(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF AT&T COMMUNICA­TIONS OF THE MOUNTAIN STATES, INC.  PETITION FOR ARBITRA­TION PURSUANT TO SECTION 252(b) OF THE TELECOMMUNICA­TIONS ACT OF 1996 OF THE RATES, TERMS, AND CONDITIONS OF INTERCONNECTION WITH U S WEST. | )  )  )  )  )  )  )  ) | CASE NO. USW-T-96-15  ATT-T-96-2  ORDER NO.  27050 |

This case was initiated by a Petition for Arbitration filed by AT&T Communications of the Mountain States, Inc. (AT&T) on November 22, 1996.  The Petition was filed pursuant to 47 U.S.C. § 252(b), a provision of the Telecommunications Act of 1996, which encourages local exchange carriers (LECs) and potential competitors to negotiate and voluntarily arrive at the terms and conditions for interconnection of their systems.  In this case, AT&T seeks an interconnection agreement with U S WEST Communications, Inc. (U S WEST).  If parties are unable to negotiate an agreement between themselves, Section 252(b) authorizes a party to seek binding arbitration by the state public utilities commission to resolve disputed issues.

On December 30, 1996, the Commission issued Procedural Order No. 26748 to appoint an arbitrator and establish a procedural schedule for the arbitration.  With the acquiescence of both parties, John Antonuk was appointed arbitrator.  The schedule for completing the arbitration established by provisions of the Act was March 20, 1997.  However, the parties stipulated to extend the schedule in order to allow time for the full presentation of their cases to the arbitrator and for the Commission to adequately review the arbitrator’s decision and issue an order to resolve the disputed issues.

By the schedule established by the parties and the arbitrator, the parties conducted discovery, presented extensive prefiled testimony (both direct and rebuttal), and an initial arbitration hearing was held on February 24-28, 1997.  Post-hearing briefs were filed by the parties on March 13, 1997.  On March 24, 1997, the arbitrator issued a First Order Addressing Substantive Arbitration Issues (First Order).  The arbitrator provided the parties an opportunity to submit additional testimony and more hearings were held on April 18, 1997, and on May 5, 1997, by telephone conference.  The parties also filed briefs and responsive briefs regarding exceptions to the arbitrator’s First Order.  On June 9, 1997, the arbitrator filed with the Commission Secretary a Second Arbitration Order (Second Order).

Pursuant to the Commission’s Rule of Procedure 258, the Commission issues this Order based upon its independent review of the record and hearing examiner’s recommended findings of fact.  We noted during our review of the record that some exhibits were not specifically admitted or excluded by the arbitrator following an objection.  Pursuant to IPUC Rule of Procedure 267 and the practice of the Commission, all exhibits not specifically excluded by the arbitrator are now included in the record.

According to Section 252(c) of the Act, a state commission resolving disputed issues by arbitration must ensure that the resolution and conditions meet the requirements of Section 251 of the Act and must establish rates for interconnection, services, or network elements according to subsection (d) of Section 252.  Upon review of the exhaustive and detailed record created in this case, we are satisfied that the recommended resolution of the disputed issues contained in the arbitrator’s First Order and Second Order satisfy the requirements of the Act, with one adjustment made by the Commission on its review of the record.  The record in this case is voluminous and it is clear that the arbitrator diligently pursued the separate issues in order to provide an appro­priate resolution for the parties.  The Commission appreciates the efforts of the arbitrator in this difficult task.

The Commission is compelled, however, to make one adjustment to the recommendations of the arbitrator.  At page 20 of his Second Order, the arbitrator established the wholesale discount for retail services to be resold by AT&T to its customers.  The arbitrator determined a discount of 22.5% should apply to U S WEST’s retail services in its southern Idaho territory.  The discount rate for U S WEST’s northern Idaho service territory was determined by the arbitrator to be 23.4%.  We believe adjustments should be made to the arbitrator’s calculation of the discount that determines the rate for resale of U S WEST’s retail services.

ADJUSTMENTS TO THE WHOLESALE RATE CALCULATION

The Telecommunications Act is intended to foster competition in all telecommunications markets, including the local service market.  Entry into the local service market by new competitors may occur in three ways: (1) through the competitor’s purchase of unbundled network elements from the incumbent LEC; (2) through the purchase of wholesale local services from the incumbent for resale by the competitor to customers; (3) by the competitor’s construction of its own network facilities.  We make two adjustments to the arbitrator’s determination of the discount rate to be applied to U S WEST’s retail services for purchase and resale by AT&T. First, revenues should be increased to account for private line, Advanced Communications Services, and listing (directory) revenues.  Second, costs should be taken from U S WEST’s ARMIS 43-04 data, instead of using ARMIS 43-03 data that has been adjusted through a special study process to remove assumed interstate access costs.

Section 252(d)(3) of the Act requires that wholesale rates be determined “on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by the local exchange carrier.”  To determine the costs to be avoided by U S WEST when AT&T resells U S WEST’s services, extensive cost studies and data were presented by the parties, including cost data from so-called ARMIS reports.  The ARMIS cost data is reported each quarter by U S WEST to the Federal Communications Commission. Data from the 1995 year-end ARMIS 43-03 report was presented, as well as from a version referred to as ARMIS 43-04.

The calculation to establish avoided costs includes revenues received by U S WEST for particular services.  One dispute in the discount rate calculation concerned revenues for intrastate private line, advanced communication and listing (directory) services.  U S WEST presented evidence that additional revenues from these services in the amount of $9.237 million for southern Idaho and $331,000 for northern Idaho should be included in the wholesale rate calculation.  See Exhibit DRE-SUP-4.1(a).(footnote: 1)

The parties agreed that revenues from private line, advanced communication and directory services should be included in the denominator of the fraction that determines the wholesale discount, but disagreed whether the calculation used by the arbitrator did in fact include those revenues.  The arbitrator found that the evidence supported a conclusion that AT&T’s calculation included these revenues, and thus the arbitrator did not add to AT&T’s total revenues for services subject to resale.  We reach a different conclusion by comparing the exhibits submitted by the parties for the April 18, 1997 hearing.  Worksheets presented by U S WEST’s exhibits display common ARMIS 43-03 account numbers and amounts for basic local service and for long-distance network services revenue, and U S WEST testified that these accounts did not include private line, advanced communication and listing services revenues.  U S WEST’s exhibits for the April 18 hearing show separate ARMIS 43-04 lines for basic local service, long-distance, private line and advanced communication services (line 3) and listing revenues (line 6). Three facts support U S WEST’s claim that private line, advanced communication and listing services revenues are not included in the final calculation:  (a) basic local service and long-distance revenue amounts are nearly equivalent in both the ARMIS 43-03 and 43-04 data, (b) there is no separate 43-03 entry for private lines, advanced communications or listing revenues, and (c) the 43-04 data contains separate entries for these last three revenue sources, as well as several others that appear to be distinct from basic local service and long distance.

We find that the additional revenues for private line, advanced communications and directory listing revenues should be included in the denominator of the wholesale discount for U S WEST retail services.  This finding adds $9.237 million for southern Idaho and $331,000 for northern Idaho to the calculations.

We also make an adjustment regarding the matching of costs and revenues as part of the calculations to determine wholesale rates.  Interstate access services are not provided to end users and therefore are not subject to resale.  Accordingly, it is appropriate to remove both the revenues and the costs associated with interstate access from the discount calculations for services that are subject to resale.  The parties disagreed on a method to remove the costs, and the arbitrator rejected U S WEST’s approach of determining intrastate costs from ARMIS 43-04 after separation between interstate and intrastate components.  We believe, however, that the approach recommended by U S WEST is preferable for removing interstate access service from the wholesale rate calculation.  Use of the ARMIS 43-04 cost entries after separation eliminates the need for a subjective study to develop costs. This method also better comports with the retail ratemaking treatment of interstate access costs, which are not included in retail revenue requirements and thus are not to be discounted under the Telecommunications Act.  The most direct method for aligning costs and revenues that are subject to resale and that are reflected in Idaho jurisdictional retail rates is to use ARMIS 43-04 entries.  The exhibits presented by U S WEST provide the data to perform the cost-related calculations that are required to establish a wholesale discount for resold U S WEST retail services.  See Exhibits DRE-Sup. 4 and Sup. 5.

The result of these adjustments to the wholesale rate calculation changes the southern Idaho discount to 18.25% and the northern Idaho discount to 19.37%.  The final calculation for northern Idaho includes an additional change to the arbitrator’s decision.  It directly uses northern Idaho operator services and directory assistance data in excluding revenue and costs, while the arbitrator’s decision applied the southern Idaho exclusion percentage to northern Idaho.  This additional adjustment simplifies the calculations and makes the northern Idaho results more reflective of north Idaho data.  These revised amounts shall apply to the wholesale discounts for southern Idaho and northern Idaho retail services.

The Commission’s approval of the arbitrator’s First and Second Order, as modified by this Order, constitutes the resolution by arbitration of disputed issues pursuant to Section 252(b) of the Act. The parties have agreed to continue working with the arbitrator to prepare a final interconnection agreement to be submitted to the Commission pursuant to Section 252(e). We encourage the parties to diligently continue their negotiations and efforts to arrive at an interconnection agreement.

O R D E R

IT IS HEREBY ORDERED that the First Order and Second Order of the arbitrator, as modified in the text of this Order, are approved by the Commission as the resolution by arbitration of disputed issues pursuant to Section 252(b) of the Telecommunications Act.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of  July 1997.

DENNIS S. HANSEN, PRESIDENT

RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**FOOTNOTES**

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1The revenues in question concern private line and advanced services, which are a part of the revenues listed at line 4013 of the ARMIS 43-04 report.  The revenues also include listing revenues, which fall under the directory component of ARMIS 43-04, line 4033, which is for miscellaneous revenues.

**COMMENTS AND ANNOTATIONS**

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**TEXT BOXES**

Office of the Secretary

Service Date

July 17, 1997