

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Joint Application for
Approval of an Arbitrated Interconnection and
Resale Agreement Between CCCMN, Inc.
d/b/a Connect! and U S WEST
Communications, Inc., Under the Federal
Telecommunications Act of 1996

SERVICE DATE: March 8, 1999

DOCKET NO. P-421/AM-99-33

ORDER REJECTING INTERCONNECTION
AND RESALE AGREEMENT AND
REQUIRING REFILING

PROCEDURAL HISTORY

On January 13, 1999, CCCMN, Inc. d/b/a Connect! (CCCMN) and US WEST Communications, Inc., (USWC) filed for Commission approval to adopt a previously approved Interconnection Agreement. According to CCCMN and USWC (the Companies), the Agreement was reached through voluntary negotiations and decisions. The Agreement does not discriminate against any other telecommunications carrier and is consistent with the public interest.

On January 25, 1999, the Minnesota Department of Public Service (the Department) filed comments recommending that the Commission accept the proposed agreement. The Department stated that it had reviewed the Agreement for provisions that the Commission has found objectionable in the past. Based on this review the Department did not recommend any language modifications. The Department also noted that providing service under the agreement is subject to CCCMN obtaining a certificate of authority from the Commission.

The Commission met on March 2, 1999 to consider this matter.

FINDINGS AND CONCLUSIONS

I. 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;. . . .

II. THE COMPANIES' AGREEMENT

The Agreement between USWC and CCCMN contains terms and conditions that cover resale, interconnection, collocation, directory listings and other miscellaneous provisions including billing, assignment, default, and dispute resolution. Prices for interconnection and unbundled network elements are interim and subject to true-up. The Agreement states that it is effective upon Commission approval and terminates on December 15, 1999. According to its terms, the Agreement is to continue in effect until a new agreement becomes effective or unless it is terminated according to the Agreement.

III. COMMISSION ANALYSIS OF THE PROPOSED INTERCONNECTION AGREEMENT

The Commission has reviewed the Interconnection Agreement that CCCMN and USWC (the Companies) proposed. None of its provisions are discriminatory and most of them are consistent with the public interest. However, there are several aspects of the agreement that render it contrary to the public interest and, hence, subject to rejection.

Discussion of the defective sections identified by the Commission, along with corrective language, are as follows:

A. Default

Section 36.35 of the Agreement addresses default. The Commission believes that the Agreement should contain language requiring the parties to notify the Commission in the event of a default. This is necessary to allow the Commission an opportunity to protect the public interest in these circumstances. The Commission will reject the Agreement due to the absence of such language. Failure to include such language is contrary to the public interest and

warrants rejection of the Agreement pursuant to Section 252 (e)(2)(a)(ii). The Commission notes that addition of the following language would correct the deficiency:

Neither Party shall disconnect service to the other Party without Commission approval.

B. U S WEST DEX

Section 18 of the Agreement covers US WEST DEX issues between CCCMN and USWC. The Agreement states:

US WEST acknowledges that CONNECT! may request US WEST to facilitate discussions between CCCMN and US WEST DEX.

In its December 2, 1996 ORDER RESOLVING ARBITRATION ISSUES in the Consolidated Arbitration Case, the Commission underlined the importance of competing local exchange carriers' (CLECs') access to directory distribution and yellow page listing opportunities equal to those given USWC. The Commission stated at page 59:

Directory distribution. The Commission finds that US WEST must facilitate the distribution by US WEST Direct of one white and one yellow pages directory to every telephone subscriber within the geographic area covered by the directory.

The Commission believes that all parties agree to this requirement, and all will be benefitted by the expanded directories.

Yellow pages advertising. US WEST is an affiliate of US WEST Direct. Given this status, US WEST must ensure that it is treated in a competitively neutral manner by US WEST vis a vis the new entrants. If US WEST receives a commission from US WEST Direct for placement of yellow pages advertising, CLECs should receive the same commission. US WEST Direct must give CLECs the same opportunity to provide directory listings as it provides to US WEST (for example, through some type of bidding process). If a CLEC is not given the same directory listing opportunity as US WEST, the CLEC should receive a share of the revenues (based on the percentage of lines belonging to that CLEC in the particular list) that US WEST receives from US WEST Direct.

Due to the importance of these items in the development of fair and meaningful competition, the Commission finds that the Agreement's failure to adequately address them is not consistent with the public interest, convenience, and necessity and, therefore warrants rejection, pursuant to Section 252 (e)(2)(a)(ii). As in previous decisions on this topic, the Commission notes that the following language would correct the deficiency:

US WEST is an affiliate of US WEST DEX. Given this status, US WEST will ensure that it is treated in a competitively neutral manner by US WEST DEX vis a vis the Carrier. If US WEST receives a commission from US WEST DEX for placement of yellow pages advertising, the Carrier shall receive the same commission. US WEST DEX will give the Carrier the same opportunity to provide directory listings as it provides to US WEST (for example through some type of bidding process). If the Carrier is not given the same directory listing opportunity as US WEST, the Carrier shall receive a share of the revenues (based on the percentage of lines belonging to that Carrier in the particular list) that US WEST receives from US WEST DEX. US WEST shall make its contracts with US WEST DEX available for review by the Carrier, as necessary,

to ensure that the Carrier is receiving the same services at the same terms as US WEST.

IV. COMMISSION ACTION

The Commission will reject the Companies' proposed interconnection for the above-stated reasons. To expedite the process of approving a revised agreement that conforms to the Commission's decision, the Commission will direct the Companies how to proceed in Ordering Paragraph 2, below.

ORDER

1. The Commission hereby rejects the Interconnection and Resale Agreement (Agreement) proposed by CCCMN, Inc. d/b/a Connect! (CCCMN) and U S WEST Communications, Inc. (USWC) for reasons stated in the text of this Order.
2. Within two weeks of this Order, CCCMN and USWC (the Companies) shall file a revised Agreement incorporating the Commission's findings of deficiencies.
3. The Commission delegates authority to the Executive Secretary to examine the revisions filed by the Companies, confirm that the deficiencies have been corrected as recommended, and to issue a letter to the Companies approving the revised Agreement as of the date of filing.
4. If the Companies do not reach an agreement that address the Commission's findings of deficiencies, the parties should inform the Commission of that within two weeks of the Commission's Order.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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