

In the Matter of the Interconnection )  
Agreement Between U.S. WEST )  
COMMUNICATIONS, INC., and )  
ERNEST COMMUNICATIONS )

DOCKET NO. 98-049-37

REPORT AND ORDER

ISSUED: December 22, 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 December 7, 1998, US West Communications, Inc. ("USWC"), submitted for Commission approval a proposed Interconnection Agreement ("the Agreement") with ERNEST COMMUNICATIONS, (hereafter "CLEC" (Competing Local Exchange Carrier)). The Commission asked the Division of Public Utilities, Utah Department of Commerce ("DPU") to review the matter, and DPU filed its Memorandum on December 14, 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 CLEC is not certificated to provide services within the State of Utah is dispositive in our consideration of this Interconnection Agreement. Utah law is clear that entities that provide public telecommunication services are 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 statutory standards for qualifying for a certificate are minimal and do not constitute a barrier to entry. We cannot achieve the statutory requirements to protect the public interest, monitor competition in the local exchange, and report our findings to the legislature if a segment of the industry is operating without a certificate. 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 reject the Interconnection Agreement submitted December 7, 1998. The rejection is without prejudice, permitting the Agreement to be resubmitted when ERNEST COMMUNICATIONS 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 22nd day of December, 1998.

/s/ Stephen F. Mecham, Chairman

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

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary