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0000000240

ARIZONA CORPORATION COMMISSION

DATE: APRIL 22, 1997

DOCKET NOS: U-3242-97-017 and E-1051-97-017

TO ALL PARTIES:

Enclosed please find the recommendation of Arbitrator Scott S. Wakefield. The recommendation has been filed in the form of an Opinion and Order on:

COX ARIZONA TELECOM, INC. and U S WEST COMMUNICATIONS, INC.
(INTERCONNECTION AGREEMENT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **10:00** a.m. on or before:

MAY 1, 1997

The enclosed is NOT an order of the Commission, but a recommendation of the Hearing Officer to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 2, 1997

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Geoffrey E. Gonsher
EXECUTIVE SECRETARY

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
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IN THE MATTER OF THE PETITION OF COX ARIZONA TELECOM, INC. FOR ARBITRATION WITH U S WEST COMMUNICATIONS, INC. OF INTERCONNECTION RATES, TERMS, AND CONDITIONS PURSUANT TO 47 U.S.C. § 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996.	DOCKET NO. U-3242-97-017 DOCKET NO. E-1051-97-017 DECISION NO. _____ **OPINION AND ORDER**

DATE OF ARBITRATION: April 1, 1997

PLACE OF ARBITRATION: Phoenix, Arizona

PRESIDING ARBITRATORS: Jerry L. Rudibaugh and Scott S. Wakefield

APPEARANCES: Mr. Lex J. Smith, BROWN & BAIN, P.A., on behalf of Cox Arizona Telecom, Inc.; and

Mr. Timothy Berg, FENNEMORE CRAIG, P.C., on behalf of U S WEST Communications, Inc.

BY THE COMMISSION:

On January 10, 1997, Cox Arizona Telecom, Inc. ("Cox") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration ("Petition") pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 ("Act") to establish an interconnection agreement ("Agreement") with U S WEST Communications, Inc. ("U S WEST"). By Procedural Order dated January 22, 1997, an arbitration was scheduled for April 1, 1997, at the Commission's offices in Phoenix. On February 5, 1997, U S WEST filed its Response to the Petition. The arbitration was held as scheduled and the parties submitted closing arguments in writing on April 11, 1997. The issues resolved in this Decision are those which the parties indicated remained as of April 11, 1997.

DISCUSSION

On February 8, 1996, President Clinton signed the Act into law which established new responsibilities for the Federal Communications Commission ("FCC") as well as for the various state

commissions.[1] On July 2, 1996, the FCC issued *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-268 ("TNP Order"), which established rules so that a customer who changes his local exchange carrier ("LEC") in the same local service area may keep the same telephone number. On July 22, 1996, the Commission in Decision No. 59762 adopted A.A.C. R14-2-1501 through A.A.C. R14-2-1507 ("Arbitration and Mediation Rules"), which authorized the Hearing Division to establish procedures and conduct arbitrations. Also on July 22, 1996, the Commission in Decision No. 59761 adopted A.A.C. R14-2-1301 through 1311 ("Interconnection Rules"), to govern the interconnection of local exchange services between incumbent LECs ("ILECs") and competing LECs ("CLECs"). On August 8, 1996, the FCC released *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 ("Order") and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, in which the FCC adopted initial rules ("Rules") designed to accomplish the goals of the Act.[2]

Pursuant to the Act, telecommunications carriers desiring to interconnect with the facilities and equipment of an ILEC may negotiate the terms of such interconnection directly with the ILEC. If the parties are unsuccessful in negotiating an Agreement, any party to the negotiation may request the Commission to arbitrate any open issues regarding interconnection. The Act requires the Commission to resolve any such issues within 180 days of a telecommunications carrier's initial request to the ILEC for interconnection.

Pursuant to § 252 of the Act, state commissions are required to determine just and reasonable rates for interconnection and network elements based on the cost of providing the interconnection or network element which are nondiscriminatory and may include a reasonable profit. For resale services, rates are to be the wholesale rates based on retail rates excluding costs of marketing, billing, collection

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[1] As part of the Act, the FCC was ordered to issue regulations no later than August 8, 1996 interpreting many of the broad and general terms of the Act.

[2] Unless otherwise noted, any reference to "Para." in this Decision is to Paragraphs in the Order.

and other costs avoided by the LEC. The Commission's Interconnection Rules require the use of total service long run incremental costs ("TSLRIC") to determine costs.

Our January 22, 1997 Procedural Order directed the parties to provide a joint pre-arbitration statement which set forth their positions and the manner in which their disagreement should be resolved by the arbitrators, a proposed Agreement, a list of witnesses and a summary of their testimony, as well as exhibits. The FCC's Rules issued on August 8, 1996, required the use of total element long run incremental costs ("TELRIC"). TELRIC includes the forward-looking costs that can be attributed directly to the provision of services using that element, and includes a reasonable share of the forward-looking joint and common costs.

On August 30, 1996, a Procedural Order was issued which consolidated the appropriate portions of the dockets of interconnection arbitrations between U S WEST and several other CLECs to consider the cost studies submitted by U S WEST in each of those dockets. The cost studies were analyzed at a consolidated arbitration commencing on November 18, 1996, with a Decision expected in early 1997. By Stipulation filed on March 12, 1997, Cox and U S WEST agreed to be bound to the cost and pricing results to be determined by the Commission in the consolidated cost docket. The parties did not seek to arbitrate any issues regarding interim pricing.

Pursuant to § 252(b)(4)(C), the Commission hereby resolves the issues presented for arbitration.

Inter-Network Connection in Collocation Sites - Issue D

Cox's position

Cox proposed that it be permitted to provide its own interconnections between the networks of Cox and other CLECs located at the same U S WEST collocation facility. Cox believes that, in order to promote competition, U S WEST must permit the cross connection to be done in the most cost-efficient manner.

U S WEST's position

U S WEST did not dispute that it must permit collocated CLECs to interconnect with each other but proposed that U S WEST should provide the connection via its own facilities. U S WEST argued that safety, liability and labor contract concerns require U S WEST to provide the interconnections.

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Commission's resolution

While the FCC Order requires ILECs to permit interconnection between CLECs collocated at the same ILEC facility, it concludes that ILECs need not permit CLECs' personnel to place connecting transmission facilities outside of the CLECs' collocation cages. Order at para. 595. Similarly, we recognize that safety and liability concerns justify U S WEST requiring that its personnel perform the interconnection between non-adjacent collocating CLECs.[3] However, where CLECs' collocation cages are adjacent, U S WEST may not prohibit the CLECs from interconnecting their own networks with facilities they provide, as long as those facilities do not cross spaces in use by U S WEST.

Costs for Cable Installation in Collocation Cages - Issue E

Cox's position

Cox proposed that its personnel should be permitted to install its fiber optic cable from outside U S WEST collocation facilities to Cox's collocation cages within the facilities. Cox argued that permitting Cox personnel to install the cable is cost-efficient, pro-competitive and would free Cox from any U S WEST-imposed scheduling limitations.

U S WEST's position

U S WEST argued that Cox's personnel should not be permitted to install the cable into U S WEST's central offices for Cox's collocations. Instead, U S WEST proposed that its own personnel should perform those tasks, due to safety, liability and labor contract concerns. U S WEST did indicate that it would permit Cox to provide the necessary cable to perform the installation into U S WEST's central offices, and that no additional splice of the Cox-provided cable would be necessary.

Commission's resolution

Consistent with the FCC's Order at paragraph 595, we will not require U S WEST to permit Cox to install its own cable into its collocation cages at U S WEST central offices. We will require U S WEST to permit Cox to supply the necessary cable for U S WEST personnel to install without any additional splicing by U S WEST. We will also require U S WEST to work cooperatively with Cox to minimize scheduling limitations.

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[3] U S WEST may permit the collocating CLECs to provide the cables or other facilities necessary for U S WEST to perform the collocation.

Network Interface Device - Issues F, G and H

Cox's position

Cox intends to provide telecommunications service through its existing network, which currently could serve over 500,000 primarily residential customers in the metropolitan Phoenix area. Cox therefore proposed that it be permitted to connect its own loops to its customers' internal wiring through its own Network Interface Unit ("NIU"), rather than through U S WEST's Network Interface Device ("NID"). Cox indicated that the expanded telecommunications services which it intends to offer require the use of its NIU, which includes electronic components not present in U S WEST's NID.

Cox also proposed that U S WEST remove its NID from a Cox customer's premises if the customer so requests, and that such removal be at no cost to the customer or to Cox. Cox argued that no tariff permits U S WEST to charge a customer for removal of the NID. Cox has agreed that, should its customer switch to another carrier, Cox will either remove its own NIU from the former customer's premises at no additional cost, or make its NIU available for use by the new carrier.

Cox proposed that, when it purchases an unbundled loop from U S WEST, it be permitted to connect that loop directly to Cox's NIU, rather than requiring that Cox purchase a NID along with an unbundled loop. Further, Cox proposed that, if U S WEST is permitted to leave its NID on a customer's premises, Cox should be permitted to connect its own loops to that NID in order to provide service to the customer.

U S WEST's position

U S WEST opposed removal of its NIDs, due to potential safety and building code issues. Among other things, the NID protects the customer's wiring and the U S WEST network against voltage surges such as lightening strikes. When Cox obtains an unbundled loop from U S WEST, the NID should not be removed because, as owner of the loop, U S WEST is responsible for providing the over-voltage protection. As an alternative, U S WEST would permit Cox to attach its NIU to U S WEST's NID. Removal of the NID when Cox provides its own loop would leave U S WEST's bare wire or stub exposed and without the over-voltage protection provided within the NID housing.

If the NID were removed when Cox provided its own loop, U S WEST proposed that it be permitted to charge the customer for removal of the NID and the associated costs to insure that any

exposed drop wires were protected. U S WEST argued that the costs to remove a NID are not included in the current tariff connection charge, because its NIDs have historically been left in place for use by future customers.

U S WEST does not oppose Cox's proposal to connect Cox's loops to U S WEST's NID when spare terminals exist, if Cox satisfies installation recommendations and requirements established by the NID supplier and the National Electric Code, including the purchase and installation of over-voltage protection units in the NID housing, the termination of Cox's facilities to these protection units, and the purchase and installation of the actual network interface devices (RJ-11) associated with Cox's facilities. Additionally, Cox must maintain responsibility for the drop installation, and assume liability for the facilities terminated at the NID housing.

Commission's resolution

When Cox provides service through its own loop and NIU, we will require that U S WEST remove its NID within a reasonable time if the customer requests removal. U S WEST may not charge Cox or its customers to remove the NID.

When Cox serves a customer through an unbundled U S WEST loop, however, U S WEST may require that its NID remain in place. U S WEST, as the provider of the loop, is responsible for the safety of that loop, and can insist that its NID remain in place to provide protection to its own network. U S WEST must, however, permit Cox to attach its NIU to the NID.

When a U S WEST NID remains in place at a customer's premises and Cox provides service through its own loop, U S WEST may qualify the use of that NID by Cox, as outlined above.

Collocation and Service Provisioning Intervals - Issue J

Cox's position

Cox proposed that U S WEST respond to collocation requests within 10 days, provide a price quote within three weeks, and construct collocation spaces for Cox within 45 days.

U S WEST's position

U S WEST proposed that it be required to respond to collocation requests within 15 days, provide a quote within 25 days, and construct facilities within 90 days. U S WEST indicated that other CLECs have agreed to these intervals, and that uniform intervals are necessary for fairness and administrative

simplicity. In addition, U S WEST has minimal experience engineering its network in a multiple LEC environment, and is not yet able to establish a standards interval to serve as a baseline.

Commission's resolution

We agree with U S WEST that uniform intervals for all CLECs are necessary for fairness and administrative simplicity. U S WEST, however, will be obligated to provide non-discriminatory service to Cox. In the pending Quality of Service proceeding we will adopt measurements by which Cox can determine whether the service it receives is at parity with that offered by U S WEST to itself or to other CLECs.

Reassignment of Abandoned Numbers - Issue L

Cox's position

Cox proposed that U S WEST-assigned numbers which are ported for Cox customers and then abandoned when the customer terminates his service should be reassigned to new Cox customers after an appropriate referral and aging period. Cox argued that U S WEST's recapturing of the number will decrease the efficiency of NXX utilization, will require CLECs to wastefully open NXXs in each rate center, and is anti-competitive. Cox's witness testified that the reassignment of abandoned numbers by Cox is necessary until permanent number portability is implemented in order for Cox to bill out of the appropriate rate center.

U S WEST's position

U S WEST proposed that abandoned ported numbers be returned to the owner of the switch in which the number resides. U S WEST argued that Cox's concern regarding the wasteful opening of NXXs in each rate center is unfounded, because all of Cox's business with be in a single rate center at least until the time that permanent number portability is put into place[4]. U S WEST also argued that Cox's proposal leads to an inefficient utilization of telephone numbers. If Cox retained ported numbers for new customers, U S WEST would lose the ability to track the usage of numbers and determine whether they are in use or not, making it impossible to gather the data required to order a new prefix for

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[4] When Permanent Number Portability is put into place in the Phoenix metropolitan area by the middle of 1998, telephone numbers will not "reside" in any particular switch, and the issue of returning ported numbers will become moot.

its switch, and leading carriers to request additional prefixes "just in case," to avoid the possibility of running out of numbers. Further, U S WEST contended that Cox's proposal is an inefficient use of the network, because it continues the use of two switches to perform the routing of calls which could be performed by a single switch if Cox assigned new customers numbers from its own switch. Finally, U S WEST indicated that Cox's proposal interferes with the Local Exchange Routing Guide's capability to provide routing information for individual telephone numbers.

Commission's resolution

We will deny Cox's proposal to retain ported U S WEST telephone numbers. Because Cox only intends to offer service in a single rate center until such time as permanent number portability becomes effective, there should be no need for Cox to obtain an excessive number of NXX codes in order to properly bill its customers' calls.

The parties will be instructed to prepare for the Commission's review an interconnection agreement incorporating the issues resolved by arbitration.

* * * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. Cox has applied to the Commission for authority to provide competitive telecommunications services to the public in Arizona.

2. U S WEST is certificated to provide local exchange and intraLATA telecommunications services to the public in Arizona pursuant to Article XV of the Arizona Constitution.

3. On January 10, 1997, Cox filed with the Commission a Petition pursuant to the Act.

4. On February 5, 1997, U S WEST filed its Response to the Petition.

5. By Procedural Order dated January 22, 1997, an arbitration was scheduled for April 1, 1997, at the Commission's offices in Phoenix.

6. On April 11, 1997, each party submitted closing arguments, which summarized the issues still unresolved and presented each party's proposed resolution of the issues.

7. The Commission has analyzed the issues presented by the parties and has resolved the

issues as stated in the Discussion above.

8. The Commission hereby adopts the Discussion and incorporates the parties' positions and the Commission's resolution of the issues herein.

9. Pursuant to A.A.C. R14-2-1506.A, the parties will be ordered to prepare and sign an interconnection agreement consistent with the terms of the Commission's resolutions, for review by the Commission pursuant to the Act, within thirty days from the date of this Decision.

CONCLUSIONS OF LAW

1. Cox is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. Cox is a telecommunications carrier within the meaning of 47 U.S.C. § 252.

3. U S WEST is a public service corporation within the meaning of Article XV of the Arizona Constitution.

4. U S WEST is an ILEC within the meaning of 47 U.S.C. § 252.

5. The Commission has jurisdiction over Cox and U S WEST and of the subject matter of the Petition.

6. The Commission's resolution of the issues pending herein is just and reasonable, meets the requirements of the Act and regulations prescribed by the FCC pursuant to the Act, is consistent with the best interests of the parties, and is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the Commission hereby adopts and incorporates as its Order the resolution of the issues contained in the above Discussion.

IT IS FURTHER ORDERED that Cox Arizona Telecom, Inc. and U S WEST Communications, Inc. shall prepare and sign an interconnection agreement consistent with the terms of the Commission's resolutions.

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IT IS FURTHER ORDERED that the signed interconnection agreement shall be submitted to the Commission for its review within thirty days of the date of this Decision.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, GEOFFREY E. GONSHER, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 1997.

GEOFFREY E. GONSHER
EXECUTIVE SECRETARY

DISSENT _____
SSW:dap

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