

Docket No: 01-0521
Bench Date: 8/28/01
Deadline: 9/14/01

MEMORANDUM

TO: The Commission

FROM: Leslie Haynes, Claudia E. Sainsot, and Sherwin Zaban,
Administrative Law Judges

DATE: August 27, 2001

SUBJECT: Verizon Wireless and Illinois Bell Telephone Company
(Ameritech Illinois)

Joint submission for review of an Arbitrated Interconnection Agreement pursuant to 47 U.S.C. Sec. 252(e)(2).

RECOMMENDATION: Grant Rehearing and Vacate the Interim Order, or deny Rehearing and strike relevant portions of the Pricing Appendix.

The Commission entered an Interim Order in this proceeding on August 23, 2001. The Interim Order approved, for the most part, the parties' Agreement. However, the Commission ordered that one provision of the contract be amended. The Commission also ordered that the parties submit an amended Agreement the following day in order to have a full agreement on file prior to the running of the 30 day deadline in this docket.

At issue is whether the language in Section 5.4.4 of the Interconnection Agreement submitted in this Docket is in conformance with the Commission's Arbitration decision regarding Issue 1(a): Direct Trunking in Docket 01-0007. The Commission ordered that "[e]ach party is responsible for the costs of facilities on its side of the connection." This language concerns how the parties are to be compensated, if Verizon's traffic is taken off the Ameritech tandem.

In an informal negotiation process, each party presented proposed language to Staff. Upon review by Staff to determine which language was in compliance with the Order, Staff recommended that the language as originally filed in this Docket be adopted as the language that reflects the Commission's intent in its order in Docket 01-0007.

In its Interim Order, the Commission decided that the portion of Section 5.4.4 that provided for the method of payment for the use of facilities under that provision should be deleted and that the method of payment should be decided in a future Commission proceeding.

Verizon Wireless' Petition

In its Petition for Rehearing and Motion to Vacate Order, Verizon Wireless asks that the Interim Order be vacated and the Agreement originally filed in this docket be deemed approved, pursuant to Section 252(e)(4). 47 U.S.C. § 252(e)(4).

Verizon Wireless argues that the Commission does not have authority to modify the Interconnection Agreement that was submitted in this docket, pursuant to Section 252(e)(2). It contends that the Commission may only approve the Agreement, reject the Agreement, or the Commission may do nothing, in which case, the statute provides that the Agreement is deemed approved.

Verizon Wireless further asserts that the parties could not possibly comply with the Commission's directive to file a signed Agreement in conformance with the interim order, given the short time period provided.

Ameritech, according to Verizon Wireless, waived its right to object to the Proposed Interim Order. Furthermore, the Commission, acting *sua sponte* when overruling the Proposed Interim Order, without any Party objecting to the conclusions contained therein, appears, to Verizon Wireless, to be "irregular."

If the Commission, however, were not to grant rehearing, Verizon Wireless asks the Commission to be consistent and amend the Interim Order to also delete language in the Pricing Appendix. Without this clarification, Verizon Wireless cannot charge Ameritech for recurring charges relating to the particular scenario in 5.4.4, but Ameritech can still charge Verizon Wireless for those recurring charges.

Recommendation

Section 252 of TA 96 provides that a state commission may only reject an agreement adopted by negotiation if it finds that the agreement does not meet the requirements of Section 251. Section 251(a)(5) imposes a duty upon an incumbent local exchange carrier, such as Ameritech, to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Additionally, Section 252(c) requires that a state commission "shall . . . establish any rates for interconnection, services, or network elements" 47 U.S.C. § 252(c)(2). Moreover, without language specifying the method of payment, Section 5.4.4 of the Interconnection Agreement is unenforceable. Cefalu v. Breznik, 15 Ill. 2d 168, 154 N.E.2d 237 (1958).

We believe that the Commission's order, in its present form, conflicts with the above-mentioned laws.

If the Commission vacates its Interim Order, and takes no further action on the arbitrated portions of this Docket, it will not have acted within the statutory timeframe. As a result, pursuant to Section 252(e)(4), the Agreement as originally filed in this Docket will be deemed approved.

Accordingly, we recommend that the Commission grant rehearing and vacate the Interim Order and take no further action with regard to the arbitrated portions of this Docket. However, in the event that the Commission does not grant rehearing, we recommend that the Commission amend its Interim Order to also delete the following language from the Pricing Appendix to the Interconnection Agreement:

When the direct trunk routing option with the tandem building POI is invoked by Ameritech, Verizon Wireless shall not charge Ameritech the shared facilities DS1 charge for Ameritech originated traffic over the dedicated two way trunk group, where such trunk groups are technically feasible and Ameritech elects to send traffic destined for that specific Verizon wireless MSC as documented in LERG routing.

Deletion of this language will ensure consistency between the parties. Without deletion of this language, Verizon Wireless will have to pay Ameritech for the use of the facilities whenever Section 5.4.4 is invoked, but Ameritech will not have to pay Verizon.

LH/CS/SZ:jt