DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

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TONYA CLARK

DON HOWELL

STEPHANIE MILLER

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WORKING FILE

FROM:WELDON STUTZMAN

DATE:OCTOBER 24, 1997

RE:REQUEST FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN SPRINT COMMUNICATIONS AND U S WEST; CASE NOS. SPR-T-97-3 AND USW-T-97-16

On August 28, 1997, Sprint Communications Company (Sprint) filed an Application for approval of a negotiated interconnection agreement between Sprint and U S WEST Communications, Inc.  The agreement provides terms for numerous interconnection issues including collocation, entrance facilities or meet point arrangements, the exchange of traffic between U S WEST and Sprint, compensation for transport and termination of traffic, the purchase of U S WEST retail services for resale by Sprint, the acquisition of unbundled network elements from U S WEST, and other issues.  The Application was filed only by Sprint, although the interconnec­tion agreement has been signed by both parties.

On September 22, 1997, the Commission issued a Notice of Petition and Notice of Modified Procedure.  During the comment period, comments were filed by U S WEST, and responsive comments were filed by Sprint on October 22, 1997.  In its comments, U S WEST states that the agreement is not a final, complete agreement, even though it has been signed by the parties.  The agreement was executed on July 15, 1997, three days before the Eighth Circuit Court of Appeals issued a decision in the Iowa Utilities Board v. Federal Communications Commission case.  According to U S WEST, the Eighth Circuit decision invalidates portions of FCC regulations that were the basis for some of the terms in the agreement.  U S WEST contends the agreement now requires modification to bring it into compliance with the Eighth Circuit Court decision.

U S WEST states that the agreement contains terms to allow the parties to modify it to reflect changes in perti­nent regulations or laws.  The agreement requires the parties to negotiate in good faith to make modifications.  U S WEST requests that the Commission not approve the agreement until the parties have changed its terms or, if the Commission does approve the agreement, U S WEST suggests the Commission “provide a mechanism to prevent a party from being required to perform a provision of the agreement which has been superseded by the Eighth Circuit’s decision.”  Alternatively, U S WEST suggests the Order approving the agreement “require the parties to negotiate and submit such modifying language to the Commission within 60 days of the Commission’s Order.”

In its responsive comments, Sprint points out that U S WEST does not contend the agreement fails to meet the requirements of 47 U.S.C. § 252(e).  Sprint argues that the Commission’s review authority under that section is very narrow, and because the agreement meets the requirements of Section 252(e), the Commission is required to approve it.  Sprint states that the agreement submitted to the Commission is a final, complete and enforceable contract that has been signed by both parties.

Although Sprint recognizes that provisions of the agreement may need to be altered in light of the Eighth Circuit Court decision, Sprint is concerned that the negotiation process to modify the terms may take a long time.  In the meantime, Sprint argues that the agreement should be in place so that it can begin to provide telecommunications service in Idaho.  Sprint urges the Commission to approve the agreement subject to the requirement that it be amended in response to the Eighth Circuit Court decision.  Sprint stated that it would not object to the Commission’s imposition of a reasonable deadline, such as 60 days from the date of the Commission Order approving the agreement, for submitting either negotiated amendments or a request for arbitration of unresolved issues to the Commission.

Sprint also strongly objects to the suggestion by U S WEST that the Commission provide in its Order that a party need not perform provisions of the agreement that it believes has been superseded by the Eighth Circuit Court decision.  Such a provision, according to Sprint, “would only provide U S WEST with further incentive to unreasonably interpret the Eighth Circuit decision.”

Staff Recommendation

The Commission has before it a final interconnection agreement that has been executed by both parties to the agreement.  In those circumstances, 47 U.S.C. § 252(e) provides a narrow function for the Commission.  According to that section, the Commission may only reject the interconnection agreement if:

1.the agreement (or a portion thereof) discriminates against a telecom­mu­ni­ca­tions carrier not a party to the agreement; or

2.the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

Because the agreement itself provides the means for the parties to renegotiate terms as needed, Staff does not believe approval of the agreement would be inconsistent with the public interest, convenience and necessity, and there is no contention that the agreement discriminates against other telecommunications carriers.  Accordingly, Staff recommends approval of the agreement, recognizing that portions of it may need to be modified as a result of the Eighth Circuit Court decision in the Iowa Utilities Board case.

Commission Decision

Should the interconnection agreement between Sprint and U S WEST be approved?

Should the parties be directed to submit modifed terms to the Commission within a specified period (60 days)?

Weldon Stutzman

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