BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Cox Nebraska Telcom, Inc.'s Petition 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-1473
	)	Interconnection Agreement Approved as Modified
	)	Entered: July 15, 1997

APPEARANCES:

For Cox Nebraska Telcom:
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and
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For the Commission Staff:
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BY THE COMMISSION:

On August 5, 1996, Cox Nebraska Telcom (Cox) filed a request for negotiation of an interconnection agreement with US West Communications, Inc. (USW). Pursuant to Section 252(e)(1) of the Telecommunications Act of 1996 (the Act), Cox filed a petition for arbitration with the Commission on January 10, 1996. Consistent with the Commission's mediation/arbitration policy set forth in C-1128 / Progression Order No. 3, the parties selected independent arbitrator, David J. Blair, to conduct the proceeding.

Hearings were held before the Arbitrator from March 26 to March 28, 1997 in Omaha, Nebraska. Present for Cox was Loel Brooks, Carrington Phillip and Dr. Frank Collins. USW was represented by Richard Johnson, William Ojile, Al Bergman, Peter Cummings, William Easton, Geraldine Santos-Rach, Mark Schmidt, Michael Zulevic and Robert Harris. Evidence was submitted by both parties.

The Arbitrator's decision was rendered on or about May 1, 1997. Consistent with the Arbitrator's recommended decision, an interconnection agreement was filed with the Commission on June 16, 1997. Interested parties were allowed to submit written comments on the proposed interconnection agreement on or before June 26, 1997. Written comments were filed by Cox and USW. A hearing was held to approve or reject the interconnection agreement in the Commission Hearing Room on July 1, 1997 with Commissioner Rod Johnson chairing the proceeding. Appearances were made as shown above.

DECISION

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 reviewed the Arbitrator's decision, the proposed interconnection agreement and the parties' exceptions using the standards above. Except as indicated, we conclude the Arbitrator's decision comports with the requirements of the Act, applicable FCC rules and relevant state laws and regulations. We believe that all issues identified in the Arbitrator's decision were properly presented to the Commission in the petition as disputed issues and therefore, were subject to review by the Arbitrator.

For organizational purposes, we will address each issue set forth in the Arbitrator's decision. We have provided clarification or additional interpretation of the Arbitrator's decision where appropriate.

1. **US West's Technical Criteria and Service Standards.** The parties submitted the same language to the Arbitrator for approval. The recommended language is consistent with the Act, state law and is hereby approved.

2. **Use of Alarm Signals in the Event of Equipment Malfunction.** The Arbitrator ruled in favor of USW stating technical limitations prevented USW from providing the alarm signals as requested. We disagree with the Arbitrator and reject the Arbitrator's decision. We find that the language proposed by Cox is fair, reasonable and should be used in the interconnection agreement. First, USW did not testify as to any technical limitations that prevented it from offering alarm signals to Cox. The use of alarm signals is a service that USW currently provides itself and as such, it should be made available to Cox. Second, the public interest is served by notifying Cox of equipment malfunctions as soon as possible so that repairs and restorations of service can be made promptly. We believe the use of alarms will provide the most efficient notification to Cox which will ultimately benefit consumers. We note that Cox is responsible for paying USW the incremental cost that is incurred in providing such signals to Cox. The interconnection agreement should be modified accordingly.

3. **Points of Interconnection for Collocation.** The Arbitrator ruled in favor of USW because the language proposed by Cox was too general and vague. While we agree that Cox's proposed language is vague in that it refers to physical collocation at any "technically feasible" point, we

find USW's language to be contrary to the Act. USW attempts to limit Cox to collocating only at the local serving office building. In a letter dated July 11, 1997, counsel for USW clarifies that its intent is to permit Cox to collocate at either a USW end office or a USW tandem office. Section 251(c)(6) of the Act provides that incumbent local exchange carriers (ILECs) must provide for physical collocation at its premises. Paragraph 573 of the FCC Order defines premises broadly and does not limit premises to just the local office building. We therefore find that the Arbitrator's decision must be rejected. Cox submitted language to the Commission's in its written comments that attempts to define "technically feasible" to remedy the vagueness inherent in its earlier draft. We find such wording to be consistent with the Act, FCC rules and state law. The interconnection agreement should be modified accordingly.

4. **Inter-Network Connection at Collocation Sites.** The Arbitrator ruled in favor of USW stating the Cox language was ambiguous and incomplete. We disagree and reject the Arbitrator's recommendation. Section 251(c)(6) requires physical collocation on terms and conditions that are just, reasonable and non-discriminatory. It would be unreasonable and against the public interest to mandate Cox use USW for inter-network connection. Further, it would be anti-competitive to require Cox be a captive customer to USW's rates, terms and conditions. However, upon reviewing the language proposed by Cox to the Arbitrator, we find it necessary to add supplemental language to clarify our intent. We find that Cox may achieve cross-connection by subcontracting the process with contractors approved by or actually used by USW only when Cox's collocation space is adjacent to other collocators. USW shall not unreasonably withhold approval of contractors in this circumstance. Approval of contractors by USW should be based on the same criteria it uses in approving contractors for its own purposes. If any cross-connection traverses or encroaches upon USW's space or facilities, USW is responsible for provisioning the cross-connection and Cox may not utilize subcontractors unless agreed to by USW. When USW personnel are utilized, we expect all related charges assessed by USW to be just, reasonable and non-discriminatory. If Cox believes it is being charged unreasonable fees for cross-connection, it may file a formal complaint with this Commission for resolution. The interconnection agreement should be modified accordingly.

5. **Installation of Cable to Collocation Sites.** The Arbitrator ruled in favor of USW stating Cox's language was ambiguous and incomplete and that USW's language was reasonable. We agree with the Arbitrator. Unlike our resolution of Issue 4, cable installation will not occur solely within the collocated space controlled by Cox. The installation of cable will necessitate extending cable within USW's cable vault, through USW riser facilities and across cable racks. It is reasonable that USW be able to use its own personnel to install cable on its premises. While we expect cable installation charges assessed by USW to be just, reasonable, non-discriminatory, we recognize that USW could impose higher fees than Cox might need to incur. Therefore, if Cox believes it is being charged unreasonable fees for the installation of cable, it may file a formal complaint with this Commission for resolution. The Arbitrator's decision is approved.

6. **The Manner of Paying for Electrical Consumption at Collocation Sites.** This issue was

settled by the parties prior to the Arbitrator's ruling.

7. **Cross Connection to US West's Network or Another Telecommunications Source Within a Wire Center.** The Arbitrator ruled in favor of USW stating their position was reasonable on the merits. We disagree and reject USW's proposed language as it is unreasonable and against the public interest. Like the disposition of Issue 4., we find it reasonable for Cox to utilize subcontractors used or approved by USW for cross-connection to USW's network or other sources within a wire center when they are physically adjacent to Cox's collocated space. Cox did not offer specific language to the Arbitrator. Therefore, we rule that the interconnection agreement must be redrafted to reflect that interconnection may be accomplished by the use of subcontractors used or approved by USW. USW shall not unreasonably withhold approval of contractors. The approval of contractors should be based on the same criteria it uses in approving contractors for its own purposes. The interconnection agreement should be modified accordingly.

8. **Time Intervals Needed to Accomplish Collocation.** The Arbitrator ruled in favor of USW stating its language was reasonable on the merits. We approve the Arbitrator's recommendation on an interim basis. This Commission will open an investigative docket regarding the level of service quality an incumbent local exchange carrier owes a competitive local exchange carrier in the near future. In that docket, we will establish reasonable time intervals to achieve physical collocation with USW for all CLECs. This docket will ensure a level of continuity and will eliminate the possibility of discrimination among various CLECs. We accept the Arbitrator's decision until this investigative docket is complete.

9. **Payment of Costs for Testing Equipment.** The Arbitrator ruled in favor of USW stating that Cox's language was ambiguous and unnecessary. We agree and accept the Arbitrator's decision. If Cox performs tests of facilities after USW indicates the fault is in the Cox facility and it is not, Cox may file a formal complaint with the Commission for resolution. However, we find it necessary to clarify USW's proposed language to more correctly reflect the responsibilities it has promised to Cox in testing equipment. Counsel for USW testified it would conduct initial tests to ensure equipment was operating properly before releasing such to Cox. This level of commitment is not reflected in the language proposed by either party to the Arbitrator. Therefore, we order that an additional sentence be inserted at the beginning of the section that indicates USW will perform general pre-testing consistent with industry standards prior to provisioning services to Cox to assure the requested facilities function properly. The Arbitrator's decision is approved as modified herein.

10. **The Manner of Access and Interconnection at the End User's Premises.** The Arbitrator ruled in favor of USW stating its position was reasonable on the merits. This issue was discussed at the hearing by both parties. After lengthy questioning, it was determined that some consensus had been made on this issue. We find the language accepted by the Arbitrator in Section 8.2.6.4 fairly and reasonably reflects the public interest and applicable laws. We modify the adopted language slightly in order to clarify when a Network Interface Device (NID) may be removed. We believe it is more correct for the section to read "Cox, *by request* of the customer, may direct

US West . . ." This more accurately reflects the testimony offered by Cox at the hearing. We further agree that reasonable charges may be assessed by USW to remove its NIDs and to handle exposed cable stubs. If Cox objects to the amount of any such charges, it may file a formal complaint to this Commission for review. Lastly, the language of Section 8.2.6.4 does not reflect the level of reciprocity that we believe should exist in a competitive environment. It is fair, reasonable and in the public interest to also mandate Cox remove its Network Interface Unit (NIU).

Regarding Section 8.2.6.5, we reject the Arbitrator's decision and find that Cox may provide loops to premises and lease unbundled loops from USW by connecting such to its own NIU and is not obligated to use USW's NID. This decision is reasonable considering USW's NID may be removed at the customer's request, meaning that it might not be available for Cox in all circumstances. Further, we find the level of service quality given to customers could be adversely affected if Cox were obligated to utilize the USW NID for connection. The Arbitrator's decision is approved in part and rejected in part. The interconnection agreement should be accordingly modified.

11. **Disposition of Disconnected Ported Numbers Under Permanent Number Portability.** The Arbitrator ruled in favor of Cox stating its position was reasonable. We disagree and reject the Arbitrator's decision. A national board is studying standards for permanent number portability. As such, we decline to inject contractual language into this agreement at this time. We find USW's approach to omit this section to be fair and reasonable. We acknowledge that permanent number portability standards promulgated by a federal body would affect this agreement. The Arbitrator's decision is rejected and the interconnection agreement should be modified accordingly.

12. **Disposition of Disconnected Ported Numbers Under Interim Number Portability.** The Arbitrator ruled in favor of Cox stating its position was reasonable. We disagree and reject the Arbitrator's decision. We find in the event a ported number is disconnected, it should be returned to the carrier who owns the switch. This approach is reasonable and in the public interest as it would provide more efficient planning and utilization of telephone numbers. This obligation, like other terms in this agreement should apply in a reciprocal manner. That is, USW shall return all disconnected Cox numbers to Cox. The interconnection agreement should be modified accordingly.

13. **Switch Provisioning Charge for Interim Number Portability.** The Arbitrator ruled in favor of USW stating no cost studies were submitted by Cox. We approve the Arbitrator's decision. A minimal recurring charge for carriers requesting interim number portability is reasonable. Pursuant to the Act, interim number portability must be provided, the costs of which shall be borne by all telecommunications carriers on a competitively-neutral basis. Accordingly,

USW is permitted to recover charges for interim number portability from competing carriers at a just, reasonable and non-discriminatory rate. The cost of $42.60 per central office is fair and reasonable. The interconnection agreement should be modified accordingly.

14. **Compensation for Access to Operational Support Systems.** The Arbitrator ruled in favor of Cox citing USW's proposed language to be vague and indefinite. We disagree and reject the Arbitrator's decision. USW is entitled to recover the incremental costs it incurs in providing Operational Support System access to competitors. Such costs shall be just, reasonable and be assessed to other CLECs requesting such service on a non-discriminatory basis. As stated in USW's written comments, Cox would be charged its pro-rata share of the costs USW incurs in providing OSS to Cox. We find it fitting however, to modify the last sentence to read "In addition to the initial access fee, US West *may* charge a *reasonable* recurring transaction fee." We have concerns that a transaction fee might not be necessary in all circumstances and that all such fees must be reasonable. We believe our modification is fair, reasonable and in the public interest. If Cox disputes the assessment of any transaction as being unreasonable or discriminatory, it may file a formal complaint to this Commission for resolution. The interconnection agreement should be modified accordingly.

15. **Time Intervals in Processing a Bona Fide Request.** Settled by the parties prior to ruling. This section, as negotiated is approved.

16. **Sharing of Development and Implementation Costs with Subsequent Requesting Carriers.** Settled by the parties prior to ruling. This section, as negotiated is approved.

17. **Costs Incurred by One Party Which Were Caused by the Other.** Settled by the parties prior to ruling. This section, as negotiated is approved.

18. **Cost Based Prices for Unbundled Elements, Interconnection, Resale and Collocation.** The Arbitrator ruled in favor of Cox stating Cox presented no cost studies. We agree and approve the Arbitrator's recommendation. The Commission has opened Docket C-1415 to establish an appropriate cost model for USW. If the determinations of Docket C-1415 support differ pricing conclusions than those addressed herein, those changes should be incorporated into the interconnection agreement. We therefore, are unpersuaded that the Arbitrator's ruling violates federal or 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.

19. **What Rate Should Cox Charge for the Termination of US West's Traffic on Cox's Network?** The Arbitrator ruled in favor of USW finding that Cox's switch is not factually equivalent to USW's tandem switch. We approve the Arbitrator's recommendation. As stated in a previous Order, we find the service a tandem provides is a separate and distinct service from end

office termination (*See* Application C-1379, Order dated March 4, 1997). We find at this time the Cox switch does not function as a tandem switch. Section 252(d) of the Act does not allow a company to assess charges for services it does not provide. Accordingly, Cox may not charge USW tandem rates when Cox terminates traffic to Cox's end office switch. If at some point in the future, the functions of Cox's switch are changed, it may seek reconsideration of this issue. The Arbitrator's decision is approved.

We have reviewed the remaining provisions of the parties' interconnection agreement and find them to be in compliance with the Act and federal law. Many provisions were agreed to by both parties. Such negotiated terms and conditions were reviewed and determined to be nondiscriminatory and consistent with the public interest, convenience and necessity. We note however, the interconnection agreement, where applicable, should be interpreted to be reciprocal.

ORDER

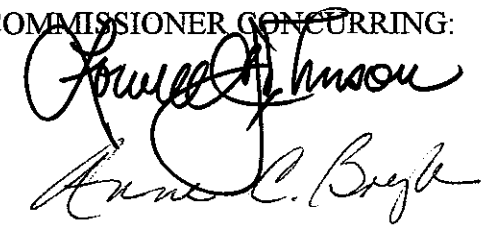
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Arbitrator's Recommended Decision is approved as modified herein.

IT IS FURTHER ORDERED that an interconnection agreement containing the terms and conditions set forth herein be filed with the Commission for approval on or before August 1, 1997, to become effective August 8, 1997, pending the Commission's review.

MADE AND ENTERED at Lincoln, Nebraska this 15th day of July, 1997.

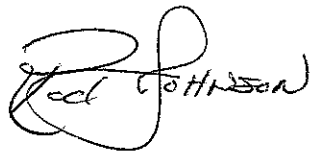
NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONER CONCURRING:



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

Chairman



ATTEST:

Deputy Director