

ISSUE DATE: November 18, 1998

DOCKET NO. P-5668, 421/M-98-1286

ORDER REJECTING AGREEMENT AND REQUIRING REVISED FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Joint Application for Approval of Adoption of Arbitrated Interconnection Agreement Between U S WEST Communications, Inc. and AT&T Communications of the Midwest, Inc., Pursuant to 47 U.S.C. § 252(e)

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**PROCEDURAL HISTORY**

On September 3, 1998, U S WEST Communications, Inc. (USWC) and North Star Access, LLC., (North Star) jointly submitted an adoption letter requesting to adopt the terms of the arbitrated Interconnection Agreement between USWC and AT&T Communications of the Midwest, Inc. that was approved by the Commission in an Order dated March 17, 1997 ORDER GRANTING RECONSIDERATION AND APPROVING CONTRACT AS MODIFIED in Docket No. P-3167, 421/M-96-729. USWC and North Star (the Companies) also submitted their actual interconnection agreement, pursuant to Section 252(e) of the Federal Telecommunications Act of 1996 (the Act).

On September 11, 1998, the Minnesota Department of Public Service (the Department) submitted comments. The Department recommended that the Commission reject the proposed contract unless one modification is made to the agreement.

The Commission met on November 5, 1998 to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. NORTH STAR AND USWC'S PROPOSED AGREEMENT**

North Star and USWC (the Companies) have requested Commission approval of their intent to adopt the terms of the arbitrated Interconnection Agreement between USWC and AT&T Communications of the Midwest, Inc. which the Commission approved in its ORDER GRANTING RECONSIDERATION AND APPROVING CONTRACT AS MODIFIED dated March 17, 1997 in Docket No. P-3167, 421/M-96-729.

## II. THE DEPARTMENT'S COMMENTS

The Department filed comments recommending that the Commission reject the proposed Interconnection Agreement unless the parties modified their agreement by adding the following language to Part A, Section 23 (Assignment/Subcontracting):

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

The Department noted that its recommendation was consistent with language required by the Commission in its June 22, 1998 Order in Docket No. P-421/EM-98-554.<sup>1</sup>

## III. THE COMMISSION'S ANALYSIS AND ACTION

### A. Background

The Federal Act permits telecommunications companies to negotiate an interconnection agreement with an incumbent local exchange carrier to interconnect with and use the incumbent's network for the purpose of providing competitive local exchange service. The Federal Act specifies the Commission's role with respect to a negotiated agreement for the resale of local exchange service. Section 252(e) states, in relevant part:

(e) Approval by State Commission. —

(1) Approval Required. — Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for Rejection. — The State commission may only reject —

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that —

(i) an agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity;. . . .

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<sup>1</sup> In the Matter of an Application for Approval of a Type 2 Wireless Interconnection Agreement Between Minnesota PCS, L.P. and U S WEST Communications, Inc., Under the Federal Telecommunications Act of 1996, Docket No. P-421/EM-98-554, ORDER REJECTING AGREEMENT AND DIRECTING FURTHER FILING (June 22, 1998).

## **B. Interconnection Agreement**

The Commission has reviewed the Interconnection Agreement that the Companies propose to adopt. None of its provisions are discriminatory and most of them are consistent with the public interest. However, based on considerations coming to the Commission's attention subsequent to the Commission's early (March 17, 1997) Order regarding interconnection agreement terms in Docket No. Docket No. P-3167, 421/M-96-729, the section objected to by the Department (Section 23) is no longer acceptable, as the Commission has regularly found in a series of Orders predating the Companies' filing in this matter by many months.

The provision of concern in this case is as follows:

### **1. Section 23: Assignment/Subcontracting**

The Department recommended that the Commission require the parties to provide it with 60 days notice of assignment, consistent with previous Commission decisions. The Department stated that the following language would correct the problem:

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

Consistent with previous decisions,<sup>2</sup> the Commission finds that the absence of the cited language renders the proposed section inconsistent with the public interest. As such, the Commission will reject the propose agreement and note that addition of the Department's language would correct the deficiency.

## **C. Default Section: Failure to Require Notification to Commission Regarding Default**

As the Commission has found in previous decisions,<sup>3</sup> failure to provide for notification to the Commission of any alleged default is not consistent with the public interest. The Commission needs to be informed of any pending default in order to protect the public. Notification via an application by the incumbent local exchange company (ILEC) to the Commission for relief (after

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<sup>2</sup> See, e.g. In the Matter of the Joint Application for Approval of a Type 2 Wireless Interconnection Agreement Between WWC Holding Company, Inc., Minnesota Cellular Corporation and U S WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(e), Docket No. P-421/EM-98-235, ORDER REJECTING INTERCONNECTION AGREEMENT (April 16, 1998), at page 2.

<sup>3</sup> See In the Matter of the Joint Application for Approval of Interconnection, Resale, and Unbundled Elements Agreement Between Dakota Telecom, Inc. and US WEST Communications, Inc., Docket No. P-5634, 421/M-98-1133, ORDER REJECTING INTERCONNECTION AGREEMENT (October 1, 1998) and In the Matter of the Joint Application for Approval of an Adoption Agreement for Interconnection and Resale between PriCellular Corporation and U S WEST Communications, Inc., Under the Federal Telecommunications Act of 1996, Docket No. P-421/M-98-1202, ORDER REJECTING AGREEMENT AND REQUIRING REVISED FILING (November 3, 1998).

default) is insufficient. Further, if the ILEC applied to the court for relief rather than to the Commission, the Commission would receive no notification of this sort at all. Requiring notice to the Commission upon default (rather than via an application to the Commission for relief) will assure that the Commission receives necessary advance notification of a troubled contract.

Accordingly, the Commission will reject the agreement as proposed. The Commission notes that adding a default section containing the following language would correct the deficiency:

If either Party defaults ... the other Party must notify the Minnesota Public Utilities Commission in writing and may seek legal and/or regulatory relief.

**D. Default Section: Failure to Provide Commission Approval Prior to Disconnection**

The Interconnection Agreement also fails to require approval from the Commission before USWC can terminate service to Ameritech, the reseller. The Commission notes that in other interconnection agreements, such as the interconnection agreement between Knight Communications, Inc. and USWC in Docket No. P-421/M-98-1107, it has rejected language that did not require Commission approval of termination of service. The Commission's concern in that docket and here is that without such language termination of the reseller's end use customers could be done without the Commission's approval. This would be contrary to the public interest.

Accordingly, the Commission will reject the Agreement on this ground also. Adding the following language to the new section covering Default (see above) would cure the defect.

USWC will not disconnect reseller without first obtaining approval from the Commission.

**ORDER**

1. The interconnection agreement proposed by North Star and USWC (the Companies) is rejected as contrary to the public interest with respect to the three issues identified in the text of this Order.
2. Within two weeks of the Commission's Order, the Companies shall either refile for approval under § 252(e), an agreement that corrects the deficiencies identified by the Commission or, if they cannot agree on language that corrects the deficiencies consistent with the Order, file a notice to that effect.
3. The Companies' refiled contract shall be effective on the date the parties file a conforming agreement, i.e. one consistent with this Order.
4. The Executive Secretary shall have authority to:

- a. determine whether the revised contract, as filed, corrects the deficiencies as indicated at the hearing; and
  - b. send the parties a letter confirming approval of the contract.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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