

Telecommunications Orders - Issued 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE) INTERCONNECTION CONTRACT) NEGOTIATIONS BETWEEN AT&T) COMMUNICATIONS OF THE MIDWEST, INC.) AND U S WEST COMMUNICATIONS, INC.) PURSUANT TO 47 U.S.C. SECTION 252)))	ORDER ON) RECONSIDERATION;) NOTICE OF ENTRY OF) ORDER) TC96-184)
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On November 20, 1996, the Public Utilities Commission (Commission) received a filing from AT&T Communications of the Midwest, Inc. (AT&T) pursuant to 47 U.S.C. § 252(b)(1) to arbitrate open issues related to its interconnection negotiations with U S WEST Communications, Inc. (U S WEST). U S WEST filed its response on December 16, 1996.

On January 10, 1997, the Commission issued an Amended Procedural Schedule; Order for and Notice of Hearing. In the Amended Procedural Schedule, the Commission scheduled a prehearing conference for January 13, 1997. The prehearing conference was held as scheduled.

On January 17, 1997, the Commission received a Joint Procedural Agreement submitted by U S WEST. In the Joint Procedural Agreement, U S WEST stated that AT&T had approved of the Agreement and that AT&T and U S WEST requested that the Commission adopt the proposed Agreement. The Agreement set forth the dates various witnesses would testify and the issues they would address. By Order dated January 22, 1997, the Commission adopted the Joint Procedural Agreement.

The hearing was held as scheduled on February 3, 1997, through February 7, 1997, in Pierre, South Dakota.

On February 26, 1997, AT&T and U S WEST each filed a Post-Hearing Brief and a matrix of unresolved issues. On March 5, 1997, each party filed a Re al Brief and Findings of Fact and Conclusions of Law.

On March 17, 1997, the Commission rendered its oral decision on the unresolved issues in this docket. The Commission issued its written decision on March 20, 1997.

On April 21, 1997, U S WEST and AT&T filed separate proposed Interconnection Agreements. AT&T also filed a Motion for Reconsideration/Modification of Order. At an April 28, 1997, meeting, the Commission considered how to proceed. After taking arguments from the parties, the Commission decided to take AT&T's Motion for Reconsideration/Modification of Order under advisement. In addition, the Commission found that the separate proposed Interconnection Agreements filed by U S WEST and AT&T failed to comply with the Commission's Order which required AT&T and U S WEST to submit a complete agreement to the Commission for approval within 30 days after the date of the Order. The Commission further found that the separate Interconnection Agreements failed to comply with the federal Telecommunications Act of 1996 (federal Act).

On May 12, 1997, the Commission issued a procedural schedule that gave U S WEST until May 12, 1997, to file an answer to AT&T's Motion for Reconsideration/Modification of Order and allowed AT&T to reply on or before May 22, 1997. The Commission further found that it would set a new deadline for the parties to submit a single agreement signed by both parties after it had entered a decision on AT&T's Motion for Reconsideration/Modification of Order.

A July 15, 1997, meeting, the Commission voted to grant in part and deny in part AT&T's Motion for Reconsideration/Modification of Order for the reasons set forth below.

The first issue presented by AT&T was that U S WEST's cost model was flawed and therefore should not have been used by the Commission. In the Commission's Order, the Commission recognized that both models presented by the parties were flawed. See Finding of Fact 106. Due to the significant flaws, as specified in the Commission's Order, concerning the Hatfield Model, the Commission adopted U S WEST's TELRIC cost studies with modifications. However, the Commission further found that "due to the deficiencies in both models, the Commission may open a docket to evaluate whether it shall set prices based on a different model or an improved version of the models presented in this case." Finding of Fact 107.

Upon reconsideration, the Commission finds the decision to use U S WEST's TELRIC cost studies, with modifications, was reasonable. The Commission finds that, compared to AT&T's Hatfield model, U S WEST's cost studies, as modified, more accurately reflected the costs incurred by U S WEST. However, the Commission also finds that, given the flaws in both models and consistent with its Finding of Fact 107, that the prices, terms, and conditions as set forth in its March 20, 1997, Order shall be considered interim prices, terms, and conditions. The Commission shall open a new docket to set permanent prices, terms, and conditions for interconnection for U S WEST. This will allow the parties to present new cost models or improved versions of existing cost models to the Commission for evaluation.

AT&T's next issue is its contention that the Commission's Finding of Fact 98 was in error when it stated that AT&T had failed to show whether the additional costs of unbundling are included in the Hatfield model. The Commission finds that it properly concluded that AT&T had failed to show whether unbundling costs were included in the Hatfield Model since its witness testified that he "thought" that new state-of-the-art concentration equipment would have unbundling capabilities and did not provide any citation to material in the record that would show that new concentration equipment would in fact have unbundling capabilities.

AT&T objects to the Commission's finding that AT&T's reduction of estimated non-plant specific operating and maintenance expenses of 30% is unreasonable. U S WEST's cost studies assumed that non-plant specific operating and maintenance expenses would not drop

at all. The Commission found that U S WEST must reduce its network operating expenses by 10%. The Commission affirms its finding that the 30% as advocated by AT&T was unreasonable. The Commission properly rejected the testimony of AT&T to support the 30% reduction since that testimony was based in part on testimony by Pacific Bell, not U S WEST, in a different proceeding. Although the Commission rejected AT&T's 30% reduction, it did accept the testimony of AT&T that some reduction was needed due to technology and competitive pressures. Therefore, the Commission had a sufficient evidentiary basis to reject U S WEST's proposed reduction of 0% and to find a 10% reduction was reasonable.

AT&T objects to the Commission's rejection of the Hatfield Model based in part on the lack of sufficient South Dakota state specific data. The Commission finds that this finding is reasonable since AT&T changed only 15 of the 400 user inputs, all of which related to depreciation lives.

AT&T objects to the Commission's rejection of its input which set U S WEST's corporate overhead at 10%. AT&T reduced corporate overhead to 10% from U S WEST's current 21% by using a regression analysis done on other independent local exchange companies, which were not named, and then further reducing this to 10% by looking at other industries. U S WEST did not propose any reduction to its corporate overhead factor. Given that AT&T's reduction of U S WEST's corporate overhead by more than 50% was based on other unnamed independent LECs and further reduced by comparison to other industries, the Commission properly found that the reduction was unreasonable. The Commission's finding that U S WEST should reduce its corporate overhead by 10% due to economic efficiencies is reasonable given the evidence presented at the hearing.

AT&T objects to the Commission's finding tha Hatfield model should have used the depreciation lives approved by the Commission rather than depreciation lives approved by the FCC. AT&T points out that U S WEST's cost studies did not use Commission approved depreciation lives either. The Commission finds that it erred in not requiring U S WEST to modify its cost studies to reflect the use of the Commission's prescribed depreciation lives. Thus the Commission shall amend its decision to require that U S WEST shall use the Commission approved depreciation lives.

AT&T objects to the Commission adopting U S WEST's structure sharing model and rejecting the Hatfield Model's inputs for structure sharing. AT&T stated that it had uncontroverted evidence that U S WEST shared underground trenching in South Dakota. This so-called "uncontroverted" evidence consisted of an AT&T witness who stated that he believed he observed a joint occupancy trench situation near the Pierre Airport because there was both a power transformer and pedestal located there. Tr. at 689-698. The witness also makes the less than unequivocal statement that in a forward-looking environmen " ' realistic to at least examine the possibilities of sharing that conduit, or sharing that trench, I should say." Tr. at 659 beginning at line 24 to 660, line 2. Given this type of testimony in support of underground trench sharing, it is hardly, as AT&T claims, "preposterous" to assume that no structure sharing of underground trenching will occur.

AT&T objects to the Commission's finding that the Hatfield Model over counted the number of lines by counting DS-1 and DS-3 lines as DSOs. AT&T states the Hatfield line counts were based on U S WEST's reported line counts for DS-1 and DS-3 lines as reported to the FCC. AT&T states that "U S WEST cannot criticize AT&T for using the figures that U S WEST represented as correct to a federal government agency." However, the Commission is

obligated to look at the evidence presented at the hearing and, based on that evidence, correctly found that the line counts presented by the Hatfield Model were incorrect since DS-1 and DS-3 lines were not counted as single lines.

AT&T claims the drop counts figures were the best evidence in the record and should have been accepted. The Commission found that AT&T had used an average of 73 feet for a typical drop length which was based on an estimate from a Bellcore study. This compares with U S WEST's testimony that the average drop is 170 feet. Compared with U S WEST's average drop and drop costs, the Commission could properly find that AT&T's estimates were unreasonable.

AT&T claims that there is no evidence to support the Commission's finding that the Hatfield Model, in the aggregate, understates distribution cable. AT&T neglects to mention that a U S WEST witness provided testimony and exhibits in support of U S WEST's position that the Hatfield Model underestimated distribution cable by 40 to 60 percent. Exhibit 29 at 37-40 and attached Appendix 3.

AT&T asserts that the Commission failed to order U S WEST to use modified inputs for all interconnection and unbundled network element items. In Findings of Fact 108-112, the Commission only required that U S WEST modify inputs for the local loop price. The Commission agrees with AT&T that it should have ordered U S WEST to apply the same modifications to the inputs used for prices for all interconnection and unbundled network element items. Therefore, the Commission will adopt an additional finding to require this.

AT&T claims that the Commission's failure to geographically deaverage prices for interconnection and unbundled network elements results in non-cost based prices. This assertion is incorrect. The prices set by the Commission are still cost based since they are based on the cost to U S WEST of providing the services in South Dakota.

AT&T objects to the Commission's rejection of its simplified avoided cost model used by AT&T to set the wholesale discount rate. AT&T first objects to the Commission's finding that AT&T's model fails to include any return on U S WEST's investment. AT&T states the model "addresses" return on investment and also removes the portion that is attributable to the assets used in avoided retail activities. However, AT&T's citations to the record to support this statement fail to show where AT&T has included any return on U S WEST's investment. In fact, not only does the AT&T exhibit appear to not include a return on investment, it then appears to take out a return on investment for avoided general support and operator system investment. Exhibit 16, attached Exhibit DBS-2. Thus, AT&T's cost model appears to remove a return on some items even though it failed to first include any return.

AT&T states that the Commission's finding that AT&T's model assumes that all marketing and billing costs will be avoided is incorrect because AT&T's model did not make this assumption in all of the runs submitted. The Commission agrees that AT&T did additional runs, the Commission's reference to AT&T's model was the model which AT&T was actually advocating at the hearing. Tr. at 925, line 23 to 926, line 1; Tr. at 928, lines 20-23.

AT&T makes the same argument with respect to the Commission's finding that AT&T's assumption that all product management expenses will be eliminated is unreasonable. As with the marketing and billing issue, the Commission relied on the run of the model which AT&T was advocating at the hearing which did, in fact, eliminate all product management expenses.

Tr. at 951, lines 14-16.

AT&T objects to the Commission's finding that AT&T's model did not properly match revenues and cost elements. This objection is undercut by AT&T's next assertion of error which is that AT&T's failure to incorporate property tax expense, interarea rent, equal access depreciation, and other operating expenses was correct. AT&T provides no basis for this statement. The Commission affirms that it was error for AT&T to fail to incorporate these items and this failure means that AT&T's cost model also failed to properly match revenues and cost elements. Thus, the Commission's findings with respect to AT&T's failure to properly match expenses and costs and failure to incorporate certain expenses are correct.

AT&T contends the Commission was in error when it required that the wholesale discount must be reduced if AT&T provides its own operator services, directory assistance, and billing and collection. AT&T merely states that logic dictates that the wholesale discount should be increased if it provides its own operator services, directory assistance, and billing and collection. However, it fails to show that when U S WEST's cost model is run without operator services, directory assistance, and billing and collection, that this would in fact increase the discount percentage.

AT&T asserts that U S WEST should have been required to furnish to AT&T more than one white page listing. As explained in its Order, the Commission found that anything beyond a white page listing must be negotiated with U S WEST Direct.

AT&T objects to the Commission's failure to adopt proposed direct measures of quality and business processes. The Commission finds the decision not to adopt these standards because the record was not sufficiently developed is reasonable. In addition, the Commission's position that the record concerning liquidated damages was also insufficiently developed shall stand.

AT&T contends that the requirement for AT&T to obtain written letters of authorization from any end user who wants to switch to AT&T's service is a barrier to entry and conflicts with South Dakota law. However, South Dakota law now provides that written letters of authorization are required before a telecommunications company may change customers. See SDCL 37-30A-9.

AT&T objects to the Commission prohibiting an arbitrator from awarding punitive damages. The Commission finds that this prohibition improperly limits an arbitrator's power to award relief and thus will modify this finding.

With respect to operation support systems, AT&T objects to the Commission finding that each company can assess the users of its gateway on a per transaction basis. The Commission stands by this finding since allowing a company to assess users of its gateway on a per transaction basis is consistent with cost-causation principles.

The Commission makes the following additional findings based on its reconsideration of its March 20, 1997 Order:

1. The terms, conditions, and prices, contained in its March 20, 1997, Order shall be considered interim due to the flaws in the cost models advocated by both AT&T and U S WEST. These terms, conditions, and prices shall remain in effect until such time as the Commission completes a new docket to set permanent terms, conditions, and prices for U S

WEST.

2. U S WEST shall modify its cost studies and use the Commission approved depreciation lives as prescribed in Docket TC94-121.
3. U S WEST shall apply the modifications contained in Findings of Fact 109-112 to all interconnection and unbundled network elements items.
4. The second sentence in Finding of Fact 19 is modified by deleting the word "not."

It is therefore

ORDERED, that the Commission's Findings of Fact and Conclusions of Law issued March 20, 1997 in Docket TC96-184 are hereby modified by the additional findings listed above; and it is

FURTHER ORDERED, that AT&T and U S WEST shall submit a complete interconnection agreement signed by both parties to the Commission within 30 days from the date of this Order.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that these Additional Findings of Fact in Docket TC96-184 were duly entered on the 13th of August, 1997. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 13th day of August, 1997.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>	<p>BY ORDER OF THE COMMISSION:</p> <p>_____</p> <p>JAMES A. BURG, Chairman</p> <p>_____</p> <p>PAM NELSON, Commissioner</p> <p>_____</p> <p>LASKA SCHOENFELDER, Commissioner</p>
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