

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition) Application No. C-3351
of DIECA Communications, Inc.)
d/b/a Covad Communications)
Company, San Jose, California,)
for Arbitration of an) APPROVED
Interconnection Agreement with)
Qwest Corporation, Denver,)
Colorado.) Entered: March 7, 2006

BY THE COMMISSION:

By Petition filed February 15, 2005, DIECA Communications, Inc. d/b/a Covad Communications Company (Covad), San Jose, California, sought Arbitration of an interconnection agreement with Qwest Corporation (Qwest), Denver, Colorado. Notice of the Petition was published in The Daily Record, Omaha, Nebraska, on January 30, 2006. A response to the Petition for Arbitration was filed by Qwest on March 14, 2005. Covad and Qwest selected Paul Hartman to serve as the Arbitrator. On December 22, 2005, the Arbitrator issued his ruling on the case. Covad and Qwest filed an interconnection agreement consistent with the Arbitrator's Ruling on January 26, 2006. The Commission published notice of the interconnection agreement and sought comments on the agreement on January 30, 2006. No comments were filed. Covad and Qwest agreed that no Commission hearing on the Arbitrator's Ruling was required.

A draft interconnection agreement reflecting the parties' negotiations was filed with the Petition. The Arbitrator found the three issues raised by Covad should be consolidated as follows:

1. Whether the Commission has the authority to order Qwest to unbundle Section 271 only Network Elements, either under federal or state law.
2. Whether the Commission has the authority to set the rates of Qwest's Section 271 only Network Elements at Total Element Long Run Incremental Costs (TELRIC) either under federal or state law.

With respect to the first issue, the Arbitrator found since Qwest Section 271 only Network Elements have been made available to Covad through commercial agreements he

did not need to reach the issue on the Commission's authority to order Qwest to unbundle these elements in Nebraska. With respect to the second issue, the Arbitrator found the Commission does have the authority to order the relief requested by Covad where there is a clear and Nebraska specific rationale for the Commission to do so that does not thwart federal intent. Here, the Arbitrator found Covad did not provide the specific rationale required for a ruling in Covad's favor on this issue, the relief was therefore denied.

The parties were required by the Arbitrator's ruling to include in the interconnection agreement Qwest's proposed language on the disputed paragraphs identified in the arbitration and submit the final interconnection agreement to the Commission.

Pursuant to Section 252(b) of the Telecommunications Act of 1996 (the Act), Qwest and Covad entered into an interconnection agreement arrived at through arbitration. An executed copy of this agreement is contained within the application.

Upon review of the filed agreement, the Commission finds neither the agreement nor any portion thereof discriminates against any telecommunications carrier. Furthermore, the implementation of the agreement is consistent with the public interest, convenience and necessity.

Section 252(e) of the Act requires this Commission to review interconnection agreements adopted by negotiation or arbitration to ensure they comply with Sections 251 and 252(d) of the Act, as well as all applicable state laws. Using those standards, the interconnection agreement should be approved.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the arbitrated interconnection agreement between Qwest Communications, Denver, Colorado, and DIECA Communications, Inc. d/b/a Covad Communications Company, San Jose, California, be, and it is hereby, approved.

IT IS FURTHER ORDERED that the executed interconnection agreement filed herein be, and it is

hereby, made the official copy on file with the Nebraska Public Service Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of March, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

