(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF WESTERN WIRELESS CORPORATION PETITION FOR ARBITRA­TION PURSUANT TO SECTION 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996 OF THE RATES, TERMS, AND CONDITIONS OF INTERCONNECTION WITH U S WEST. | )  )  )  )  )  )  ) | CASE NO. USW-T-96-11  WST-T-96-1  ARBITRATION DECISION |

On September 6, 1996, Western Wireless Corporation (Western) filed a Petition for Arbitration with the Commission pursuant to Section 252 of the federal Telecommunications Act of 1996 (Act).  Western is a commercial mobile radio service (CMRS) provider and asks the Commission to arbitrate terms for reciprocal compensation arrangements with U S WEST Communications, Inc. (U S WEST), the incumbent local exchange carrier (LEC).  Section 252 of the Act provides procedures for negotiation, arbitration, and approval of agreements for interconnection between telecommunica­tion providers.  An incumbent LEC may negotiate and enter into a binding agreement with a telecommunications carrier that requests interconnection, services or network elements from the incumbent carrier.  The parties may also request that a state commission be involved in the negotiations as a mediator.  Finally, Section 252(b) of the Act provides for compulsory arbitration in the event that negotiation by the parties is unsuccessful.

This arbitration is guided by standards for the transport and termination of traffic between carriers contained in the Act.  Section 251(b)(5) provides that an incumbent LEC has a “duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.”  Section 252(d)(2) provides benchmark standards for a state commission to consider in determining reciprocal compensation.  That section provides that

a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

In an arbitration under Section 252, the Commission will limit its consideration to those issues set forth in the Petition and response.  The purpose of an arbitration process is to determine issues unresolved by the negotiations of the parties so that an agreement between the parties can be finalized.  The goal is a final agreement by the parties.  Thus, the Commission is interested in resolving the issues consistent with the standards of Section 252(d)(2) and the agreement or acquiescence of the parties.

An Arbitration Decision is unlike an order the Commission usually provides in contested cases.  This Decision identifies the unresolved issues identified by the parties, followed by a brief discussion and the decision of the Commission on that issue.  Following resolution of the disputed issues by this arbitration, the parties should prepare a final agreement containing the terms determined by arbitration, and submit it to the Commission for approval.

Issue No. 1: What rates should be used for the transport and termination of traffic?

Commission Discussion and Decision:

This issue has been largely resolved by the parties.  U S WEST on October 1, 1996, proposed rates for the transport and termination of traffic, to which Western indicated agreement.  However, U S WEST subsequently revised its proposed rates to include recovery for a depreciation reserve deficiency.  This component increased the proposed rates by $.0011 per minute.  Western does not agree to the additional cost component.  Thus, the parties disagree whether U S WEST is entitled to increase the originally proposed rates to recover a depreciation reserve deficiency.

Under rules promulgated by the Federal Communications Commission (FCC), a cost component to recover a depreciation reserve deficiency would not be permissible.  However, those rules by the FCC currently are the subject of litigation and have been stayed by the United States Eighth Circuit Court of Appeals.  We do not believe a cost component to recover a depreciation reserve deficiency is impermissible by the terms of Section 252(d)(2).  Subparagraph (ii) of Section 252(d)(2) requires mutual and reciprocal rates for the transport and termination of calls to be based on “a reasonable approximation of the additional costs of terminating such calls.”  We do not believe the standards in this section preclude a state commission from determining that reciprocal compensation can contain components of embedded costs.  We approve the rates agreed to by the parties as adjusted by the slight increase for depreciation reserve deficiency cost recovery.  However, we also believe there is merit in Western’s argument that the appropriate amount or size of the reserve deficiency has not been adequately established.  The Commission will determine the amount of recovery of depreciation reserve deficiency, if any, in the pending U S WEST rate case, or some other proceeding may be presented to establish the appropriate amount of the deficiency.  Accordingly, we approve the cost component for the depreciation reserve deficiency in the rates for this case, subject to refund in the event the Commission concludes that the deficiency does not exist or is less than the amount allowed here.

The Commission approves the following or substantially similar contract term to resolve this issue:

The following rates shall apply as mutual and reciprocal compensation for the transport and termination of interconnected traffic exchange between the Western Wireless and U S WEST networks:

CALL TERMINATION

Weighted Average Per MOU$0.004498

CALL TRANSPORT

Tandem-Switched Transport

Tandem-Switching Per MOU$0.002545

Tandem Transmission

Non Distance Sensitive

0 MileNone

Over 0 - 8 Miles$0.000370

Over 8 - 25 Miles$0.000371

Over 25 - 50 Miles$0.000368

Over 50 Miles$0.000370

Distance Sensitive

0 MileNone

Over 0 - 8 Miles$0.000005

Over 8 - 25 Miles$0.000010

Over 25 - 50 Miles$0.000014

Over to Miles$0.000010

The amounts of $.0011 in the Call Termination and Tandem-Switching rates are subject to refund should the IPUC determine in a later proceeding that the depreciation reserve deficiency is less than $.0011.

Issue No. 2: Is Western entitled to compensation for termination of traffic at end-office switched rates rather than tandem switch rates?

Commission Discussion and Decision

Because the Act provides that rates for the transport and termination of telecommunica­tions traffic must be mutual and reciprocal, Western claims that it is entitled to be compensated at U S WEST’s tandem switch interconnection rate rather than at end-office rates.  Under the current contract between the parties, Western pays both a tandem switching and transport element and the end-office switching rates when Western delivers its traffic to U S WEST at a tandem switch.  If Western delivers its traffic to U S WEST at an end-office location, Western pays only the end-office switching charge.

We believe the record in this case establishes a distinction in functions between a tandem switch and an end-office switch.  Additionally, Western has the option of avoiding the tandem switching charge by delivering its traffic to U S WEST at end-offices for termination.  Western has only one switching facility that functions like an end-office switch rather than a tandem switch when traffic is delivered from U S WEST to Western.  Accordingly, the contract between the parties should include a term for end-office switched rates as well as tandem switch rates.  Western is not entitled to be paid tandem switch rates for the traffic it carries for U S WEST because the Western switch does not function the same as U S WEST’s tandem switch.

The Commission approves the following or substantially similar contract term to resolve this issue:

Western Wireless shall be compensated at the established end-office interconnection rate level.

Issue No. 3: What is the effective date of reciprocal rates?

Commission Discussion and Decision:

Rules promulgated by the FCC provide that mutual and reciprocal rates for the transport and termination of traffic are effective as of the date a CMRS requested interconnection with the LEC, regardless of the amount of time it takes thereafter to reach an agreement.  The rule states, until new rates are negotiated, that “a CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of local telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.”  This rule is also the subject of the Eighth Circuit litigation, and initially was stayed by the Court.  The Court subsequently lifted its stay for this rule as of November 1, 1996.

Western sought to renegotiate its interconnection agreement with U S WEST on March 29, 1996.  Thus, Western claims that reciprocal rates should be effective retroactively to that date.  U S WEST argues that the FCC rule requiring retroactive rates did not become effective until November 1, 1996, and thus it is not possible to create an effective date for rates prior to that date.

We question whether the FCC can require retroactive rates that become effective on the date a CMRS provider requested to renegotiate a contract with an incumbent LEC.  However, the Eighth Circuit Court of Appeals has reinstated the FCC rule as of November 1, 1996, and U S WEST indicated its willingness to abide by the rule as of that date.  Accordingly, we approve a contract term that requires the effective date of reciprocal rates to be November 1, 1996.  The new rates approved in this Decision shall be effective upon approval of the renegotiated contract by the Commission.

The Commission approves the following or substantially similar contract term to resolve this issue:

U S WEST shall compensate Western Wireless for traffic terminated by Western Wireless at the existing contract rates of $.0245 for the period from November 1, 1996, to the date that new mutual compensation rates take effect.  The new rates and other provisions established through arbitration shall take effect upon final approval of the contract by the IPUC.

Issue No. 4: What is the definition of local traffic that applies?

Commission Discussion and Decision:

This issue arises because, under FCC rules, traffic between an incumbent LEC and a CMRS network that originates and terminates within the same major trading area (MTA) is subject to transport and termination rates under Section 251(b)(5) rather than access charges.  U S WEST Brief, p. 26.  The FCC rule defines local telecommunications traffic between an LEC and CMRS provider as all calls that originate and terminate within the same MTA.  This rule was originally stayed by the Eighth Circuit, but also was reinstated by the Court on November 1, 1996.  Thus, Western argues that U S WEST has the legal obligation to recognize the MTA as the defining point for application of local interconnection rates.  U S WEST argues that CMRS providers should not be excluded from the requirement to contribute to the use of the public switched network by paying access charges.  U S WEST urges the Commission, should it determine the MTA applies as the local calling area, to include an administrative factor of 5% to recognize that access charges should apply to some calls even if the MTA is the local calling area.  U S WEST contends that, in the absence of actual calling data, the contract should provide for a 5% administrative factor.  In other words, 5% of all traffic between U S WEST and Western would be deemed to be subject to access charges.

We agree that wireless customers should be subject to the appropriate access charges, even though the MTA is the local calling area.  Accordingly, we approve a contract term that provides that 5% of the traffic between U S WEST and Western shall be regarded as subject to access charges.

The Commission approves the following or substantially similar contract term to resolve this issue:

The MTA shall be regarded as the local calling area. However, to recognize that some traffic within the MTA is subject to switched access charges, an administrative factor of  5% of all traffic will be used to determine the appropriate amount for switched access charges.

Issue No. 5: What is the amount of U S WEST traffic (land-to-mobile) that terminates on Western’s network?

Commission Discussion and Decision:

This issue arises because “Western Wireless is not able to ascertain, and U S WEST is not able to identify, the point of origin for traffic that terminates on Western Wireless’ network.”  Western Wireless Brief, p. 26.  Some traffic originates with another carrier, is handed to U S WEST, which transfers it to Western where it terminates.  U S WEST apparently does not charge the originating carrier a termination charge. Thus,  U S WEST argues that it “should not have to pay for traffic originating from other carriers that transits U S WEST’s system.”  U S WEST Brief, p. 18.  Western does not disagree with that position so long as U S WEST is not receiving termination charges from the originating carrier.  Western Brief, p. 26.

This issue would be moot if both telecommunication systems had full SS7 functionality that would allow identification of the originating carrier of each call, making precise billing arrangements possible.  In the absence of the ability to obtain requisite identifying information to create exact billing arrangements, the parties proposed a proxy to represent traffic that U S WEST transfers to Western for termination.  Western proposed 24% of all traffic as a proxy; U S WEST recommended 17% as the proxy number.

Each party provided evidence to support its suggested proxy figure.  However, none of the supporting evidence is based on actual calling data for U S WEST and Western in Idaho.  Under these circumstances, we find that a compromise figure of 20% should be used as a proxy figure.  We also accept Western’s proposal that this issue should be reviewed by the parties and revised when appropriate traffic studies are available.  When SS7 service is implemented, the proxy can be eliminated.

The Commission approves the following or substantially similar contract term to resolve this issue:

Western Wireless shall receive terminating compensation for 20% of the traffic that flows between the U S WEST and Western Wireless networks.  That percentage will be reviewed and revised, if needed, after six months and annually thereafter, based on traffic studies, until SS7 functionality is fully implemented.

An agreement between the parties containing these or substantially similar provisions will be approved by the Commission consistent with Section 252.  The parties are directed to prepare a final agreement containing the terms approved in this decision.  The parties should present a final agreement to the Commission within 14 days for final approval pursuant to Section 252(e) of the Act.

DATED this                  day of December 1996.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean Jewell

Assistant Commission Secretary

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

December 26, 1996