages for five broad categories of services rather than a single avoided cost discount percentage. Ms. Gude recommended that the Commission adopt USW's TSLRIC study and resale discounts presented by Mr. Brigham, but that if the Commission decided to employ an embedded cost methodology, it should adopt USW's Embedded Avoided Cost Study and the resale discounts resulting from that study.

Cox did not submit any cost studies, nor did Cox challenge the cost studies submitted by USW. Richard Smith testified that Cox did not believe that it made sense for Cox to do its own study of USW's costs since resale in not a large part of Cox's strategy. Mr. Smith stated that Cox, therefore, choose to rely on nationwide statistics. In support of Cox's position, Mr. Smith offered testimony and an exhibit showing wholesale discount rates for various companies from other states. In addition, Mr. Smith testified that Cox believes that it should get the same higher discount rates that some of its competitors have been able to receive through arbitration in this state. In response to questions from the Commission, Mr. Smith indicated that Cox would prefer USW's TSLRIC study to the embedded study since economists generally favor a long run incremental study for pricing decisions.

OPINION AND FINDINGS

Section 251(c)(4)(A) of the Telecommunications Act of 1996 requires incumbent local exchange carriers such as USW:

> . . . to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

In order to establish wholesale rates, Section 252(d)(3) of the Act states:

> . . . a State Commission shall determine wholesale rates on the basis of retail rates charged to subscribers for telecommunications services requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

Thus, under the Act the wholesale rate is to be based on the retail rate less costs that "will be avoided." A wholesale rate is not to be based on some theoretical measure of costs that might, under certain conditions, be avoided or by some arbitrary percentage of costs that might be applicable in some other state. Furthermore, in light of the Eighth Circuit's decision, it would be improper to "pick and choose" discount rates from some other carrier's interconnection agreement that has been approved in this state. Rather, it is incumbent that this Commission have before it evidence of the costs that will be avoided in this case and that such evidence be supported by a cost study.

In our Order of July 15, 1997, we noted that the Arbitrator in this case had ruled in favor of USW with regard to certain cost-based prices stating that Cox had presented no cost studies. In agreeing with the Arbitrator and approving his recommendation, this Commission stated:

> The Commission has opened Docket C-1415 to establish an appropriate cost model for USW. If the determinations of Docket C-1415 support different pricing conclusions than those addressed herein, those charges should be incorporated into the interconnection agreement. We therefore, are unpersuaded that the Arbitrator's ruling violates federal and state law. We believe a retroactive true-up should be implemented after the conclusion of C-1415 to correct any pricing errors. We find it reasonable to limit the period to "true-up" rates in the proceeding retroactively to one year. The Arbitrator's decision is approved on an interim basis.

We believe that this reasoning in our earlier Order is also applicable here. The Commission will re-address the question of wholesale rates for USW in Docket C-1415. If the Commission reaches any different pricing conclusions concerning wholesale rates in that docket, the changes will be incorporated into the parties' interconnection agreement at that time, and the interim rates approved by this Order will be corrected by a retroactive true-up. We again find it reasonable to limit the true-up period to one year.

As interim wholesale rates for the Cox/USW interconnection agreement, the Commission approves the wholesale discounts that result from USW's TSLRIC cost study. We believe that this forward-looking study (rather than a historical study) better determines the costs that "will be avoided" as required by the Act. In addition, on an interim basis, the Commission approves separate discounts for five different service groups established by USW. As costs vary significantly among service groups, it would seem inappropriate to have only a single composite discount rate applicable to all services.

However, the Commission does not approve the mechanized and manual customer transfer charges contained in the Appendix A filed by USW. As detailed above, the Act directs that wholesale rates are to be based upon the retail rate less the costs that will be avoided. At the October 1 hearing, USW did not present any evidence or testimony to demonstrate how a customer transfer charge has any bearing in the determination of USW's avoided costs. The Commission cannot approve of these charges with this lack of evidentiary justification in the record.

The Commission realizes that the interim discount rates approved in this order differ substantially from those discount rates established in earlier agreements between other telecommunications providers. The Commission further recognizes that this disparity in discount rates may place Cox at a competitive disadvantage with other interconnectors. However, these earlier disparate agreements involving other parties were reached in a different statutory environment. They cannot be used as the benchmark in this matter. In determining the issues before us, we are confined to the evidence and testimony in the record. Upon review of the record, we cannot find support for any ruling other than the one reached herein. The obvious disparity in discount rates between interconnectors to USW in Nebraska will be resolved by the Commission upon the completion of its Interconnection Cost Docket C-1415.

Therefore, with the exception of the mechanized and manual customer transfer charges, the Commission approves the Appendix A that was filed by USW with the following modified groupings and discount rates:

	Service Groups	Discount Rates
1.	Basic Exchange - Business, PBX, ISDN	14.60%
2.	Toll	21.84%
3.	Listings, central office features, info. services	25.96%
4.	Basic Exchange - Residence	4.57%
5.	Private Line, ACS	11.58%

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the interconnection agreement between Cox Nebraska Telecom, Inc. and U S WEST Communications, Inc. that became effective August 8, 1997, be modified as directed herein.

MADE AND ENTERED at Lincoln, Nebraska this 18th day of November, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

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

COMMISSIONERS DISSENTING:

Chairman

ATTEST:

Executive Director