

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of Sprint Communications Company L.P.'s Petition for Arbitration of Interconnection Rates, Terms, Conditions and Price with US West Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996

ARBITRATOR'S REPORT

The above entitled matter was arbitrated by Administrative Law Judge Steve M. Mihalchick, beginning with a prehearing conference on October 11, 1996. An evidentiary hearing was held on November 12, 1996, and the record was closed with the submission of reply briefs on December 9, 1996.

Appearances were as follows:

Donald Low, Senior Attorney, Sprint Communications Company L.P., 8140 Ward Parkway, Kansas City, Missouri, 64114, appeared for Petitioner Sprint Communications Company L.P. (Sprint).

David G. Seykora, Senior Attorney, US West, Inc., 100 South Fifth Street, Room 395, Minneapolis, Minnesota, 55402, and James A. Gallagher, Maun & Simon, 2000 Midwest Plaza Building West, 801 Nicollet Mall, Minneapolis, Minnesota, 55402, appeared for US West Communications, Inc. (US West).

Ellen Gavin, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota, 55101, appeared for the Department of Public Service (DPS).

Scott Wilensky, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota, 55101, appeared for the Office of Attorney General, Residential and Small Business Utilities Division (OAG).

The Public Utilities Commission staff appearing was Jeffrey Nodland.

PROCEDURAL HISTORY

On April 15, 1996, Sprint submitted a request to negotiate an interconnection agreement to US WEST pursuant to the federal Telecommunications Act of 1996 (the Act). The two parties failed to reach full agreement on an interconnection agreement and Sprint filed a petition for arbitration to the Minnesota Public Utilities Commission (PUC or Commission) on September 20, 1996. On October 30, 1996, the Commission referred the arbitration to the Office of Administrative Hearings for hearing by an Administrative Law Judge. Pursuant to the PUC's procedural order, the DPS and OAG intervened in the matter. In accordance with the time deadlines set forth in the Act, the PUC decision in the matter is due by January 15, 1997. Consequently, the PUC requested that this Arbitrator's Report be submitted by December 19, 1996.

ISSUES

Prior to the hearing, Sprint and US West filed a Joint List of Issues which reflected the fact that the two parties had resolved all issues except for five which were addressed in the evidentiary hearing and are the subject of this Arbitrator's Report. The remaining issues are, what terms should be included in the arbitrated interconnection agreement between the parties regarding:

1. The rights of the parties under Section 252(i) of the Act, known as the Most Favored Nation provision.
2. How access revenues received when calls are forwarded through interim number portability should be shared.
3. Resale restrictions that would control Sprint's reselling services to customers who would be ineligible to purchase service from US West.
4. Recombining unbundled elements without using any Sprint facilities.
5. Performance measures and penalties.

BURDEN OF PROOF

The PUC has determined that US West has the burden of proof in these proceedings. In its Order Granting Petition and Establishing Procedures for Arbitration dated October 30, 1996, (the Commission Order) the PUC stated:

The burden of proof with respect to all issues of material fact shall be on US West. The facts at issue must be proven by a preponderance of the evidence. The ALJ, however, may shift the burden of production as appropriate, based on which party has control of the critical information regarding the issue in dispute. The ALJ should also shift the burden to the extent necessary to comply with any applicable FCC regulations regarding burden of proof.

PARTIAL STAY OF THE FCC'S FIRST ORDER AND RULES

On October 15, 1996, the Eighth Circuit Court of Appeals issued an Order Granting Stay Pending Judicial Review in Iowa Utilities Board v. Federal Communications Commission (Docket No. 96-3321, et al.) (Eighth Circuit Stay Order) of significant portions of the FCC First Order and Rules. The Stay specifically applied to 47 C.F.R. §§ 51.501-51.515, 51.601-51.611, 51.701-51.717, 51.809 and the proxies established for line ports as set forth in the FCC's Order on Reconsideration, dated September 27, 1996. The areas of the FCC First Order covered by the Stay include the FCC's so-called the "pick and choose" rule implementing § 252(i) of the Act.

SPRINT'S PREHEARING MOTION

On November 6, 1996, Sprint filed an Amended Petition in which it requested that the Commission enter determinations in the instant case which are the same as those made on the same issues in the AT&T, MCI, and MFS consolidated arbitrations with US West, MPUC Docket Nos. P-442,421/M-96-855; P-5321,421/M096-909; and P-3167,421/M-96-729, (AT&T Arbitration), rather than the relief originally sought in its Petition. Concurrently with the Amended Petition, Sprint also filed a Prehearing Motion asking for a determination that Sprint was entitled as a matter of law to the relief requested in its Amended Petition. The Motion was argued before the Arbitrator on November 11, 1996, and denied, partially on the basis that the Motion was premature since the PUC had not made decisions in the AT&T Arbitration. In its Brief, Sprint has urged reconsideration of the Motion in light of the fact that the PUC has now rendered its Order Resolving Arbitration Issues in the AT&T Arbitration (AT&T Order).

The Arbitrator has reconsidered Sprint's motion and again declines to grant it. The principal reason for this is the nature of this proceeding and the AT&T Arbitration; they are arbitrations conducted to fill in terms the parties have been unable to reach agreement on in the negotiated agreements. They are not contested cases or any similar form of administrative adjudication. They are not even arbitrations of grievances, contract violations or other similar issue arbitrations. Because they are arbitrations, not contested cases, different standards and procedures apply, both to the arbitrators and to any reviewing courts. Under both federal and state law, arbitrators are to decide both questions of law and fact and, unless provided otherwise, arbitrators are not bound to follow substantive rules of law strictly. G. Wilner, 1 Domke on Commercial Arbitration, § 25.01. Thus, even the flexible legal rule that generally requires some consistency in administrative decisions, unless adequate justification is given for the change, simply does not apply to this arbitration. The Arbitrator, and the Commission, may choose to act in a consistent manner from arbitration to arbitration for policy reasons, but there is no legal requirement that they do so. All that is required is that the arbitrated agreements be consistent with the Act. 47 U.S.C. § 252(c). Moreover, granting Sprint's motion would require complete uniformity among all arbitrated agreements, at least those involving the same incumbent local exchange carrier. Such a result appears to be contrary to the Act. Had the Act required such uniformity, it could have easily so provided. Instead, the Act provides for negotiation of separate interconnection agreements and separate arbitrations. Requiring uniformity is also inappropriate given the speed with which these arbitrations have been conducted and decided and their

complexity. There may well be issues that are fact specific or that may require a deeper analysis than time allowed during the AT&T Arbitration.

Sprint and DPS also argue that § 252(i) of the Act requires that Sprint be allowed to choose any of the provisions of the AT&T arbitrated agreement and, thus, it is "entitled" to the same terms and conditions in its agreement. As will be discussed in some more detail below, § 252(i) does not allow requesting carriers to "pick and choose" individual terms out of an approved agreement. It allows them to "pick and choose" any interconnection, service, or network element provided under an approved agreement upon the same terms and conditions as provided in that agreement.

DPS has also argued that the provisions of the Act requiring ILECs to provide interconnection, access to network elements, collocation, and resale in a nondiscriminatory manner would be violated if the Sprint agreement provided different terms and conditions than the AT&T arbitrated agreement if Sprint has requested the same terms and conditions. As just stated, Sprint has the right under 252(i) to request any interconnection, service, etc., from US West on the same terms and conditions as US West provides that item under the AT&T arbitrated agreement. Thus, there will be no discrimination. For all these reasons, there should be no blanket decision to necessarily apply all Commission decisions in one arbitration to another arbitration.

In a similar vein, US West erroneously argues that the Arbitrator's decision must be based on substantial evidence. Initial Brief of US West at 4-5. The argument starts from the fact that the Commission's Order establishing procedures for this arbitration directs the Arbitrator to control all aspects of the hearing consistent with the standards set forth in Minn. R. 1400.7300, subps. 1, 2, 3 and 4. US West points to subp. 2, which limits the evidence that can be considered to that made part of the record. US West then states that under the Minnesota Administrative Procedure Act any decision of the Commission must be supported by substantial evidence when the record is considered as a whole and that absent substantial record evidence, an arbitrator's decision simply cannot stand, citing Minnesota Power & Light Co. v. Minnesota Public Utilities Comm'n., 342 N.W.2d 324 (Minn. 1983).

There are several errors in this argument. The primary one is that despite the fact that the Commission Order requires some of the contested case rules of evidence to be applied, this proceeding is an arbitration, not a contested case. It is an arbitration under the terms of the Act and the Commission Order. Since it is not a contested case, the judicial review provisions of the Administrative Procedure Act do not apply. Minn. Stat. § 14.63. Thus, the substantial evidence test and other standards applied by the appellate courts on judicial review of contested cases found in Minn. Stat. § 14.69 do not apply. Since this is an arbitration, it presumably will be reviewed by the courts under the standards applicable to arbitrations. But, that is not an issue for the Arbitrator or the Commission to decide. In any event, the determinations made by the Arbitrator here are based entirely upon the evidence and argument of counsel that have been made part of the record applying the burden of proof set forth above.

ISSUE 1--MOST FAVORED NATION PROVISION

Position of the Negotiating Parties

Resolution of this issue requires, first, an interpretation of US West's obligations under §252(i) of the Act and, second, a determination of what contractual provision should be reasonably required to reflect those obligations. Sprint asserts that this section of the Act requires that any individual component of an interconnection agreement must be made available. US West contends that this provision only requires that the parts of an agreement be available to a requesting carrier which agrees to take all the terms and conditions of the entire agreement, in order to fairly give effect to the "give and take" of the negotiations process mandated by the Act.

In the AT&T Order, the PUC did not address the MFN issue, but determined that AT&T's proposed Interconnection Agreement language should be used except where otherwise indicated. AT&T Order at 6-10. Thus, the language of the AT&T Arbitrated Agreement is as follows:

- 13.1 If at any time while this Agreement is in effect and in addition to provisions under the Act and the FCC's Rules and Regulations, if US WEST enters into an agreement with another party or file a tariff to provide Local Services, Network Elements or Combinations US WEST shall provide such agreement or tariff to AT&T within five (5) days of the date it is signed or submitted. If such agreement contains prices, terms or conditions different from those available under this Agreement, then AT&T, at its discretion, may substitute the prices, terms and conditions, in whole or in part, offered to that other party in place of the relevant prices, terms and conditions in this Agreement with effect from the date ILEC first made such tariff effective or entered into such arrangement and for the remainder of the term of this Agreement. AT&T may exercise this option by delivering written notice to US WEST. US WEST shall thereafter continue to provide Local Services, Network Elements or Combinations to AT&T, as required by this Agreement, subject to the prices, terms, and conditions that AT&T elects to substitute from such other third party agreement.

On December 9, 1996, Sprint and US West submitted a Joint Position Statement dated December 2, 1996, setting forth the negotiated terms to be included in an Arbitrated Interconnection Agreement and a Physical Collocation Agreement. Attached to the documents were the final language proposals of the parties on the five disputed issues. US West's proposal is that § 33.2 of the Arbitrated Interconnection Agreement provide:

The Parties agree that the provisions of Section 252(i) of the Act shall apply, including state and federal interpretive regulations in effect from time to time.

Sprint's final proposal is that this § 33.2 should provide:

Any price, term and/or condition offered to any carrier by US WEST shall be made available to Sprint Communications Company L.P. ("Sprint") on a Most Favored Nation's ("MFN") basis and US WEST shall immediately notify Sprint of the existence of such better prices and/or terms and make the same available to Sprint effective on the date the better price and/or term became available to either carrier. The MFN shall apply to any unbundled element, service (e.g., directory assistance, basic residential service, intraLATA toll, Centrex, call waiting). Exceptions to the general availability of MFN should be very limited and include only volume discounts that reflect only cost savings, term discounts, significant differences in operations support (e.g., unbundled loops with maintenance as compared to unbundled loops without maintenance or unbundled loops conditioned for data as compared to voice grade loops), and technical feasibility (e.g., local switching must be purchased to receive vertical features supported by the switch). If US WEST geographic zones are not uniform as applied to all carriers, Sprint may choose the lowest price available from US WEST for each specific area being served by Sprint.

Applicable Law

Section 252(i) of the Act provides:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The so-called "Pick and Choose" provision of the FCC Rules provides:

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.

47 C.F.R. § 51.809(a). This Rule has been temporarily stayed by the Eighth Circuit's Stay Order.

Decision and Rationale

A plain reading of the Act does not support US West's position that LEC's must make available only an entire agreement to another carrier. As noted in the FCC's "First Report and Order," (FCC Order) that interpretation would be sustainable only if the Act did not contain the phrase "any interconnection, service or network element," because

Requiring requesting carriers to elect entire agreements, instead of provisions relating to specific elements, would render as mere surplus the words "any interconnection, service, or network element."

FCC Order ¶ 1310.

Nor does a plain reading of the Act support Sprint's position, and that of DPS, OAG, and, perhaps, the FCC, that requesting carriers can "pick and choose" any provision out of any agreement that they like. As noted above, § 252(i) requires that any interconnection, service, or network element be made available on the same terms and conditions, not that any contract element be made available. Thus, it seems clear, for example, that under the Act there could not be a request for just the performance measures provision of an approved agreement. Instead, a requesting carrier may only request a particular interconnection, service or network element and then be subject to the terms and conditions that specifically apply to that interconnection, service or network element under the approved agreement. Those terms and conditions would include such things as the price, quantities, performance standards, point of interconnection, etc., under which the particular interconnection, service, or network element are provided under the approved agreement.

The rule adopted by the FCC, 47 C.F.R. § 51.809(a), appears to implement § 252(i) correctly and, on its face, does not allow picking and choosing of any separate element of an agreement. However, some of the language used by the FCC in FCC Order ¶¶ 1309-1323 indicates that that may have been the FCC's intention. Other statements in those paragraphs indicate that the FCC was really talking about the right of carriers to choose interconnections, services, and network elements and not contract elements. Because of this confusion, the meaning of § 252(i) will no doubt ultimately be decided by the courts.

The Arbitrator recommends that the following provision be inserted as § 33.2 of the Arbitrated Interconnection Agreement:

Consistent with § 252(i) of the Act, any interconnection, service, or network element provided to any carrier by US West under an agreement approved by the Commission shall be made available to Sprint upon the same terms and conditions as those provided in the approved agreement. US West shall notify Sprint within five days of the date of approval of any such agreement with any other carrier. Sprint may exercise its option to

request such interconnection, service or network element by delivering written notice to US West and US West shall thereupon provide the requested interconnection, service or network element under the terms and conditions of the approved agreement effective from the date of request or when the interconnection, service or network element is thereafter provided.

Such a provision is consistent with the clear terms of § 252(i) of the Act. The Arbitrator is aware that this clause is different from that contained in the AT&T Arbitrated Interconnection Agreement, but believes that that provision may be read to allow picking and choosing of contract elements and should not be adopted here.

ISSUE 2--INTERIM NUMBER PORTABILITY-ACCESS REVENUES

Position of the Negotiating Parties

This issue involves application of ¶140 of the FCC Order in CC Docket No. 95-116 and its determination of how terminating access revenues should be shared in the context of interim number portability.

Applicable Law

The FCC found that in the context of interim number portability, neither the forwarding carrier nor the terminating carrier provides all the facilities and therefore the terminating access charges should be assessed pursuant to meet-point billing arrangements. The Arbitrators' Report in the AT&T Arbitration, at pages 36-37, summarized such requirements as follows:

The terminating carrier shall receive the CCL charge, end office charges (primarily the local switching charge), the transport interconnection charge, and some portion of the tandem switched transport element, depending on distance from switch to switch. The tandem switching carrier shall receive the balance of the tandem switched transport element and all of the tandem switching and entrance facility charges.

US West does not dispute what is required under the FCC Order but apparently wants the PUC to disregard that Order by requiring a different sharing of access revenues.

Decision and Rationale

The Arbitrators' Report in the AT&T Arbitration addressed US West's position by stating, at page 37:

The allocation of the various switched access charges is dictated by FCC Orders. US WEST has volunteered to forward CCL charges to CLECs, but not the other charges. That position is at odds with the FCC Orders, and cannot be followed.

The Commission agreed with this conclusion and adopted the AT&T proposal, stating that it was analogous to the FCC's cost recovery method, had been used successfully at the interstate level, and was consistent with FCC principles. AT&T Order at 42. Those conclusions remain valid. Therefore, Sprint's proposed language for Section 8.1.8 of the Arbitrated Interconnection Agreement should be adopted.

ISSUE 3--RESALE RESTRICTIONS

Positions of the Negotiating Parties

Sprint has agreed to contract provisions which explicitly restrict the resale of residential services to business customers and of lifeline services to ineligible users. It objects, however, to US West's proposed provision which would prohibit all other cross-class resale. Sprint contends that it should be permitted to resell US West business service to residential customers. US West's position is that the agreement should prohibit any resale of a service other than to the same class of customers eligible to purchase the service from US WEST.

Applicable Law

The Act does not allow restrictions on the resale of services, except that State commissions may, pursuant to FCC regulations, "prohibit a reseller that obtains at wholesale rates a telecommunications service of a service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers." §251(c)(4)(B). The FCC, however, determined that any such restrictions were presumptively unreasonable other than prohibitions on reselling residential services to business customers and on lifeline services to ineligible customers. Thus, ILECs must prove to state commissions that other restrictions are reasonable and nondiscriminatory. FCC Order ¶¶ 948-953.

Decision and Rationale

The only example of cross-class resale that Sprint could provide at the hearing was of using CENTRON for apartments and new housing complexes. US West argued that permitting this type of resale would require systems changes. Since CENTRON resale is already permitted and taking place, it seems unlikely that additional changes to US West's systems would be necessary simply because there may be a different class of end-user of the service. In any event, competition will inevitably require US West to make many changes to its systems. The requirement that systems might have to change is not a legitimate reason to prohibit the growth of competition.

US West's concerns about possible adverse impacts on its revenues from the resale of CENTRON in the residential market do not provide a basis for permitting a cross-class restriction on the resale of CENTRON. Many aspects of competition will affect US West's revenues. The Commission's duty in this arbitration is to promote effective competition in the local service market, not to protect US WEST's revenues.

Finally, US West's argument that CENTRON resale to residential customers should be prohibited because residential customers in the same area could end up paying different prices for service cannot serve as a basis for restricting resale. It is, of course, contemplated that under a competitive environment, customers may be offered service for different prices from competing firms. The possibility that Sprint may charge a different price than US WEST charges for residential service certainly cannot be used to overcome the presumption against prohibiting cross-class resale found in the Act.

In the AT&T Order, the Commission determined that until a decision is made regarding US West's request to grandfather CENTRON service, no general restrictions on resale of business services to residential customers would be allowed. The Arbitrator finds that the same conclusions are appropriate in this case since US West has not rebutted the presumption that prohibiting resale of business services to residential customers is unreasonable. Sprint's proposed language for § 29.2.5 should be adopted.

ISSUE 4-UNBUNDLED ELEMENTS

Positions of the Negotiating Parties

The issue is whether US West should be required to sell unbundled elements to Sprint without restriction on how they are combined by Sprint to produce a service. Sprint argues that the Act and the FCC Order expressly authorize the combination of unbundled elements. US West disagrees with the law in this area and contends that Sprint should not be permitted to recombine unbundled elements, without using any Sprint facilities, if the recombination will do nothing more than produce a US West finished service. US West's alternate position is that the Commission should establish a temporary residual unbundling charge that would equal the difference between the price of unbundled elements and the price of the corresponding wholesale service.

Applicable Law

The Act requires US West to provide to any CLEC upon request unbundled elements at any technically feasible point "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." 47 U.S.C. § 251(c)(3); see also, FCC First Order, ¶¶ 289-297.

Decision and Rationale

US West argues that Congress intended restrictions on unbundling and cites language from a brief of some members of Congress who share that view. However, it is a cardinal rule of statutory construction that the plain language of a statute cannot be disregarded under the guise of determining legislative intent. If Congress means to restrict unbundling, it had the ability to do so. To date, however, it has not chosen to do so and the ALJ and the Commission must uphold the plain meaning of the statute and FCC First Order and Rules on this issue.

In the AT&T Order, at 25, the Commission concluded that until the issue was determined by the courts, the FCC Order must be applied and that it could not allow any contract language that restricted the purchase or recombination of unbundled elements. The Commission finding in the AT&T Arbitration remains correct..

The alternative position of US West must also be rejected in this case. US WEST has suggested that the Commission should establish a temporary residual unbundling charge to "reconcile" the unbundling and resale provisions of the Act. That charge would essentially require Sprint, and presumably other new entrants, to pay the wholesale rates for resold services rather than the unbundled network elements rates. Tr. 91. Such a surcharge obviously does not represent a "reconciliation" of the Act's provisions but is merely a alternative means of achieving the restrictions on combining network elements desired by US West. Since such restrictions have been rejected by Congress, the FCC and the PUC; US West's proposal must be rejected in this case.

US West has proposed a provision that would restrict Sprint's ability to recombine unbundled elements. Since such a restriction is contrary to the express language of the Act, the US West provision is not appropriate to include in the interconnection agreement. The Sprint proposal for § 30.1.2 of the Arbitrated Interconnection Agreement should be adopted.

ISSUE 5--PERFORMANCE MEASURES AND PENALTIES

Positions of the Negotiating Parties

Sprint contends that US West should work with Sprint to "mutually develop operating statistical process measurements that will be monitored monthly to ensure that a specific quality of service is maintained through a mutually agreed upon process of feedback and improvement. . . ." Sprint also requests that it be permitted to "request standards and measures equal to, or less rigorous, than those which US West will provide to AT&T and MCI." Sprint Br. at 11. US West's position is that services must be provided at parity with US West, that the standards it proposed at the hearing should be adopted by the Arbitrator and the Commission, and that it cannot be required to provide performance credits to Sprint.

Applicable Law

The Act requires an ILEC to provide interconnection and unbundled elements at least equal in quality to that it provides to itself on a reasonable and nondiscriminatory basis. 47 U.S.C. § 251(c)(2) and (3); 47 C.F.R. § 51.311(b). The Act also requires ILECs not to impose unreasonable or discriminatory conditions on the resale of service. 47 U.S.C. § 251(c)(4). The FCC rules also provide:

[t]o the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall, upon request, be superior in quality to that which the incumbent LEC provides to itself.

47 C.F.R. § 51.311(c). The FCC rules further provide that ILECs must provide services for resale on reasonable and nondiscriminatory terms and must make resold services "equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users." 47 C.F.R. § 51.603.

The Commission has broad authority to ensure that utility customers receive adequate service under Minn. Stat. § 237.081. Under the Act, states specifically retain the right to determine service quality requirements in addition to those determined by the FCC. 47 U.S.C. § 252(e)(3).

Decision and Rationale

The Commission thoroughly discussed this issue in the AT&T Order at 53-58. While the US West position in this arbitration is somewhat more detailed than the one presented in the AT&T Arbitration, it remains essentially the same as the one rejected by the Commission in the AT&T Order. US West proposes that if it fails to provide services to Sprint that do not meet at least the average performance provided to itself and all others for that activity, it will use its best efforts to do so during the next review period. The Commission rejected this approach, finding it too vague, inadequate to assure "service parity", and inadequate safeguard consumers in light of US West's recent history of service quality problems. This Arbitrator agrees.

The Commission, rejecting the recommendation of the Arbitrators in the AT&T Arbitration, adopted the standards and Direct Measures of Quality (DMOQ), along with the performance credits, proposed by AT&T. It did so stating that it considered specific, enforceable quality standards such as the ones proposed by AT&T to be an essential component of any contract between an incumbent and new entrant, to serve the interests of end-users by establishing clear benchmarks, and to further the interest of competition by impeding an incumbent's ability to deny new entrants the quality services and facilities they require. It adopted the performance credits as a meaningful method to enforce the quality standards. This Arbitrator agrees with the Commission's reasoning and recommends that it be applied in this manner.

In the Joint Position Statement, Sprint did not propose any specific language that would implement the use of the AT&T DMOQ method. The Arbitrator would recommend that the following provision be adopted in the Arbitrated Interconnection Agreement:

31. SERVICE STANDARDS

The AT&T Supplier Performance Quality Management System, Metrics and Gap Closure Plans, and Direct Measures of Quality (DMOQs) as set forth in Attachment 11 to the Arbitrated Interconnection Agreement between AT&T Corporation and US West Communications, Inc. approved by the Commission are incorporated as a part of this agreement.

RECOMMENDATION

The Arbitrator respectfully recommends that the Minnesota Public Utilities Commission order that the final arbitrated agreements between Sprint and US West contain the terms and conditions recommended in this Report.

Dated this 19th day of December 1996.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Transcript prepared.
Two Volumes
Shaddix & Associates

USWC remains a rate of return regulated company in Minnesota. It may petition the Commission for a rate increase if the Company alleges its revenue requirement is not being met.