

ORDER NO. 00-440

ENTERED AUG 10 2000

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

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BEAVER CREEK COOPERATIVE)	
TELEPHONE COMPANY,)	
)	
Complainant,)	ORDER
)	
vs.)	
)	
U S WEST COMMUNICATIONS, INC.,)	
)	
Defendant.)	

DISPOSITION: COMPLAINT DISMISSED; DOCKET CLOSED

On June 26, 2000, Beaver Creek Cooperative Telephone Company (Beaver Creek) filed a complaint against U S WEST Communications, Inc. (USWC; now Qwest Corporation). The complaint alleged that USWC had violated provisions of the 1996 federal Telecommunications Act (the Act), FCC rules and orders, and sections of ORS 759.455 (the prohibited practices statute), which mandates expedited treatment of complaints. At issue is whether Beaver Creek must sign an interconnection agreement in order to procure local number portability (LNP) from USWC. USWC filed a timely answer and the matter was set for mediation and hearing.

Mediation did not settle the matter, so a hearing was held on August 1, 2000, before Ruth Crowley, Administrative Law Judge (ALJ). Complainant was represented by Rick Finnigan, attorney at law, and defendant was represented by Jay Nusbaum and Larry Reichman, attorneys at law. Parties submitted a joint stipulation of certain facts and presented further evidence at the hearing. Based on the preponderance of evidence, the Commission makes the following.

FINDINGS OF FACT

Beaver Creek is a telephone cooperative organized pursuant to ORS chapter 62. Beaver Creek offers telephone service in the Beaver Creek exchange as an

incumbent local exchange carrier (ILEC), as that term is used in the Act. USWC serves the adjacent Oregon City exchange as an ILEC, as that term is used in the Act. USWC and Beaver Creek exchange extended area service (EAS) traffic between their exchanges on an EAS trunk group without a written agreement, under a bill and keep arrangement.

USWC serves customers in territory allocated to Beaver Creek. In 1997, the Commission granted an application to transfer a small portion of allocated territory in the Oregon City exchange from USWC to Beaver Creek by Order No. 97-297 (docket UA 55). The Commission found in that order that USWC served no customers in the area. Subsequently, when it transpired that the boundary change included existing USWC customers, Beaver Creek and USWC signed a memorandum of understanding agreeing that USWC would continue to provide telephone service to those customers unless the customers choose another provider. USWC and Beaver Creek exchange local traffic within the Oregon City exchange without an interconnection agreement. Beaver Creek sends local traffic within the Oregon City exchange over the EAS trunk group that is used to exchange EAS traffic between Beaver Creek and USWC exchanges. USWC sends local traffic originated by its customers within the Beaver Creek exchange over the EAS trunk group used for the exchange of EAS traffic between the Beaver Creek and Oregon City exchanges. Beaver Creek and USWC do not pay reciprocal compensation for this traffic. USWC believes that the parties must make separate arrangements for the reciprocal exchange of local traffic in the Oregon City exchange where they compete.

Beaver Creek is certified as a competitive local exchange carrier (CLEC) by the Commission. Beaver Creek seeks to serve, and does serve, customers in the rural part of the Oregon City exchange contiguous to the boundary between that exchange and the Beaver Creek exchange. LNP is an important inducement in persuading customers to switch telephone service providers, because LNP allows a customer to keep the telephone number the customer had with the original service provider while changing carriers. Because Beaver Creek does not receive LNP from USWC, some customers who have switched their service providers from USWC to Beaver Creek have chosen the cumbersome alternative of a market expansion line, or remote call forwarding. Beaver Creek has been crediting its former USWC customers for the line charges for the market expansion line, which costs \$16 a month and \$.03 per minute of usage. Other customers would have switched carriers from USWC to Beaver Creek if LNP had been available to them.

LNP is mandated under Section 251(b) of the Act. USWC's FCC tariff and North American Numbering council standards allow a customer to retain the customer's telephone number when switching from one local service provider to another as long as the customer remains in the same rate center. LNP provides for the completion of calls to ported telephone numbers regardless of where the call originates. LNP is a database service that requires queries to industry created databases to determine whether a number has been ported to another provider so that the call can be delivered to the ported number. The database function uses the common channel signaling network to query an LNP database to secure network routing instructions before completing a call. At a minimum, LNP databases contain local routing number information about a

telecommunications service user's choice of local service provider by NXX code. The local routing number is unique to the local service provider's serving switch that will complete the call. The LNP database is administered by an independent third party. It is the obligation of the company to whom the number is ported to update the database so calls may be routed properly. Query charges are charged to the network prior to the termination of the call.

LNP is available throughout a rate center, as defined by the Local Exchange Routing Guide (LERG). The LERG defines the Oregon City and Beaver Creek exchanges as one rate center.

To implement LNP, a CLEC delivers a local service request to USWC. USWC must then screen the request to ensure that the correct information has been given; coordinate with the requesting carrier to ensure that the number is not disconnected from USWC's switch before the requesting provider is ready to receive the number; disconnect the number from its switch; and receive a message from the regional database administrator that the number has been ported. If USWC does not do these things, there could be difficulty in completing calls to the ported number.

There is no Oregon tariff for LNP. Interim number portability is tariffed in USWC's Oregon Access Service Tariff, PUC Oregon No. 24, Section 16.1. That tariff requires an interconnection agreement as a precondition for providing interim number portability. USWC's FCC Tariff No. 5, Access Service, Section 13.19, addresses LNP in part. USWC's Statement of Generally Available Terms (SGAT), filed with the Commission on April 24, 2000, which the Commission allowed to take effect on June 20, 2000, by Order No. 00-327, contains a statement of the terms and conditions pursuant to which USWC offers LNP in Oregon in Section 10.2.

In summer 1999, Beaver Creek stated that it was ready to deploy number portability in its switch. At that time, Beaver Creek requested LNP testing to determine that numbers could be ported from one switch to another. Beaver Creek participates in a regional switch with several other local exchange carriers. Because USWC would not agree to test LNP in summer 1999 unless the parties negotiated an interconnection agreement pursuant to Sections 251 and 252 of the Act, Beaver Creek lost its place in line for software installation at the regional switch and was unable to have software upgrades installed in the switch.

In December 1999, Beaver Creek asked USWC to set up test numbers to ensure the transmission of LNP information between Beaver Creek's switch and USWC's Oregon City switch. USWC maintained, and continues to maintain, that an interconnection agreement is necessary to provide LNP in the Oregon City exchange.

In summer 1999, USWC agreed to provide LNP to Beaver Creek without an interconnection agreement, on the understanding that the parties would negotiate an interconnection agreement and that the LNP agreement could be short. In January 2000, Beaver Creek believed that USWC had agreed to an LNP only agreement. Beaver Creek

believed that provisions governing interconnection and the reciprocal exchange of local traffic were not necessary. USWC believed in January 2000 that any proposed agreement would contain provisions for interconnection and the reciprocal exchange of local traffic as a necessary part of the agreement.

On February 4, 2000, USWC was under the impression that Beaver Creek had agreed to negotiate an interconnection agreement with USWC. USWC drafted a proposed agreement that eliminated provisions governing collocation, resale, and access to unbundled network elements that are typically contained in USWC's interconnection agreements with CLECs. On February 18, 2000, USWC sent a pared down draft interconnection agreement to Beaver Creek. Beaver Creek requested an agreement containing only provisions regarding LNP.

USWC agreed to discuss reducing the draft interconnection agreement to the maximum extent possible, as long as the agreement contained the other terms that USWC determined were necessary to protect the parties and define their relationship. On March 6, 2000, Beaver Creek informed USWC that it was concerned that negotiations about reciprocal exchange of traffic would be lengthy and could delay implementation of LNP. USWC indicated that any interconnection agreement between the parties must contain a provision for reciprocal exchange of traffic, but that USWC would discuss further changes or deletions to the draft agreement. On April 4, 2000, Beaver Creek broke off discussions about an interconnection agreement.

USWC executes interconnection agreements with other CLECs in Oregon that compete with USWC to trade local traffic within an exchange. The Commission has approved over 25 interconnection agreements between USWC and CLECs in Oregon. Those interconnection agreements contain provisions addressing the general terms and conditions governing the services and relationship between the parties. USWC has executed interconnection agreements with all other CLECs to whom USWC provides and from whom USWC receives LNP.

Dialing parity and resale without a wholesale discount are provided to CLECs without an interconnection agreement.

OPINION

The Issue. Beaver Creek argues that USWC has an obligation to provide LNP to customers who wish to switch service providers from USWC to Beaver Creek without the necessity of an interconnection agreement between Beaver Creek and USWC. Beaver Creek also contends that USWC should provide LNP within 24 hours of receiving a request.

USWC argues on the contrary that the Act mandates an interconnection agreement for provision of LNP. Further, USWC argues that Beaver Creek must enter into an interconnection agreement with USWC to set terms and conditions for the

exchange of local traffic in the Oregon City exchange, where they are competitors. Beaver Creek objected at hearing to questions about the reciprocal exchange of traffic.

USWC argues that it requires an interconnection agreement as a condition of providing LNP because: LNP is a local interconnection service and USWC requires interconnection agreements for all interconnection services; many issues arise in LNP that are not covered by standard guidelines and that require coordination and communications between carriers, such as the provisioning interval; FCC rules and industry standards do not govern all issues arising out of LNP; LNP is not simply a database function but requires coordination to ensure that ordering, processing, and porting are performed efficiently and without interruption in service to the customer.

Discussion. *The Act.* Beaver Creek argues that LNP is mandated by the Act and that USWC has violated the Act in refusing to provide it. USWC responds that the answer to Beaver Creek’s complaint is simple: the Act mandates interconnection agreements. Section 251(b)(2) (47 USC 251) imposes on *all* local exchange carriers the duty to provide number portability. Section 251(c) imposes additional obligations on *incumbent* local exchange carriers. Subsection (1) of that section imposes the duty to negotiate “the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection.” USWC is an incumbent local exchange carrier subject to the requirements of Section 251(c)(1).

According to USWC, the mention of agreements in Section 251(c)(1) means that interconnection agreements are a legal necessity and the inquiry into USWC’s behavior in requiring an interconnection agreement for LNP may end there.

Beaver Creek responds by pointing out that the record in this case contradicts USWC’s point. Dialing parity is also mandated under Section 251(b) of the Act and encompassed in the Section 251(c)(1) language quoted above, but USWC does not require an interconnection agreement to provide that service.

Resolution. We conclude that the Act mandates carrier to carrier agreements for the services in subsections (1) through (5) of Section 251(b), but those agreements need not take the form of written interconnection agreements. For more complex transactions, a written agreement is appropriate. We take the gist of subsection 251(c)(1) to be the incumbent carrier’s duty to negotiate in good faith to reach agreement on how to provide the services mandated in Section 251(b)(1)-(5), regardless of the kind of agreement the parties negotiate. While USWC’s requirement of a written interconnection agreement is consistent with the Act, we do not believe it is required as a matter of law.¹ Because a written interconnection agreement is not required by the Act as a matter of law, USWC’s argument is not dispositive of the case. On the other hand,

¹ Contrary to USWC’s reading, we agree with Beaver Creek that *MCI v. GTE Northwest*, 41 F. Supp. 2d 1157 (D. Or. 1999) does not stand for the general proposition that an interconnection agreement is required before the obligations under Section 251(b) are invoked.

USWC's requirement of a written interconnection agreement is not inconsistent with the Act, and consequently does not violate the Act.

FCC Rules and Orders. Beaver Creek cites to *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking (FCC 96-286, released June 2, 1996). Beaver Creek argues that nothing in this Report and Order allows a carrier to qualify or condition its responsibility to provide LNP.

Beaver Creek further cites to *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration (FCC 97-74, released March 11, 1997) at Paragraph 60, where the FCC emphasized that there can be only minimal burdens on carriers requesting LNP. Beaver Creek argues that by requiring an interconnection agreement as a precondition to providing LNP, USWC has impermissibly qualified its responsibility to provide LNP and has placed an impermissible burden on Beaver Creek as the requesting carrier.

Resolution. The FCC rules and orders Beaver Creek cites describe LNP, stress its importance, and mandate its provision with the least amount of burden feasible. They also specify performance criteria and allocate costs. USWC is able to provide LNP as mandated in the Oregon City exchange. Whether USWC has violated the FCC rules and orders will depend on whether we find the requirement of an interconnection agreement as a precondition to providing LNP reasonable. *See* the discussion of USWC's alleged violation of ORS 759.455, immediately below. Because we do find that the requirement of an interconnection agreement is a reasonable precondition to providing LNP, we conclude that USWC has not violated the FCC rules and orders cited by Beaver Creek.

ORS 759.455. Beaver Creek alleges that USWC has violated subsections (1)(a), (1)(b), (1)(g), and (1)(h) of the statute. These sections provide that a telecommunications utility shall not:

- (1)(a) Discriminate against another provider of retail telecommunications services by unreasonably refusing or delaying access to the telecommunications utility's local exchange services;
- (1)(b) Discriminate against another provider of retail telecommunications services by providing access to required facilities on terms or conditions less favorable than those the telecommunications utility provides to itself and its affiliates. A telecommunications facility, feature, or function is a required facility if:
 - (A) Access to a proprietary facility, feature, or function is necessary; and
 - (B) Failure to provide access to the facility, feature, or function would impair a telecommunications carrier seeking access from providing the services the carrier is seeking to provide.
- (1)(g) Discriminate in favor of itself or an affiliate in the provision and pricing of, or extension of credit for, any telephone service;

(1)(h) Fail to provide a service, product, or facility in accordance with applicable contracts, and tariffs and rules of the Public Utility Commission.

Beaver Creek argues that USWC has unreasonably refused customers who wish to switch their service from USWC to Beaver Creek the availability of LNP, thus violating (1)(a). Beaver Creek argues that USWC has violated (1)(b) by denying LNP to those customers who wished to switch to Beaver Creek from USWC while providing it to customers who wish to change their service either to another provider of local exchange service that has an interconnection agreement with USWC or to customers who move within USWC's rate center and wish to retain both their numbers and their telecommunications service provider. Beaver Creek contends that USWC is treating the telephone number as a proprietary feature or function, impairing Beaver Creek from providing local exchange service to the customer.

Beaver Creek asserts that USWC has violated (1)(g) by allowing a customer who moves within the Oregon City rate center and remains a USWC customer to retain the customer's telephone number, while refusing to provide LNP to customers who desire to change their service from USWC to Beaver Creek. Finally, Beaver Creek asserts that USWC has violated (1)(h) because USWC has failed to provide LNP in accordance with Commission orders in UM 826. Beaver Creek notes that (1)(h) deals explicitly only with contracts, tariffs, and Commission rules, but contends that failure to comply with a Commission order should be equated with failure to comply with a Commission rule.

USWC responds that it has not violated any of these subsections. As to (1)(a), USWC notes that it has not unreasonably refused or delayed access to its local exchange services. USWC contends that it has behaved in a way consistent with the Act, so there can be no violation.

As to (1)(b), USWC notes that it does not provide LNP to itself, so it cannot have violated this provision. USWC makes the same argument with respect to (1)(g). Finally, with respect to (1)(h), USWC contends that Commission Order No. 98-339 in docket UM 826 establishes a list of switches that must be made LNP capable. USWC's Oregon City switch is LNP capable. The order makes no mention of interconnection relations between carriers. USWC contends that it has not violated (1)(h) or Order No. 98-339.

Resolution. ORS 759.455(1)(b) and (1)(g) require that a carrier not discriminate in favor of itself. Because USWC does not provide LNP to itself, these provisions do not apply to this complaint. As to one of Beaver Creek's allegations under these provisions, that USWC customers inappropriately retain their telephone numbers when they move within the rate center while Beaver Creek customers may not retain theirs, the FCC rejected requiring location portability and service portability. *See In the Matter of Telephone Number Portability*, First Report and Order, CC Docket No. 95-116, FCC 96-286, Paragraph 181. The Act, at Section 251, requires only that customers be

allowed to retain their numbers when they remain in the same location and change providers. USWC is not in violation of either of these provisions.

USWC has not violated (1)(h). Even if the statute were read broadly to include violation of Commission orders, the order Beaver Creek cites does not require anything of USWC other than that its switch in Oregon City be LNP capable. USWC's Oregon City switch is LNP capable. USWC has not violated this provision.

Finally, as to (1)(a), USWC has not refused to provide LNP. The question is whether USWC has been reasonable in requiring an interconnection agreement before providing LNP. USWC has shown that provision of LNP is not a spot transaction but requires communication and coordination between the carriers. We conclude that it is reasonable to require an interconnection agreement with carriers to whom USWC provides LNP. Therefore, we conclude that USWC has not violated ORS 759.455(1)(a).² Beaver Creek's complaint should be dismissed and this docket closed.

ORDER

IT IS ORDERED that the complaint by Beaver Creek against USWC is dismissed and this docket is closed.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

² We do not reach the issue of whether USWC behaved reasonably in requiring an interconnection agreement that also covered reciprocal compensation between the carriers. Beaver Creek has restricted the issue before us to determining whether USWC violated laws or rules by requiring an interconnection agreement for LNP.

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. The request must be filed with the Commission within 60 days of the date of service of this order and 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.