

ISSUE DATE: June 17, 1999

DOCKET NO. P-430/AM-99-445

ORDER REJECTING AGREEMENT AND REQUIRING REFILING

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 a Joint Application for  
Approval of an Interconnection Agreement  
between PageNet, Inc. and Sprint Minnesota,  
Inc., Under the Federal Telecommunications  
Act of 1996

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**PROCEDURAL HISTORY**

On April 2, 1999, Sprint Minnesota, Inc. (Sprint) and PageNet, Inc. (PageNet) filed for Commission approval of an Interconnection Agreement between Sprint and PageNet (the Parties). The Parties believe that the Interconnection Agreement complies with Section 252(e) of the Federal Act; it does not discriminate against any other telecommunications carrier and is consistent with the public interest, convenience and necessity.

On April 12, 1999, the Department of Public Service (Department) filed comments recommending rejection.

On April 30, 1999, PageNet filed reply comments.

The Commission met on June 8, 1999 to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. INTERCONNECTION AGREEMENT BETWEEN SPRINT AND PAGENET**

The Agreement between Sprint and PageNet contains general terms and conditions for such things as assignment, notices, dispute resolution, interconnection and service quality. The Agreement also specifies the term of the Agreement, billing, payment, liability, taxes, and indemnification. The term of the Agreement begins upon approval of the Commission and continues until March 31, 2001.

**II. THE DEPARTMENT'S COMMENTS**

The Department recommended that the Commission reject the proposed agreement and make certain modifications so the Agreement comports with previous Commission decisions regarding interconnection agreements. The Department recommended modifications to several sections of the Agreement: Section 4 - Term and Termination; Section 11 - Assignment; Section 14 - No Third Party Beneficiaries; and Section 22 - Amendments and Modifications.

### **III. COMMISSION ANALYSIS**

#### **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;. . . .

#### **B. Review**

The Commission has reviewed the Interconnection Agreement that Sprint and PageNet (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:

## **1. Term and Termination - Section 4**

Section 4 of the Agreement describes the conditions which would permit a party to terminate the Agreement. The Department recommended corrective language be added to Section 4 aimed at assuring an orderly transition occurs if the Agreement is terminated and minimizing any disruption for end use customers. The corrective language proposed by the Department was:

This Agreement may not be terminated as a result of default unless and until written notice detailing such default is given to the non-defaulting party, and to the Minnesota Public Utilities Commission.

The Commission finds that the Department raises a realistic concern and its proposed language is good and should be added to the agreement. Termination of the Agreement for default should require Commission approval. In addition, the Commission believes that additional language is required to address the orderly transition concern. That additional language is:

Neither Party may terminate service to the other Party without Commission approval.

The Commission will reject the proposed Sprint/PageNet Agreement. There is a deficiency regarding termination which could be cured by including the above noted language.

## **2. Assignment**

Section 11 of the Agreement permits assignment by either party if it demonstrates that the proposed assignee has the resources, ability, and authority to satisfactorily perform under the Agreement. The Commission notes that the Agreement does not require notice to the Commission of an assignment by a party.

The Commission has consistently rejected prior agreements that did not contain language that the Commission be given 60 days notice of assignment and will do so in this case as well. The Companies can remedy the deficiency by including language that 60 days notice of assignment will be given to the Commission.

## **3. No Third Party Beneficiaries**

Section 14 of the Agreement states that the Agreement is for the benefit of the Parties and not for any other person. The Department recommended additional language to ensure that any administrative, quasi-judicial, or other proceeding on the contract comes to the Commission's attention so that the Commission will be able, as necessary to protect the public interest.

The Commission finds that lack of language as recommended by the Department is contrary to the public interest. The Commission will, accordingly, reject the Companies' proposed agreement on that ground. The Commission notes that the following language would correct the defect:

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.

#### **4. Amendments and Modifications**

Section 22 of the Agreement requires that any amendments or modifications be in writing and signed by both parties but does not expressly acknowledge that the Commission has the authority to approve or reject any amendments or modifications. The Commission finds that the potential for the Companies' confusion on that point is contrary to the public interest.

Accordingly, the Commission will reject the agreement on that ground, noting that the following language would correct the defect:

The Commission must approve of any amendment, modification, or supplement to this Agreement.

#### **IV. FUTURE ACTIVITY ON THIS DOCKET**

The Commission will expedite the approval of the Companies resubmitted agreement by adopting the process detailed in Ordering Paragraphs 2-4.

#### **ORDER**

1. The Commission hereby rejects the Interconnection Agreement (Agreement) proposed by Sprint and PageNet for reasons stated in the text of this Order.
2. Within two weeks of this Order, Sprint and PageNet (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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