

**BEFORE THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE PETITION FOR) FINDINGS OF FACT AND CONCLUSIONS
ARBITRATION ON BEHALF OF WESTERN) OF LAW AND ORDER APPROVING
WIRELESS CORPORATION WITH U S) INTERCONNECTION AGREEMENT;
WEST COMMUNICATIONS, INC.) NOTICE OF ENTRY OF ORDER
)**

TC96-160

On September 6, 1996, the Public Utilities Commission (Commission) received a Petition for Arbitration from Western Wireless Corporation, d/b/a Cellular One (Western Wireless). Western Wireless petitioned the Commission, pursuant to Section 252(b)(1) of the federal Telecommunications Act of 1996 (federal Act), to arbitrate open issues related to its interconnection negotiations with U S WEST Communications, Inc. (U S WEST).

On October 1, 1996, the Commission received the Response of U S WEST to Western Wireless' Petition for Arbitration. Along with the Response of U S WEST, U S WEST also filed a Motion to Dismiss that portion of Western Wireless' Petition for Arbitration that sought to use the Federal Communication Commission's proxy rates during the course of the arbitration while new interconnection rates were being established. The Commission held a prehearing conference on October 7, 1996, at which time it directed the parties to file prefiled testimony along with a list of resolved and unresolved issues on or before October 28, 1996; allowed the parties to file optional re al testimony on or before November 15, 1996; and scheduled a hearing on this matter on November 26-27, 1996, in Room 412 of the State Capitol, Pierre, South Dakota.

The South Dakota Independent Telephone Coalition (SDITC) filed a Petition to Intervene on September 20, 1996. A regularly scheduled October 8, 1996, meeting the Commission considered SDITC's Petition to Intervene. The Commission voted to deny the Petition to Intervene due to SDITC's inability to show tha pecuniary interests would be directly and immediately affected by the Commission's order in the above referenced matter.

The hearing was held as scheduled on November 26, 1996. Following the hearing both parties filed briefs and proposed findings. A December 20, 1996, meeting, the Commission orally issued its decision. On December 24, 1996, the Commission issued its written decision. In a joint filing dated January 23, 1997, the parties submitted their Interconnection Agreement and requested Commission approval pursuant to 47 U.S.C. § 252(e).

On January 23, 1997, the Commission electronically transmitted notice of this filing to interested individuals and entities. The notice stated that any person that wanted to comment on the parties' request for approval of the Interconnection Agreement could do so by filing written comments with the

Commission and the parties to the agreement no later than January 30, 1997. No written comments were filed. On February 21, 1997, at a duly noticed ad hoc meeting, the Commission considered whether to approve the Interconnection Agreement between Western Wireless and U S WEST.

The Commission having examined the evidence of record and being fully informed in the matter now makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

U S WEST is a local exchange carrier and an incumbent local exchange carrier as those terms are defined in 47 U.S.C. §§ 3, 251, and 252 of the federal Act.

II

Western Wireless is a telecommunications carrier as those terms are defined in 47 U.S.C. §§ 3, 251, and 252 of the federal Act. Western Wireless is also classified as a commercial mobile radio service (CMRS) provider.

III

On August 8, 1996, the Federal Communications Commission (FCC) issued its First Report and Order, In the Matter of the Implementation of Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185 (First Report) which contained the rules implementing local competition provisions and the interconnection provisions of the federal Act.

IV

On September 27, 1996, the Eighth Circuit Court of Appeals temporarily stayed the implementation of these rules before their effective date. On October 15, 1996, the Eighth Circuit Court of Appeals granted a partial stay pending judicial review. The stay pertains to the following rules: §§ 51.501 to 51.515, 51.601 to 51.611, 51.701 to 51.717, and 51.809. On November 1, 1996, the Eighth Circuit Court of Appeals lifted the stay as to rules contained in §§ 51.701, 51.703, and 51.717.

V

The FCC in ¶ 1008 of its First Report found that all CMRS providers, such as Western Wireless, offer telecommunications. The FCC further concluded that LECs are obligated pursuant to section 251(b)(5) and the corresponding pricing standards of section 252(d)(2) to enter into reciprocal compensation arrangements with all CMRS providers for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation.

VI

On March 29, 1996, Western Wireless requested re-negotiation of its interconnection arrangements with U S WEST. Exhibit 1, Attachment A

VII

Pursuant to 47 U.S.C. § 252(b)(1), a party to a negotiation with an incumbent local exchange carrier may petition the state Commission to arbitrate any open issues. An arbitrated agreement must meet the requirements of 47 U.S.C. § 251 including the regulations prescribed by the Federal Communications Commission pursuant to that section and the standards set forth 47 U.S.C. § 252(d). See 47 U.S.C. § 252(e)(2)(B).

VIII

On September 6, 1996, Western Wireless submitted a Petition for Arbitration asking the Commission, pursuant to 47 U.S.C. § 252(b)(1) to arbitrate open, unresolved issues related to its negotiations with U S WEST. Exhibit 1.

IX

A hearing was held on this matter on November 26, 1996, in Room 412 of the State Capitol in Pierre, South Dakota.

X

On December 24, 1996, the Commission issued its decision on the following unresolved issues:

1. Whether U S WEST may be allowed to recover its depreciation reserve deficiency through these interconnection rates?
2. Whether Western Wireless should be allowed to be compensated at the tandem interconnection rate?
3. What is the percentage of traffic subject to reciprocal compensation for Western Wireless?
4. At what date shall U S WEST be required to compensate Western Wireless for traffic terminated on Western Wireless' network at current contract rates prior to implementation of the new rates? At what date are the new interconnection rates effective?
5. Whether all traffic that originates and terminates in the same MTA shall be subject to local interconnection rates?

XI

In its jointly filed Interconnection Agreement the parties incorporated the Commission's decision of December 24, 1996.

XII

The interconnection rates in the Interconnection Agreement are exclusive of a depreciation reserve deficiency add-on and reflect those rates approved by the Commission. Page 5, Appendix A, of the Interconnection Agreement.

XIII

In compliance with the Commission's Order of December 24, 1996, wherein the Commission found that

Western Wireless should not be compensated at the tandem interconnection rate, the Interconnection Agreement specifically states “[f]or purposes of call termination, the initial Carrier [Western Wireless] switch shall be treated as an end office switch.” Page 11, Section IV(D)(1)(c), of the Interconnection Agreement.

XIV

Reciprocal compensation for calls that are terminated on Western Wireless’ network that originate with U S WEST end customers are appropriately calculated in the Interconnection Agreement at 17%. Page 15, Section IV(I)(2), of the Interconnection Agreement; Appendix A-1; Page 1 of the Amendment, Section 1(6.A)(b) and (c); and Attachment 6A of the Amendment.

XV

In compliance with the Commission's Order of December 24, 1996, November 1, 1996, is established as the date Western Wireless is entitled to receive reciprocal compensation at existing contract rates until such time that new rates go into effect. Interconnection Agreement Amendment, page 1.

XVI

In compliance with the Commission's Order of December 24, 1996, the Interconnection Agreement states that new rates shall be effective at the time the interconnection agreement between Western Wireless and U S WEST is approved by this Commission. Page 36, Section XXII(B)(1), of the Interconnection Agreement.

XVII

In compliance with the Commission's Order of December 24, 1996, the Interconnection Agreement states that all traffic that originates and terminates within the same Major Trading Area, as defined by the FCC, shall be subject to local interconnection rates. Page 11, Section IV(C)(4), Section IV(D)(1)(a), of the Interconnection Agreement; Page 13, Section IV(H)(1), of the Interconnection Agreement.

XVIII

The Commission finds that, as required by 47 U.S.C. § 252(e)(2)(A), the negotiated portions of this Interconnection Agreement do not discriminate against a telecommunications carrier not a party to the Interconnection Agreement.

XIX

The Commission finds that, as required by 47 U.S.C. § 252(e)(2)(A), the implementation of the negotiated portions of this Interconnection Agreement is consistent with the public interest, convenience, and necessity.

XX

The Commission finds that the arbitrated portions of this Interconnection Agreement are consistent with the requirements of 47 U.S.C. § 251, 47 U.S.C. § 252(d), and the Arbitration Decision issued by the Commission on December 24, 1996.

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31 and the Federal Telecommunications Act of 1996. The Commission may rely upon any or all of these or other laws of this state in making its determination.

II

The Commission finds that, as required by 47 U.S.C. § 252(e)(2)(A), the Interconnection Agreement does not discriminate against a telecommunications carrier not a party to the Interconnection Agreement.

III

The Commission finds that, as required by 47 U.S.C. § 252(e)(2)(A), the implementation of this Interconnection Agreement is consistent with the public interest, convenience, and necessity.

IV

The Commission finds that the arbitrated portions of this Interconnection Agreement are consistent with the requirements of 47 U.S.C. § 251, 47 U.S.C. § 252(d), and the Arbitration Decision issued by the Commission on December 24, 1996.

V

The Commission incorporates by reference its Arbitration Decision issued December 24, 1996.

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED, that pursuant to 47 U.S.C. § 252(e) the Commission approves the Interconnection Agreement between Western Wireless and U S WEST Communications, Inc.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 21st day of February, 1997. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 21st day of February, 1997.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

By: _____

LASKA SCHOENFELDER,
Commissioner

Date: _____

PAM NELSON, Commissioner

(OFFICIAL SEAL)

(did not participate in this decision)

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