DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER SMITH

COMMISSIONER KJELLANDER

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

JOE CUSICK

WAYNE HART

DAVID SCOTT

WORKING FILE

FROM:CHERI C. COPSEY

DATE:MARCH 26, 1999

RE:CASE NO. USW-T-99-1; JOINT APPLICATION OF U S WEST AND TOPP COMM, INC. FOR APPROVAL OF AN AGREEMENT FOR RESALE

Pursuant to Section 252(e) of the Telecommunications Act of 1996, U S WEST Communications and Topp Comm, Inc filed a Joint Application on January 5, 1999, requesting approval of an agreement for resale dated December 22, 1998.  On March 4, 1999, the Commission reviewed the filings of record in Case No. USW-T-99-1 and determined that the public interest may not require a hearing to consider the issues presented and that the issues raised by the Application may be processed under Modified Procedure, i.e., by written submission rather than by hearing.  Order No. 27940.  Only Staff filed comments in response to that Order.

BACKGROUND

Under the terms of the Telecommunications Act of 1996, resale agreements must be submitted to the Commission for approval.  47 U.S.C. § 252 (e)(1).  The Commission may reject an agreement adopted by negotiation only if it finds that the agreement discriminates against a telecommunication carrier not a party to the agreement or implementation of the agreement is not consistent with the public interest, convenience and necessity.  47 U.S.C. § 252 (e)(2)(A).  If the Commission does not act to approve or reject the agreement within 90 days after its submission, the agreement is deemed approved.  47 U.S.C. § 252 (e)(4).  The Commission’s decision is not reviewable by the state courts.  Id.

Staff reviewed the language of this Agreement and found the terms and conditions to be essentially identical to those contained in previous agreements previously approved by this Commission.  Staff found that the resale rates included in this Agreement are identical to those reached through the arbitration between U S WEST and AT&T.  The resale rates reached through arbitration have been included in the agreements between U S WEST and AT&T, Sprint, ATGI  and others.

Staff, therefore, concludes that the terms or conditions in this Agreement are not discriminatory.  Staff concurs with the U S WEST’s and Topp’s claim that the Agreement is consistent with the pro-competitive policies of the Commission, the Idaho Legislature and the Telecommunications Act of 1996.  The Staff finds that the Agreement is consistent with the public interest.

STAFF RECOMMENDATION:

Staff recommends the Commission approve this interconnection agreement as filed.

Commission Decision

Should the Application of U S WEST and Topp Comm approval of the resale agreement be approved?

Cheri C. Copsey

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