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

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| IN THE MATTER OF THE JOINT APPLICA­TION OF CITIZENS TELECOMMUNICATIONS COMPANY DBA CITIZENS TELECOM AND U S WEST COMMUNICA­TIONS, INC.  FOR APPROVAL OF AN AGREEMENT FOR RESALE PURSUANT TO 47 U.S.C. § 252(e). | )  )  )  )  )  ) | CASE NO. USW-T-96-14 CTZ-T-96-2    ORDER NO.  26778 |
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On November 18, 1996, Citizens Telecommunications Company  dba Citizens Telecom (CTZ) and U S WEST Communications, Inc. (U S WEST) filed a joint Application for approval of an agreement for resale services. On December 5, 1996, the Commission issued a Notice of Application and Notice of Modified Procedure. By this Order the Commission approves the Application.

DISCUSSION

CTZ and U S WEST filed a joint Application for approval of an agreement for resale services. The Agreement provides for CTZ to resell U S WEST local exchange service in Idaho.  The Application indicated that this Agreement was reached through voluntary negotiations and is submitted to the Commission for approval pursuant to Section 252(e) of the Telecommunications Act of 1996 (Act).

Section 252(e) of the Act sets the guidelines for approval of interconnection agreements.  It states:

(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)the agreement (or 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;

47 U.S.C. § 252 (e)

The joint applicants ask for approval of this Agreement and claim that because this Agreement was reached through voluntary negotiations a hearing is not necessary. This Agreement allows CTZ to resell U S WEST local exchange services and other services in U S WEST’s Idaho service territory.  Some of the services are available at a wholesale rate while others are not.(footnote: 1)

On December 5, 1996, the Commission issued a Notice of Application and Notice of Modified Procedure. The following parties filed comments in this case: MCI, AT&T, Commission Staff, U S WEST and CTZ.  The parties raised the following issues concerning the Agreement, precedential value of the Agreement, a section that purports to limit CTZ’s participation in U S WEST cases, and a section that appears to limit services available for resale.   AT&T asks the Commission to strike certain provisions of the resale Agreement or the Agreement in whole, claiming that these provisions violate public interest.  Commission Staff and MCI do not oppose the approval of the Agreement.

I.  PRECEDENTIAL VALUE OF THE AGREEMENT

Several parties raised the concern that this Order should not be precedent for other agreements the Commission may review in the future.

MCI

On December 26, 1996, MCI filed comments on the Application for resale.  MCI recommends that the Agreement should not be precedential for other agreements.  MCI further recommends that because of this Agreement does not involve an examination of Section 251 compliance, it follows by necessary implication that this Agreement could not in the future be considered as an approved Agreement for the purposes of Section 271, relating to Bell operating company entry into interLATA services.

AT&T

On December 26, 1996, AT&T filed comments on the Agreement.  AT&T, like MCI, asks the Commission conclude that the Agreement has no precedential effect on the Commission’s future arbitrated interconnection and resale agreements between LECs and CLECs.

U S WEST

On January 6, 1997, U S WEST Communications filed Reply Comments in this case.  U S WEST addresses the issues raised by AT&T and MCI on the “precedential” value of this Agreement. U S WEST concedes that this Agreement does not create “binding legal precedent,” but argues that it still has precedential value.  U S WEST also addresses the assertions by MCI to the obligations under Sections 251 and 271.  U S WEST asserts that the Joint Petition does not seek a determination on these points, therefore, such determination should be addressed in appropriate proceedings on those issues.

STAFF

Staff also echoes the concern that this Agreement may be viewed as a precedent by the Commission.  Staff agrees with U S WEST that the approval of the Agreement does not create binding legal precedent.  Staff views this Agreement as reflecting CTZ’s desire to enter into the local market as expeditiously as possible.  Staff points out that paragraph Z of the Agreement allows CTZ to accept any other agreement for resale service approved by the Commission under Section 252 of the Act.

Commission Findings

Section 251 of the Telecommunications Act imposes several duties on incumbent local exchange companies, all designed to encourage local competition.  To approve agreements resulting from  arbitration, the Commission must determine that the Agreement is consistent with Section 251 requirements (47 U.S.C. 253(e)(2)(B)).  Agreements reached through voluntary negotiations, however, do not require a similar analysis.  Instead, the Commission looks to the guidelines set forth in Section 252(e)(2)(A).  Thus in an Order approving this Agreement, the Commission is not required to make any finding that the Agreement is consistent with Section 251.

The parties were unanimous in recommending that the terms of the Agreement between CTZ and U S WEST not be binding precedent for other agreements.  Our approval of the Agreement at issue here is based on the terms and circumstances presented by the parties in this case.  Other agreements entered into by other parties, whether through voluntary negotiations, mediation, or arbitration, will be presented to the Commission with their own unique terms and conditions.  Beyond informing others of terms the Commission does not disapprove in this voluntarily negotiated agreement, our approval of the CTZ/U S WEST Agreement has no precedential effect on the terms of other agreements.

II.  SECTION II(B)--   “OPPOSITION TO U S WEST CASES”

The next issue raised by the parties is concern over the language contained in Section II(B).  Language contained in paragraph II(B) of the Agreement states:

(ii)  Scope of the Agreement

Reseller agrees that, in any proceeding before a Commission, in any state to which this Agreement applies, in which proceeding USWC is advocating increases in residential rates to recover costs accompanied by decreases in rates for competitive services to remove historical subsidies, Reseller will not participate in opposition to USWC’s advocacy and may intervene, file testimony, participate at hearing, and otherwise use its best efforts to support USWC’s advocacy in such proceeding before the state Commission to the extent such participation or lack of participation is consistent with the company policy positions of Reseller and its affiliates.

Agreement at 4.

AT&T

AT&T asserts that Section II(B) unreasonably prevents CTZ from opposing U S WEST’s requests for residential rate increases.  AT&T explains that public interest is harmed when CLECs (competitive local exchange carriers) such as CTZ unconditionally agree to support U S WEST’s request for residential rate increases because (1) higher residential rates are not in the public interest especially when there is no evidence of increasing costs, and (2) higher residential rates could produce a price squeeze and anticompetitive effects on other CLECs by unfairly subsidizing the lowering of U S WEST’s business rates.  AT&T recommends that the Commission should reject the whole Agreement because it is harmful to the public interest or in the alternative the Commission should strike Section II(B) of the Agreement.

U S WEST

U S WEST explains that the language contained in paragraph II(B) is clear that CTZ’s obligation to support is merely permissive and its obligation to refrain from participation in rate proceeding is conditioned upon being consistent with the policy positions of Citizens Telecom and its affiliates.  Reply Comments at p. 5.  U S WEST asserts that AT&T mischaracterized the Agreement when it repeatedly referred to the provisions as the Agreement to “support” and the characterization obligation as “unconditional.”  U S WEST explains that the Agreement does provide that CTZ may participate in support of U S WEST’s rate increases and must refrain from intervention in opposition unless doing so is inconsistent with its corporate policy.  Reply Comments at 5.

CTZ

CTZ asserts that AT&T has mischaracterized Section II(B) of the Agreement when it stated that CTZ has “unconditionally” agreed to support any U S WEST’s  request for residential rate increases in the “next several years.” CTZ asserts that it has retained discretion to intervene  in U S WEST’s rate proceedings in accordance with its company policy. CTZ also asserts that AT&T has incorrectly stated that Section II(B) will be in effect “for the next several years.”  Finally, CTZ explains that the Resale Agreement provides for termination after one year if either party so chooses.

STAFF

Staff expressed concern with the language contained in paragraph II(B) of the Agreement that appeared to limit CTZ’s right to participate in U S WEST’s filings before the Commission.  After reviewing the comments filed by U S WEST and CTZ, Staff believes that there are adequate safeguards in the Agreement to protect the public interest.

Commission Findings

Based on the comments filed in this case, we find that CTZ’s decision whether to participate in any proceeding before the Commission does not affect the ability of other parties to be part of the proceeding.  We also find that Section II(B) of the Agreement is not inconsistent with the public interest.

III.  “RESTRICTION ON RESALE” -- SECTION IV.A.2; APPENDIX A

AT&T

The final issue of concern to AT&T involved the resale provisions of the Agreement contained in Section IV.A.2.  AT&T points out that Section IV.A.2, Appendix A to the Agreement, prevents CTZ from reselling lifeline service, concession service, technical trials and grandfathered products and services other than to existing customers of  those services.  AT&T further explains that in the Agreement U S WEST does not give up anything in exchange for CTZ’s “waiver of its federal right to resell such service.”  AT&T claims that the public will ultimately be harmed by this weak resale provision because the above services will only be available from U S WEST.  AT&T states that even the fact that a relatively few number of customers subscribe to these services does not mean that the public interest is not harmed by their unavailability from alternative providers.  The public interest is harmed whenever competition for particular services is not allowed to develop.  AT&T, therefore, argues that the Commission should reject the Agreement in its entirety or the Commission should modify the resale provisions of this Agreement.

U S WEST

U S WEST asserts that the Agreement was a product of successful negotiation.  CTZ has not complained about the very minimal restrictions on resale and there is nothing to show that the restrictions will inhibit any of CTZ’s business plans.  U S WEST asserts that this Agreement is the product of arms-length negotiation between competitors under the outline provided by the federal law.

CTZ

CTZ asserts that all the provisions of the CTZ/U S WEST Agreement are the product of compromise and negotiation as authorized by the Telecom Act and the Commission can reject a negotiated Agreement only if it finds that it discriminates against another carrier or is not consistent with the public interest.  CTZ states that AT&T is mistaken in claiming that it has waived the right to resell certain services.  CTZ explains that Section IV(E)(1) of the Agreement explicitly provides for different scenarios in which certain services not currently available for resale under this Agreement may become available, or certain services now available with no discount may become available at a discount, as a result of Commission Orders.

No other party addressed this issue.

Commission Findings

We agree with CTZ that speculation about which party gave up what is irrelevant to the Commission’s review of a voluntarily negotiated resale agreement.  We find no cause to reject Section IV.A.2 of the Agreement based on the criterion in Section 252(e)(2)(A) of the Act.

ULTIMATE FINDINGS AND CONCLUSIONS OF LAW

CTZ and U S WEST are telephone corporations pursuant to Idaho Code §§ 61-121 and 61-129.  The Commission has jurisdiction over this matter pursuant to Title 61 of the Idaho Code and Section 252(e) of the Telecommunications Act.  We find that the Agreement does not discriminate against any telecommunications carrier not a party to the Agreement and that the Agreement is not inconsistent with the public interest.  The Agreement is hereby approved.

O R D E R

IT IS HEREBY ORDERED that the Agreement is approved.

THIS IS A FINAL ORDER.  Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in these Case Nos. USW-T-96-14 and CTZ-T-96-2  may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in these Case Nos. USW-T-96-14 and CTZ-T-96-2 .  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of January 1997.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**FOOTNOTES**

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1   The following services are available at a 12% discount: Basic exchange business; PBX trunks; ISDN; Frame Relay; Directory listings; Central Office features; and IntraLATA MTS is available at a rate of $.12/minute.

   The following services are available for resale but not at a discount: Basic exchange residence; Centrex; Private line/Special access; Public Access Line; and Volume Discount plans or Term Agreements.

     The following services are not available for resale: Lifeline; Concession service; Technical trials and Grandfathered products and services (except to customers currently served with such services).

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

February 4, 1997