

In the Matter of the Interconnection Agree-)
ment Between U S WEST COMMUNICA-)
TIONS, INC., and KNIGHT COMMUNI-)
CATIONS, INC.)

DOCKET NO. 98-049-23

REPORT AND ORDER

ISSUED: September 3, 1998

SYNOPSIS

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

By the Commission:

On July 22, 1998, U S West Communications, Inc. ("USWC"), submitted for Commission approval a proposed Interconnection Agreement ("the Agreement") with Knight Communications, Inc. ("Knight"). The Commission asked the Division of Public Utilities, Utah Department of Commerce ("DPU") to review the matter, and DPU filed its Memorandum on August 10, 1998, recommending disapproval.

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 Knight 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 Knight will not be a simple reseller of U S West Communications' services. The Agreement contains terms and conditions that show Knights' operations will be more than traditional resale; e.g., collocation, unbundled network elements, and reciprocal traffic compensation provisions indicate that Knight 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 we had no information to allow us to contact Knight to assist us in determining Knights' service intentions, we contacted U S West Communications. U S West Communications' representative informed us that Knight was to have sought certification prior to the approval of the Interconnection Agreement. As of the date of this Order, Knight 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 Knight 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. Knights' 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 Knight anticipates to provide.

ORDER

WHEREFORE, we enter this ORDER rejecting the Interconnection Agreement submitted July 22, 1998. The rejection is without prejudice, permitting the Agreement to be resubmitted when Knight Communications, 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 3rd day of September, 1998.

/s/ Stephen F. Mecham, Chairman

(SEAL) /s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary