

BACKGROUND

Section 252(f) of the Act provides as follows:

(1) **IN GENERAL.** – A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251² and the regulations thereunder and the standards applicable under this section.

(2) **STATE COMMISSION REVIEW.** – A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253,³ nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(3) **SCHEDULE FOR REVIEW.** – The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission –

- (A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or
- (B) permit such statement to take effect.

(4) **AUTHORITY TO CONTINUE REVIEW.** – Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

(5) **DUTY TO NEGOTIATE NOT AFFECTED.** – The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251.

² Section 251 sets forth, generally, the obligations of telecommunications carriers, including additional obligations of the incumbent local exchange carriers to provide their competitors with access to unbundled network elements (UNEs) collocation and wholesale discounts on retail services.

³ Section 253 concerns the removal of barriers to entry into the local exchange telecommunications services market.

In anticipation of USWC's SGAT filing, the Commission adopted OAR 860-016-0040, which provides as follows:

(1) A Bell Operating Company may file a statement of generally available terms that comply with Sections 251 and 252 of the Act. Any person may file comments concerning the statement of generally available terms within 30 days of the filing of the statement. The comments shall be limited to the standards for review established in this rule.

(2) The Commission will review the statement of generally available terms within 60 days of its submission, and either reject it or permit it to go into effect. The period for review may be extended if the submitting carrier agrees to a time extension. The Commission may continue to review the statement after it has gone into effect.

DISCUSSION

Comments of the Parties.

All of the parties note that the Commission has three procedural options under Section 252(f) of the Act: (1) it could complete its review of the SGAT by June 23, 2000, determining whether the SGAT complies with federal and state law; (2) it could ask USWC for an extension of the 60-day review period to permit the Commission to complete its review and reach a determination; or (3) the Commission could allow the SGAT to go into effect on June 24, 2000, without either approving or rejecting the SGAT and continue to review the SGAT after it went into effect.

USWC. USWC recommends the adoption of Option 3 in its Memorandum, stating that "the Commission should permit the SGAT to take effect and, like commissions in several other states (Arizona and Colorado), review portions of the SGAT relevant to the Section 271 process in the context of the workshops on each checklist item." (Memorandum, page 3, lines 14-16.) USWC offers five reasons to the Commission for permitting the SGAT to take effect pending Section 271 review: (1) Competitive carriers not currently utilizing interconnection agreements can quickly adopt the entire SGAT as their interconnection agreement; (2) competitive carriers with older interconnection agreements can quickly amend those existing agreements to adopt sections of the SGAT; (3) the Commission will not be impaired in its ability to continue to review the SGAT's provisions with participation by competitive carriers; (4) the current workshop schedule

in docket UM 823 would be able to continue on its present schedule; and (5) no competitive carriers would be prejudiced, because they can still negotiate agreements and pursue objections or modifications to the SGAT in UM 823 workshops.

AT&T/WorldCom. Being of the opinion that the first alternative is impractical, AT&T/WorldCom appears to recommend that the Commission choose Alternative (2) or, in the event that USWC does not agree to an extension of the 60-day period, Alternative (3). AT&T/WorldCom contends that the SGAT is “seriously flawed and deviates from federal law in many respects” in that it: (1) fails to include a single point of interconnection at multi-unit premises as required by the FCC; (2) merely provides access to high capacity “capable” loops, instead of providing access to loops that actually provide high capacity transmission, despite an FCC requirement to the contrary; (3) places impermissible limits on access to subloop elements; (4) appears to place various restrictions on access to features and functions of the Network Interface Devices (NID), contrary to FCC requirements; and (5) includes non-compliant definitions for shared and dedicated interoffice transport facilities.

MGC. While noting the availability of these same three alternative courses of action open to the Commission, MGC, like AT&T/WorldCom, recommends the second alternative, with adoption of Option 3, in the event that USWC does not accede to the Commission request for an extension of time to review the SGAT. MGC also notes that allowing the SGAT to go into effect, while the Commission continues its Section 271 review, is an approach that has been taken in other western states, including Nebraska, Arizona, and Colorado.

WSCTC. WSCTC also acknowledges the availability of all three of the Commission’s alternatives but is opposed to utilizing the third option because it “gives USWC’s SGAT a legitimacy it does not deserve.” Rather, WSCTC argues that the Commission should either review and reject the SGAT within the 60-day period or seek an extension of the statutory review period from USWC until such time as the review and recommendation process set forth in the Act is completed. WSCTC maintains that the SGAT has “egregious deficiencies,” among which are the following: (1) failure to include all applicable law in its statement of controlling law; (2) violation of the “pick and choose” rule by not allowing a merged entity to pick and choose portions of its predecessors’ agreements to create a new unified agreement; (3) setting forth wholesale discounts that are unapproved and still under investigation in Docket UM 962; (4) failure to define traffic originated and terminated by internet service as local traffic subject to reciprocal compensation; (5) the inclusion of collocation terms, conditions, and rates that “fail to meet federal requirements” such as limiting collocation to its wire centers rather than its premises; and (6) failure to provision unbundled network elements in accordance

with the Act and FCC requirements, such as improperly limiting subloop access to only the feeder distribution interface and limiting the availability of combinations of unbundled network elements.

Analysis

The Commission concurs with the opinions expressed by all of the commenting parties that, as identified in OAR 860-016-0040, we have only the three named alternative choices in our response to the SGAT filing by USWC. We also note that, based upon our reading of its Memorandum, USWC appears to be unlikely to accept the voluntary extension request that constitutes the second option. This is unfortunate, because we believe that this would be the simplest way to handle the SGAT review. The SGAT will likely undergo considerable revision during the course of the Section 271 proceeding in docket UM 823 and, once in effect, changes to the SGAT document may become cumbersome. It is conceivable that each amendment to the original document might trigger a new 60-day review period and an additional item on our Public Meeting agenda. If the SGAT were merely filed but not in effect, competitive carriers would not be substantially disadvantaged, since USWC is free to offer the equivalent provisions as a standard agreement whenever a competitor requests interconnection. The competitor would then have the choice of accepting this standard agreement or entering into negotiations for some alternative arrangement.

Given USWC's position, however, we must decide between reviewing and issuing a decision on the acceptability of the SGAT by June 23, 2000, or allowing the SGAT to go into effect while we continue our review and analysis of that document. We agree with WSCTC and AT&T/WorldCom that the SGAT should not be approved as filed. There are sufficient bases for concluding that USWC has not made a clear case that the SGAT complies with federal and state law. Even if we did not share WSCTC's and AT&T/WorldCom's conclusions, we find that the 60-day review period is simply insufficient to adequately explore whether the SGAT meets all requirements of federal and state law as the Act and our rules demand. We therefore conclude that the only reasonable option is to permit the SGAT to go into effect while we conduct our review.

The Commission currently has under consideration in Docket UM 823 an application by USWC for our recommendation to the Federal Communications Commission that USWC be permitted to engage in providing in-region interLATA telecommunications services pursuant to Section 271 of the Act. That proceeding will be examining every provision of the SGAT as part of its review process, and we believe that the SGAT submitted for our review in UM 973 can best be evaluated in the context of that Section 271 proceeding.

ORDER

IT IS ORDERED that:

1. Pursuant to OAR 860-016-0040(2), the Statement of Generally Available Terms filed by U S WEST Communications, Inc., on April 24, 2000, in accordance with Section 252(f) of the Telecommunications Act of 1996, is permitted to go into effect.
2. The Commission hereby directs that this USWC Statement of Generally Available Terms be considered in the proceedings in Docket UM 823 and that such changes to that Statement as may be necessary to comply with federal and state law shall be made.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.