

ISSUE DATE: January 15, 1997

DOCKET NO. P-407/EM-97-1608

ORDER APPROVING INTERCONNECTION AGREEMENT WITH MODIFICATIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Joint Application for
Approval of an Interconnection Agreement
between WWC Holding Co., Inc. and
Contel of Minnesota, Inc. d/b/a
GTE Minnesota

ISSUE DATE: January 15, 1997

DOCKET NO. P-407/EM-97-1608

ORDER APPROVING INTERCONNECTION
AGREEMENT WITH MODIFICATIONS

PROCEDURAL HISTORY

On October 31, 1997, WWC Holding Co., Inc. (WWC) and Contel of Minnesota, Inc. d/b/a GTE Minnesota (GTE) filed a joint application for Commission approval of an interconnection agreement pursuant to § 252(e) of the federal Telecommunications Act of 1996 (the Act).

On November 10, 1997, the Department of Public Service (the Department) filed comments recommending that the Commission reject the agreement. The Department submitted 12 recommended modifications to the agreement. The Department believed that these modifications, if implemented, would cure the deficiencies in the agreement.

On December 4, 1997, WWC and GTE filed reply comments. The companies indicated that they were willing to accept five of the Department's recommendations which reflected previous Commission decisions. The companies did not agree to the other seven Department recommendations. In some of those cases, the companies submitted alternative modifications.

On December 22, 1997, the Department filed reply comments recommending Commission approval of the interconnection agreement, subject to the modifications proposed by the Department and by WWC and GTE in their reply comments. The Department withdrew its objections to language in the following sections of the agreement: Article III, Section 11--Cooperation on Fraud Minimization; Article III, Section 22.3--Disclaimer of Warranties; Appendix C--Rates and Charges for Transport and Termination of Traffic.

On December 23, 1997, the matter came before the Commission for consideration. At the meeting, the Department clarified that it no longer recommended that the Commission's address be added to Article III, Section 26--Notices.

FINDINGS AND CONCLUSIONS

I. THE APPLICABLE LAW

The federal Telecommunications Act of 1996 is designed to open the nation's telecommunications markets to competition, using three strategies:

- 1) requiring incumbent local exchange carriers to permit new entrants to purchase their services wholesale and resell them to customers.
- 2) requiring incumbent local exchange carriers to permit competing providers of local service to interconnect with their networks on competitive terms; and
- 3) requiring incumbent local exchange carriers to unbundle the elements of their networks and make them available to competitors on just, reasonable, and nondiscriminatory terms.

47 U.S.C. § 251(c).

Under the Act, new market entrants are to seek agreements on these issues with incumbent local exchange carriers, who are required to negotiate in good faith. 47 U.S.C. §§ 251(c), 252(a)(1), 252(b)(5). All agreements reached must be submitted to the state commission for approval. 47 U.S.C. § 252(a) and (e).

The state commission is to approve or reject these agreements, making written findings as to any deficiencies. 47 U.S.C. § 252(e)(1). Negotiated agreements may be rejected for the following reasons: (1) they discriminate against a telecommunications carrier who is not a party to the agreement; (2) implementing them would be inconsistent with the public interest, convenience, and necessity; (3) they conflict with any valid state law, including any applicable intrastate service quality standards or requirements. 47 U.S.C. § 252(e)(2) and (3).

The Act also requires local exchange carriers to provide interconnection, services, and network elements to any requesting telecommunications carrier on the same terms and conditions found in any state commission-approved agreement to which the incumbent carrier is a party. 47 U.S.C. § 252(i).

II. COMMISSION ACTION

The Commission commends the Department, WWC, and GTE for their efforts to develop an interconnection agreement that is consistent with the public interest and satisfactory to the parties.

The Commission agrees with the Department and the parties that the interconnection agreement, with the modifications suggested by the Department and the parties, is consistent with the standards for Commission approval found in 47 U.S.C. § 252(e)(2) and (3). The Commission will approve the interconnection agreement, subject to the parties' resubmission of the contract with the following underlined modifications:

Article III, Section 2.3. Revise the language on termination upon default:

Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party; provided however, that the non-defaulting Party notifies the default party and the Minnesota Public Utilities Commission in writing of the alleged default....

Article III, Section 3. Add a sentence to the provision on amendments:

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term “this Agreement” shall include future amendments, modifications, and supplements. The Commission must approve of any amendment, modification or supplement to this Agreement.

Article III, Section 4. Add a sentence to the provision on assignment:

The Party making the assignment shall notify the Commission 60 days in advance of the effective date of the assignment.

Article III, Section 9.1. Add a phrase to the beginning of the provision on identification:

To the extent permitted by applicable law, [e]ither Party may disclose to the other proprietary or confidential customer, technical, or business information in written, graphic, oral or other tangible or intangible forms (“Confidential Information”).

Article III, Section 17. Add to the end of the provision on governing law:

This Agreement shall be governed by and construed in accordance with the domestic laws of the state where the Services are provided or the facilities reside and shall be subject to the exclusive jurisdiction of the courts therein to the extent that the FCC and/or the Commission lack jurisdiction to resolve any issue arising out of this Agreement.

Article III, Section 25. Add the following language to the provision on third party beneficiaries:

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege. Notwithstanding the foregoing, the Parties agree to give notice to the Commission of any lawsuits or other proceedings that involve or arise under the Agreement to ensure that the Commission has the opportunity to seek to intervene in these proceedings on behalf of the public interest.

Article III, Section 30 and Article III, Section 38. Do not require any changes to Article III, Section 30--Changes in Legal Requirements, and Article III, Section 38--Subsequent Law.

Article III, Section 12.3. Add the following to the end of the provision on Dispute Resolution:

Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction subject to review by the Commission. The Parties shall submit a copy of each arbitration opinion to the Commission, the Department of Public Service, and the Office of Attorney General, Residential and Small Business Utilities Division. The arbitrator's decision shall remain in effect unless the Commission decides otherwise within 45 days.

ORDER

1. The Commission approves the interconnection agreement between WWC Holding Co., Inc. and Contel of Minnesota, Inc. d/b/a GTE Minnesota, with the modifications shown in the body of this Order.
2. Within 20 days of the date of this Order, the parties shall refile the agreement incorporating the modifications noted in the preceding paragraph.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (612) 297-4596 (voice), (612) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).