

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 APPROVING INTERCONNECTION AGREEMENT 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 Rebuttal 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 interconnection agreement signed by both parties after it had entered a decision on AT&T's Motion for Reconsideration/Modification of Order.

By order dated August 13, 1997, the Commission granted in part and denied in part AT&T's Motion for Reconsideration/Modification of Order. The Commission also ordered AT&T and U S WEST to submit a complete interconnection agreement within 30 days.

On September 12, 1997, an agreement for network interconnection and service resale between AT&T and U S WEST was filed with the Commission. The agreement contained several disputed items that the parties requested be resolved by the Commission. AT&T requested a hearing on the disputed issues; U S WEST maintained that a hearing was not needed. On October 20, 1997, U S WEST filed a Motion for Administrative Notice of the Eighth Circuit Court Order dated October 14, 1997.

At its October 28, 1997, meeting, the Commission considered whether any further hearing was needed to resolve the remaining disputed issues and also considered whether to grant U S WEST's Motion for Administrative Notice. At the meeting, AT&T asked for deferral of any evidentiary hearing pending further negotiations between U S WEST and AT&T concerning issues related to the combination of network elements as clarified by the Eighth Circuit's October 14, 1997, Order on Petitions for Rehearing. U S WEST agreed to deferral, pending further negotiations. The Commission agreed to defer action on resolution of the parties' unresolved issues. AT&T did not object to the Commission granting U S WEST's Motion for Administrative Notice. The Commission unanimously voted to grant the motion.

On September 4, 1998, U S WEST and AT&T filed another interconnection agreement with unresolved issues. The parties requested that the Commission resolve the outstanding issues. The parties also stated that the parties had agreed that the disputed issues may be resolved solely by briefs but also stated that they would supply additional information if requested by the Commission.

At its October 15, 1998, meeting, the Commission discussed whether it needed additional evidence in order to resolve the remaining disputed issues. The Commission unanimously voted to hold a prehearing conference and hearing. In its Order dated October 22, 1998, the Commission made it clear that it is not the responsibility of the Commission to ensure that the parties make a sufficient record.

At the prehearing conference held October 28, 1998, the parties informed the Commission that they had agreed to withdraw all of the disputed issues relating to SPOT frame, shared transport, and recombination. The Commission pointed out that even with those issues withdrawn, other remaining issues argued by the parties may involve facts that are not in the record. In its Order for and Notice of Hearing, dated November 6, 1998, the Commission once again gave notice to the parties that additional evidence may be necessary if the parties want the Commission to decide all of the issues. The Commission also ordered the parties to

resubmit their briefs with citations to the record. The Commission stated that if the parties do not want to have a hearing then they both should state in writing that they expressly waive any rights to a hearing. Unless both parties expressly waived their right to a hearing, the Commission ordered that a hearing would be held on November 17-19, 1998, beginning at 1:30 p.m., on November 17, 1998, in Room 412 of the State Capitol, Pierre, South Dakota.

On November 12, 1998, the Commission received a letter from U S WEST stating that the parties were able to reach agreement on all but two issues. The letter stated that "[t]he parties are developing a revised agreement and updated issues matrix detailing the issues that are closed, those that are 'parked' because they are pending before the United States Supreme Court, and the two open issues." The letter also stated that the parties waived their right to an evidentiary hearing on the open issues. On November 13, 1998, the Commission received AT&T's Revised Brief Regarding Disputed Issues in the Interconnection Agreement and U S WEST's Brief in Support of Remaining Interconnection Agreement Issues. Based on the parties' waiver of their right to an evidentiary hearing, the Commission cancelled the hearing scheduled for November 17, 1998. On December 30, 1998, the Commission issued a Second Arbitration Order to resolve the open issues as presented by the parties.

On February 3, 1999, the Commission received a Joint Request for Approval of the Arbitrated Interconnection Agreement between AT&T Communications of the Midwest, Inc. and U S WEST Communications, Inc. On February 11, 1999, the Commission electronically transmitted notice of this filing to interested individuals and entities. The notice stated that any person wishing to comment on the parties' request for approval had until February 18, 1999, to do so. No comments were filed.

In a letter of transmittal presenting the Interconnection Agreement, the parties requested approval of the Interconnection Agreement as filed. Although the parties, in separate statements referred to modifications to the Interconnection Agreement, the parties agreed "that the Interconnection Agreement can be approved and become effective at this time without the requested modifications and further negotiation toward resolution of the parked issues." The parties acknowledged the issuance of the recent U.S. Supreme Court decision and AT&T stated that the parties will attempt to negotiate resolutions to the parked issues in light of that recent decision. See *AT&T Corp. v. Iowa Utilities Board*, Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, 1999 WL 24568 (January 25, 1999).

At its March 3, 1999, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-81, and the Federal Telecommunications Act of 1996, specifically 47 U.S.C. §§ 251 and 252. The Commission makes no findings on whether the Interconnection Agreement accurately reflects the Commission's arbitrated decisions since the parties were free to further negotiate and decide upon mutually agreeable terms and conditions that differed from the Commission's arbitrated decisions. The Commission notes that its arbitrated decisions were made in accordance with the Eighth Circuit's decisions, that were in effect at the time, concerning the local competition provisions of the federal Act. The Commission further recognizes that the U.S. Supreme Court recently reversed a number of issues contained in the Eighth Circuit's decisions. Notwithstanding the issuance of that U.S. Supreme Court decision, the parties are requesting that the Interconnection Agreement be approved as filed. Moreover, it is also anticipated that the FCC will issue new orders to address the effects of the Supreme Court's decision on interconnection agreements and other issues are on remand to the Eighth Circuit. Pending those anticipated FCC orders and the Eighth Circuit remand decision and because

the parties are not requesting that the Commission revisit issues affected by the Supreme Court's decision, the Commission will approve the Interconnection Agreement as requested by the parties without modifications. The Commission expects that the parties will comply with the anticipated orders of the FCC and court decisions and, if unable to negotiate revisions to comply with those orders, that the parties will return to the Commission for arbitration. Upon review of the agreement and in light of the parties' joint request for approval, the Commission finds that the Interconnection Agreement does not discriminate against a telecommunications carrier not a party to the agreement nor is the implementation of the agreement inconsistent with the public interest, convenience, and necessity. It is therefore

ORDERED, that pursuant to 47 U.S.C. § 252(e) and SDCL 49-31-81 the Interconnection Agreement is approved.

Dated at Pierre, South Dakota, this 4th day of March, 1999.

CERTIFICATE OF SERVICE

BY ORDER OF THE COMMISSION:

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.

By: _____

Date: _____

(OFFICIAL SEAL)

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

LASKA SCHOENFELDER,
Commissioner