

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayer	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Joint Application for Approval of the Third Amendment to the Interconnection Agreement Between AT&T Communications of the Midwest, Inc. and Qwest Corporation

ISSUE DATE: October 22, 2001

DOCKET NO. P-442, 421/IC-01-1100

ORDER APPROVING AMENDMENT AND APPROVING ITS ADOPTION BY OTHER COMPETITIVE LOCAL EXCHANGE CARRIERS UPON FILING NOTICE

**PROCEDURAL HISTORY**

On July 18, 2001, Qwest Corporation (Qwest) and AT&T Communications of the Midwest, Inc. (AT&T) filed a proposal to amend their Commission-approved interconnection agreement<sup>1</sup> for the third time. The proposed third amendment would incorporate into the agreement two rate sheets – one listing retail tariffs subject to the 17.66 % wholesale discount and the other listing rates for unbundled network elements.

On August 18, 2001, the two companies made a revised filing, correcting the name used for AT&T to coincide with the name on its certificate of authority to provide local service. On October 4, 2001, they made another revised filing to clarify their intention to seek Commission approval of any future change in the rates, terms, or conditions of their agreement.

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<sup>1</sup> In the Matter of the Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with US WEST Communications, Inc. Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, Docket No. P-442,421/M-96-855; P-5321,421/M-96-909; P-3167,421/M-96-729; ORDER RESOLVING ISSUES AFTER RECONSIDERATION AND APPROVING CONTRACT (March 17, 1997).

Onvoy and a coalition of competitive local exchange carriers (CLECs)<sup>2</sup> filed two sets of joint comments on the proposed amendment. The Minnesota Department of Commerce (the Department) also filed two sets of comments.

On October 16, 2001, the amendment came before the Commission. At hearing the two parties to the agreement, the Department, and Onvoy and the CLEC Coalition stated that discussions between the parties had resolved all disputed issues and that no party opposed the Commission approving the amendment. They also stated that no party opposed Onvoy and the CLEC Coalition's request for an expedited process by which CLECs could adopt the third amendment and incorporate it into their own interconnection agreements, as long as the Commission's authority and the public record were maintained.

## **FINDINGS AND CONCLUSIONS**

### **I. The Applicable Law**

#### **A. New Interconnection Agreements and Amendments Require Commission Approval**

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).

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<sup>2</sup> The CLEC Coalition is made up of the following companies: Ace Telephone Association, BEVCOMM, Inc., Encore Communications, HomeTown Solutions, LLC, Hutchinson Telecommunications, Inc., Integra Telecom of Minnesota, Inc., Mainstreet Communications, LLC, NorthStar Access LLC, Otter Tail Telecom, LLC, Paul Bunyan Rural Telephone Cooperative, Tekstar Communications, Inc., Unitel Communications, U.S. Link and VAL-ED d/b/a 702.

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 – and by implication, all agreements to amend existing agreements – 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; or
- (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).

**B. Adopted Interconnection Agreements and Amendments Require Commission Approval**

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). CLECs opting in to existing interconnection agreements or selecting terms from existing interconnection agreements are said to be “adopting” those agreements or those terms.

This Commission has found that adopted interconnection agreements and terms must be filed for Commission approval and can be rejected under 47 U.S.C. § 252(e)(2) and (3), even if the original agreement remains in effect.<sup>3</sup> This finding has been upheld on appeal by the federal district court.<sup>4</sup>

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<sup>3</sup> In the Matter of the Joint Application of OCI Communications of Minnesota, Inc. and U S WEST Communications, Inc. for Approval of an Interconnection Agreement, Docket No. P-5478,421/M-97-522, ORDER REJECTING INTERCONNECTION AGREEMENT(July 22, 1997); In the Matter of the Joint Application of KMC Telecom Inc. and U S WEST Communications, Inc. for Approval of an Interconnection Agreement, Docket No. P-5426,421/M-97-850, ORDER REJECTING INTERCONNECTION AGREEMENT (August 13, 1997).

<sup>4</sup> U S WEST Communications, Inc. v. Garvey, No. 97-CV-1921 (D. Minn. March 31, 1999).

## **II. Commission Action**

### **A. Amendment Approved as to Qwest and AT&T**

The Commission has reviewed the proposed third amendment to the interconnection agreement and finds that it should be approved. It does not discriminate against any other telecommunications carrier. It is consistent with the public interest, convenience, and necessity. It does not conflict with state law.

### **B. Amendment Approved as to Other CLECs upon Filing Notice**

At hearing no party opposed Onvoy and the CLEC Coalition's request for an expedited process by which CLECs could adopt the third amendment and incorporate it into their own interconnection agreements, as long as the Commission's authority and the public record remained intact. The Commission will grant the request for the reasons set forth below.

First, the terms of this amendment derive directly from two Commission proceedings – one setting prices for interconnection, collocation, and network elements,<sup>5</sup> and the other geographically de-averaging the network element prices set in the first proceeding.<sup>6</sup> This is not a case, then, in which the Commission is likely to need to refine the terms or the implementation of the amendment on the basis of practical experience with it.

Second, Onvoy and the CLEC Coalition have stated without contradiction that business necessity requires that they and other CLECs incorporate the terms of this amendment into their interconnection agreements as soon as possible. The Commission has a duty and a commitment to nurture and promote competition in the local telecommunications market.<sup>7</sup> It would clearly promote competition to expedite the effective adoption of this amendment by other CLECs.

Finally, expediting the effective adoption of this amendment would not jeopardize the public interest, since the Commission can design an expedited process that will give both regulatory agencies and the public clear and effective notice of which CLECs have adopted the amendment.

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<sup>5</sup> In the Matter of a Generic Investigation of US West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements, Docket No. P-442, 5321, 3167, 466, 421/CI-96-1540.

<sup>6</sup> In the Matter of Implementing the Geographic Deaveraging Requirements of 47 C.F.R. § 51.507(f), Docket No. P-999/CI-99-465.

<sup>7</sup> Minn. Stat. §§ 237.011, 237.16; Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of title 47, United States Code).

The Commission will therefore approve this amendment not just as to Qwest and AT&T, but as to Qwest and any other CLEC that may choose to adopt it. Adoption will be effective as of the date an adopting CLEC files notice of adoption with the Commission, the Department, and Qwest.

The Commission will so order.

**ORDER**

1. The Commission approves the third amendment filed by Qwest and AT&T as to Qwest and AT&T.
2. The Commission approves the third amendment filed by Qwest and AT&T as to Qwest and any CLEC choosing to adopt the amendment under 47 U.S.C. § 252(i). Adoption will be effective as of the date an adopting CLEC files notice of adoption with the Commission, the Department, and Qwest.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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