

Decision No. C02-1044

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 96A-287T

IN THE MATTER OF THE PETITION OF MFS COMMUNICATIONS COMPANY, INC., FOR ARBITRATION PURSUANT TO 47 U.S.C. § 252(B) OF INTERCONNECTION RATES, TERMS AND CONDITIONS WITH U S WEST COMMUNICATIONS, INC.

DOCKET NO. 97T-507

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN U S WEST COMMUNICATIONS, INC. AND GLOBAL CROSSING LOCAL SERVICES, INC. F/K/A FRONTIER LOCAL SERVICES, INC.

DOCKET NO. 98T-042

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN U S WEST COMMUNICATIONS, INC. AND NEXTLINK COLORADO, L.L.C.

DOCKET NO. 98T-519

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN U S WEST COMMUNICATIONS, INC. AND ADVANCED TELECOM GROUP, INC.

DOCKET NO. 99T-040

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN U S WEST COMMUNICATIONS, INC. AND ERNEST COMMUNICATIONS, INC.

DOCKET NO. 99T-067

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN U S WEST COMMUNICATIONS, INC. AND DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY

DOCKET NO. 99T-598

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN U S WEST COMMUNICATIONS, INC. AND KINGS DEER TELEPHONE COMPANY, INC.

DOCKET NO. 00T-064

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN U S WEST COMMUNICATIONS, INC. AND ELECTRO-TEL, INC.

DOCKET NO. 00T-277

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN U S WEST COMMUNICATIONS, INC. AND SOUTHERN BELL TELECOM, INC.

DOCKET NO. 01T-013

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN U S WEST COMMUNICATIONS, INC. AND TIME WARNER TELECOM OF COLORADO, L.L.C.

DOCKET NO. 01T-019

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT BETWEEN U S WEST COMMUNICATIONS, INC. AND MCLEOD USA TELECOMMUNICATIONS SERVICES, INC.

ORDER REQUESTING COMMENT

Mailed Date: September 20, 2002
Adopted Date: September 18, 2002

I. BY THE COMMISSION

Statement

1. On August 21, 2002, Qwest Corporation (Qwest) filed 11 Motions for Approval of Amendments in these respective dockets. Each motion stated that Qwest filed these requests seeking "an order approving the attached agreements as amendments pursuant to 4 CCR 723-44.4."

2. Just what constitutes an interconnection agreement under § 251 is a prior, necessary question before the Commission can consider approval or disapproval under § 252 and 4 CCR 723-44.4.

3. Qwest proffers these agreements under a new policy of filing all contracts, agreements or letters of understanding between Qwest and CLECs that create obligations that meet the requirements of § 251(b) or (c). Qwest has reviewed all of its currently effective agreements with CLECs in Colorado that were adopted prior to this new policy. The 11 agreements filed here include contracts relating to § 251(b) or (c)-related services with prospective obligations that have not been terminated or

superseded by agreement, commission order, or otherwise.¹

4. "Interconnection Agreement" (ICA) is defined at 4 CCR 723-44-2.5. The Iowa Utilities Board (IUB) and staff of the Arizona Commission have recently proposed definitions of ICAs. A Qwest declaratory petition pending before the FCC asks for similar guidance. Before approving or disapproving the 11 agreements under § 252, we likewise believe it necessary to define what constitutes an ICA under § 251 subject to state commission approval under § 252. Therefore, we will treat these agreements in two stages.

5. In the first stage, we request comments from the parties in these captioned dockets as to a definition of an "interconnection agreement" under 47 U.S.C. § 251. After considering these comments, the Commission will apply a definition of what constitutes an interconnection agreement to the 11 filed agreements. If an agreement among the 11 is determined not to be an ICA, then the application will be dismissed. If an agreement qualifies as an ICA subject to state commission approval under § 252, then that agreement will be subject to a second stage of analysis.

6. The second stage of analysis will involve whether

¹ These 11 agreements are a subset of the "unfiled" agreements issue that was brought into the § 271 proceeding, Docket No. 01M-260T. These agreements, and perhaps others, are currently the subject of a staff investigation. Except for defining what constitutes an interconnection agreement, any action taken in these dockets will not affect proceedings arising out of the staff investigation.

or not the Commission should approve or disapprove a given agreement. Another round of comments will be allowed to address this question.

7. We understand that each amendment to the agreements is unique and a determination as to whether each amendment constitutes an interconnection agreement may vary. However, to the extent that issues defining the eleven agreements are identical, for expedience sake we will allow and encourage the parties to present arguments or comments on issues common to all the agreements involved in one pleading, rather than repeat the same comments for each docket. The comments filed will be construed to be part of the record for each captioned docket.

8. 47 U.S.C. § 254(e) requires the Commission to approve or disapprove a negotiated interconnection agreement within 90 days of submission. The 90 day deadline requires that the Commission act expeditiously to get through both stages of analysis. These 11 dockets were filed on August 21 and August 22, 2002, respectively. This means that 90 days runs out on November 19 and 20, 2002.

9. Comments on the definition of an interconnection agreement shall be due by October 4, 2002. Reply comments will be due by October 9, 2002. The Commission will then endeavor to determine which agreements of the 11 are ICA's before October 18, 2002. The second stage comments for agreements deemed to be ICA's will be due by October 30, 2002. These comments shall be

directed to each individual ICA, and whether the Commission should approve or disapprove the ICA. Second stage reply comments will be due by November 5, 2002.

II. ORDER

A. The Commission Orders That:

1. As part of stage one of the approval process, the parties to the captioned dockets shall submit comments addressing the definition of an interconnection agreement under 47 U.S.C. § 251 by the close of business on October 4, 2002.

2. Any reply comments to the stage one comments required in Ordering Paragraph 1 above, shall be submitted by the close of business on October 9, 2002.

3. As part of stage two of the approval process, comments by the parties addressing whether the Commission should approve or disapprove an individual agreement, deemed by the Commission to be an interconnection agreement in stage one of these proceedings, shall be due by the close of business on October 30, 2002.

4. Any reply comments to the stage two comments required in Ordering Paragraph 3 above shall be submitted by the close of business on November 5, 2002.

5. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 18, 2002.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

POLLY PAGE

JIM DYER

Commissioners