

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Interconnection )  
Agreement between U.S. WEST )  
COMMUNICATIONS, INC., and )  
PATHNET, INC. )

DOCKET NO. 00-049-05  
REPORT AND ORDER

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ISSUED: May 2, 2000

SYNOPSIS

The Interconnection Agreement at issue being defective as involving a non-certificated carrier, the Commission rejects the Interconnection Agreement.

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By The Commission:

On February 2, 2000, U.S. West Communications, Inc. ("USWC"), submitted for Commission approval a proposed Interconnection Agreement ("the Agreement") with Pathnet, Inc., (hereafter "CLEC" (Competing Local Exchange Carrier)). The Commission asked the Division of Public Utilities, Utah Department of Commerce ("DPU"), to review the matter and the DPU filed its Memorandum on April 28, 2000, recommending dismissal.

The Commission rejects the Interconnection Agreement submitted herein.

47 U.S.C. §252(e)(2) provides the basis upon which we may reject a negotiated interconnection agreement. That section, in part, provides that: "The State commission may only reject - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that -

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity. . ."

The fact that CLEC is not certificated to provide services within the State of Utah is dispositive in our consideration of this Interconnection Agreement. The Interconnection Agreement clearly contemplates that CLEC will not be a simple reseller of USWC's services. The Agreement contains terms and conditions that show CLEC's operations will extend beyond traditional resale; *e.g.*, separate facilities, unbundled network elements, and reciprocal traffic compensation provisions, indicate that CLEC will be more than a reseller. Utah law is clear that entities that provide public telecommunication services beyond simple resale of certificated public utilities' services are, themselves, public utilities subject to the provisions of Utah's public utility laws. As of the date of this Order, CLEC has not been granted, let alone applied for, a certificate to provide any public telecommunication services in Utah.

In this context, we conclude that the Interconnection Agreement must be rejected as "not consistent with the public interest, convenience, and necessity" in attempting to position CLEC to provide public telecommunication services in the State of Utah without a certificate. The types of services and interconnection contemplated by this Interconnection Agreement implicate public policy concerns and Utah statutory requirements that are much more extensive than when simple resale is involved. CLEC's failure to be subject to and to be able to comply with these requirements preclude us from approving the Interconnection Agreement. We conclude that it would also "discriminate against [all other] telecommunications carrier[s] not a

party to the Agreement" that have complied with Utah law and obtained their certificates to provide the services that CLEC anticipates to provide.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- We enter this Order rejecting the Interconnection Agreement submitted February 2, 2000. The rejection is without prejudice, permitting the Agreement to be resubmitted when Advanced Communications Group, Inc. has remedied the deficiencies noted in this Order.
- Any person aggrieved by this Order may petition the Commission for review of this Order pursuant to the Utah Administrative Procedures Act, U.C.A. §§63-46b-0.5 et seq.

DATED at Salt Lake City, Utah, this 2nd day of May, 2000.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary