

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition) Application No. C-2872
of Great Plains Communications,)
Inc. for arbitration to resolve) INTERCONNECTION AGREEMENT
issues relating to an) APPROVED AS MODIFIED
interconnection agreement with)
WWC License L.L.C.) September 23, 2003

APPEARANCES:

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BY THE COMMISSION:

I. Introduction

1. This order is made and entered pursuant to 47 U.S.C. §252(e) and *Neb. Rev. Stat.* §86-122 (2002 Cum. Sup) which assign to this Commission the jurisdiction and authority to review, approve or reject an interconnection agreement adopted by arbitration pursuant to 47 U.S.C. §252(b). Specifically, in this order the Commission addresses the arbitrated interconnection agreement between Great Plains Communications, Inc. (Great Plains) and WWC License L.L.C. (WWC) submitted to this Commission on July 22, 2003 (the "Interconnection Agreement"). For the reasons set forth below, the Commission directs that the Interconnection Agreement be modified in accordance with the terms of this order and further directs the parties to file a revised form of such Interconnection Agreement with the Commission in conformity with the requirements of this order.

II. Procedural and Factual Background

2. Great Plains is a Nebraska corporation and is an incumbent local exchange carrier (ILEC) that has been certified by this Commission to provide local exchange and other telecommunications services in certain local exchange service areas in the State of Nebraska. Respondent, WWC, is a Delaware limited liability company and is a commercial mobile radio service (CMRS) provider that furnishes service throughout much of Nebraska under the trade name CellularOne.

3. WWC began terminating traffic to Great Plains' network prior to March 1998.¹ This traffic was transmitted to Great Plains through tandem switches.² Great Plains began negotiating an interconnection agreement with WWC in July of 2001.³ The negotiations between the parties continued intermittently thereafter. On August 26, 2002, WWC transmitted to Great Plains a bona fide request for the commencement of negotiations for purposes of §252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act).⁴

4. On January 23, 2003, Great Plains initiated this application by filing a Petition for Arbitration (the Petition) with this Commission pursuant to §252(b) of the Act, the Commission's Mediation and Arbitration Policy, established in Application C-1128, Progression Order No. 3, dated April 8, 1997 (the Policy), and *Neb. Rev. Stat.* §86-122. WWC filed its response to the Petition on February 18, 2003. Great Plains filed an Amended Petition with the Commission on April 22, 2003, and WWC filed its response thereto on May 5, 2003.

5. The Commission appointed Dr. Marlon Griffing to serve as the Arbitrator. Great Plains and WWC engaged in discovery, pre-filed testimony was submitted and a contested arbitration hearing was held May 13 and 14, 2003. Great Plains offered testimony of the following witnesses: Rodney Thiemann, Wendel Aanerud, Jim Weston, Sue Vanicek, Keith Hightree, and Dan Davis. Western Wireless offered testimony of Ron Williams and Brian Pitkin.

6. On June 6, 2003, both parties filed final offers, a post-hearing brief and WWC submitted a proposed order. Great

¹ Tr. p. 479, ln. 16 through p. 480, ln. 2, and Exhibit 137.

² See, late-filed Exhibit 233 and Exhibit 116.

³ Ex. 156, p. 3, ln. 5-17.

⁴ See, Exhibit A to Petition for Arbitration.

Plains, with leave granted by the Arbitrator, filed a proposed order on June 20, 2003.

7. The Arbitrator's Decision was delivered July 1, 2003 (the Decision). Pursuant to the Decision, the Interconnection Agreement was submitted to the Commission on July 22, 2003. The Commission published notice of the filing of the Interconnection Agreement. On August 1, 2003, public comments were filed with the Commission by a group of eleven rural independent local exchange carriers.

8. On August 11, 2003, Great Plains filed comments with the Commission objecting to the Decision with regard to Issues 1, 2, 3, 6, 7, and 8, and objecting to the terms of the Interconnection Agreement relating to such issues, and concurring with Issue 4 (not including the reciprocal compensation rate relating to Issue 3) of the Decision. Also on August 11, 2003, WWC filed comments with the Commission concurring with the Arbitrator's Decision regarding Issues 1, 2, 3, 6, 7, and 8, and concurring with the terms of the Interconnection Agreement relating to such issues, while objecting to the Decision on Issue 4.

9. An oral hearing was held before the Commission on August 19, 2003, for the purpose of affording the parties an opportunity to present their respective positions regarding the terms of the Interconnection Agreement. Appearances were entered as shown above.

III. Arbitrated Issues

10. There are seven issues presented in this arbitration. The Commission will address such issues in the order presented at the hearing on August 19, 2003. (Issue 5 presented by WWC in its Response to the Petition has been withdrawn, and Issue 9 is undisputed by the parties.) The issues are listed below:

- Issue 7- How should Great Plains deliver land-to-mobile telecommunications traffic to WWC?
- Issue 8- Recognition of WWC NPA-NXXs with separate rating and routing points.
- Issue 3- Is Great Plains' proposed reciprocal compensation rate appropriate pursuant to 47 U.S.C. §252(d)(2)?

- Issue 1- What should the definition of Great Plains' "Local Service Area" be for the purposes of the parties' Interconnection Agreement?
- Issue 2- What traffic should be subject to reciprocal compensation in accordance with applicable FCC Rules?
- Issue 6- How should interconnection facilities be priced, and how should charges be shared?
- Issue 4- What is the appropriate effective date and term of the interconnection agreement, and what rate and total compensation for transport and termination of WWC's telecommunication traffic on Great Plains' network is payable for the period prior to the effective date of the Interconnection Agreement pursuant to 47 C.F.R. §51.715(d)?

IV. Findings and Conclusions

11. Section 252(e)(1) of the Act requires that any interconnection agreement adopted by arbitration be submitted to the state commission for approval. The Commission's review of the arbitrated agreement is limited by §252(b)(4) of the Act, which provides, "Action by State Commission. (A) The state commission shall limit its consideration of any petition [for arbitration] under paragraph (1) [of §252(b) of the Act] (and any response thereto) to the issues set forth in the petition and the response, if any, filed under paragraph (3)." Thus, in reviewing this matter, the Commission is statutorily constrained to only consider the issues raised by the parties in the petition and response within the meaning of §252(b)(4). If necessary, however, §252(b)(4)(B) of the Act provides that "the commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision . . ."

12. With that said, §252(e)(2)(B) of the Act provides that the Commission may reject "an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of §251, including the regulations prescribed by the commission pursuant to §251, or the standards set forth in subsection (d) of this section."

13. Also, in reviewing such arbitrated interconnection agreements, state commissions are allowed, pursuant to

§252(e)(3) of the Act, to utilize and enforce state law in the review of agreements. Accordingly, the Commission may also consider the Nebraska Legislature's directive that: "Interconnection agreements approved by the commission pursuant to §252 of the Act may contain such enforcement mechanism and procedures that the commission determines to be consistent with the establishment of fair competition in Nebraska telecommunications markets." *Neb. Rev. Stat.* §86-122(1).

14. In order to fully implement §252(e), the Commission has adopted the Mediation and Arbitration Policy in Application No. C-1128. Under that Policy, the Commission may only approve arbitrated agreements that: "1) ensure that the requirements of §251 of the Act and any applicable Federal Communications Commission (FCC) regulations under that section are met; 2) establish interconnection and network element prices consistent with the Act; and 3) establish a schedule for implementation of the agreement (pursuant to §252(c))."

15. While an arbitrated agreement must normally be approved or rejected within 30 days after submission by the parties of an agreement by arbitration under §252(e)(4), the parties agreed to allow the Commission to and including September 23, 2003, to render a decision regarding the Interconnection Agreement.

16. In fulfilling its obligations under the Act and Nebraska statutes, the Commission reviewed the Decision, the Interconnection Agreement submitted by the parties, the entire record of this proceeding established through the hearing before the Arbitrator on May 13 and 14, the parties' post-hearing briefs, final offers and proposed orders, comments by the public, the comments of the parties submitted to the Commission on August 11 and the oral arguments of the parties presented to the Commission on August 19.

Issues 7 and 8

Issue 7: How should Great Plains deliver land-to-mobile telecommunications traffic to WWC?

Issue 8: Recognition of WWC NPA-NXXs with separate rating and routing points.

17. Due to the inter-relationship between Issues 7 and 8, the Commission will address these Issues together. Great Plains' final offer regarding Issue 7 was to include language in section 4.1 of the Interconnection Agreement such that to the

extent that WWC entered into arrangements for delivery of traffic to Great Plains indirectly through tandem providers, such traffic would be accepted subject to the parties' compensation arrangements. To the extent that traffic originated from subscribers in Great Plains' exchanges, such traffic would be routed to interexchange carriers (IXCs) in compliance with Great Plains' equal access and toll dialing parity requirements.

18. WWC's final offer regarding Issue 7 was to require Great Plains to deliver land-to-mobile traffic to WWC consistent with Great Plains' local dialing parity obligations. It is WWC's position that since the *First Report and Order* ¶1036 establishes a CMRS provider's local calling area as the entire major trading area (MTA), the local dialing parity obligation applies throughout that area.

19. With regard to Issue 7, the Arbitrator found, "that the FCC meant for CMRS carriers to enjoy all the benefits of that designation of an MTA, including local dialing parity." As such, the Arbitrator adopted the language of WWC's final offer. The language of the Interconnection Agreement thus approved by the Arbitrator was: "Great Plains will deliver land-to-mobile traffic to Western Wireless in a manner consistent with its local dialing parity obligations."⁵ This resolution of Issue 7 would require Great Plains to route traffic originated by subscribers within a Great Plains exchange area to a tandem switch located outside of such exchange area.

20. Great Plains' final offer regarding Issue 8 was that there should not be separate rating and routing points for a WWC NPA-NXX. Great Plains proposed that a WWC NPA-NXX rated as local to a Great Plains exchange should route to a point of interconnection within the same rate center.

21. WWC's proposal concerning Issue 8 was that if WWC obtains numbers, and rates those numbers to a Great Plains rate center where WWC is licensed to provide service, calls from that rate center to the WWC number block must be dialed as local calls and delivered to WWC at a point of direct interconnection (if applicable) or at the third-party tandem.

22. With regard to Issue 8, the Arbitrator found that if and when WWC implements tandem-routed local traffic arrangements, Great Plains must meet its local dialing parity obligations. If this requires Great Plains to make new

⁵ Decision at 29. (All references to the Decision refer to the "Redacted Amended Arbitrator's Decision.")

arrangements to deliver traffic to WWC, such arrangements must be made.

23. The Commission disagrees with the decision of the Arbitrator on both Issues 7 and 8. While the FCC has stated that the MTA "serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under §251(b)(5)" (emphasis added),⁶ the FCC has not expressly stated that the MTA is similarly the appropriate area within which CMRS providers are to be provided local dialing parity. In its *Second Report and Order*, ¶71, the FCC acknowledged the need to identify specific requirements pertaining to local dialing parity in the future, stating: "We therefore decline to prescribe now any additional guidelines addressing the methods that LECs may use to accomplish local dialing parity." Absent the provision of a guideline from the FCC that an incumbent LEC is obligated to provide a CMRS provider with MTA-wide local dialing parity, we are not prepared to require an incumbent local carrier, like Great Plains, to deliver traffic to a point of interconnection located outside of its local exchange.

24. Without a clear pronouncement by the FCC that identifies the scope of an ILEC's local dialing parity obligations with regard to a CMRS provider, we reject the Arbitrator's conclusion that the FCC "meant" for CMRS providers to receive local dialing parity on an MTA-wide basis. In fact, Sprint Corporation has initiated a petition for declaratory ruling on this issue with the FCC.⁷ We have reviewed Public Notice DA 02-1740 released July 18, 2002, and certain comments filed therein, and we are aware of the pendency of issues in CC Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*.⁸ We believe that the FCC's ultimate resolution of the issues in the foregoing docket will directly bear upon and will clarify the parties' responsibilities with regard to Issues 7 and 8. The Commission has previously indicated its deference with regard to an issue pending before the FCC when, in Application No. C-2738 (wireless termination service tariff),

⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-325, Released August 8, 1996, at para. 1036.

⁷ *In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of traffic by ILECs*, CC Docket No. 01-92, Petition of Sprint (filed May 9, 2002) (Sprint Petition).

⁸ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

the matter of the legality of such tariffs was left for the FCC's determination in a pending docket.⁹

25. The only authority on which the Arbitrator relied to reach his conclusion as to what the FCC "meant" with regard to Issue 7 is ¶¶64-68 of the FCC's *Second Report and Order*. These paragraphs do not provide a resolution for Issue 7. If such were the case, we believe that the FCC could have reasonably been expected to have summarily ruled on the Sprint Petition and such Petition would not be pending before the FCC.

26. In addition, we are troubled by the fact that the Arbitrator's resolution of Issues 7 and 8 ignores the fact that calls originated by wireline subscribers within a Great Plains exchange area to WWC subscribers with an NPA-NXX outside of such exchange area are "telephone toll service" under §153(48) of the Act and must be routed to an IXC in accordance with Great Plains' toll dialing parity obligations pursuant to §251(b)(3) of the Act.¹⁰ Section 251(g) of the Act preserves the requirement for ILECs to interconnect with IXCs and provide access service.

27. WWC advocates that its interconnection agreement with Citizens Telephone is a precedent for the arrangement that WWC proposed as its final offer on Issue 8. We disagree. Review of the WWC-Citizens agreement discloses that it does not require Citizens to deliver traffic to a point of interconnection located outside of a Citizens' local exchange.¹¹ Conversely, the Arbitrator's ruling on Issue 8 would require Great Plains to make technical arrangements to transport calls destined for WWC NPA-NXXs to a tandem switch at a point distant from the Great Plains exchange boundary.

28. Similarly, the Oklahoma Commission's decision concerning interconnection obligations between the ILECs and WWC is distinguishable from the instant case.¹² Such decision contemplates that a rural ILEC would route calls to WWC NPA-NXXs over existing Feature Group C trunks to a tandem switch for

⁹ NPSC Application No. C-2738, order entered January 22, 2003 at p. 3.

¹⁰ Automatic assignment of toll traffic by a LEC to itself violates *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, the Second Report and Order and Memorandum Opinion and Order, (FCC 96-333), Released August 8, 1996 (the "Dialing Parity Order").

¹¹ Exhibit 147, attached WWC-Citizens Interconnection Agreement, Section 4.2.

¹² Exhibit 201, see especially p. 19.

delivery to WWC.¹³ This arrangement differs from Nebraska where Feature Group C facilities do not now exist. Nebraska is a Feature Group D "equal access" state.

29. WWC also maintains that since it is able to route traffic to the tandem without using an IXC, Great Plains must do the same. The Commission observes that this position ignores the fact that a LEC is subject to toll dialing parity and equal access requirements while a CMRS provider is not subject to such requirements.¹⁴

30. For the foregoing reasons the Commission reverses the Arbitrator's decision with regard to Issue 7 and orders the following language to be included as section 4.1 of the Interconnection Agreement:

4.1 Indirect traffic:

To the extent that Western Wireless has entered into contractual arrangements with tandem providers for delivery of Western Wireless traffic to Great Plains for termination to Great Plains customers, Great Plains will accept such traffic subject to the compensation arrangement as outlined in Section 5 of this Agreement.

In those Great Plains exchanges where Western Wireless has not requested a direct connection to Great Plains as specified in Section 4.2, Great Plains shall continue to route calls originating from its exchanges to Interexchange Carriers in compliance with its equal access and toll dialing parity requirements.

31. Further, based on the foregoing considerations the Commission cannot sustain the Arbitrator's findings with regard to Issue 8. Therefore, the Commission reverses the Arbitrator's decision and orders that Section 4.4 of the Interconnection Agreement submitted to the Commission on July 22, 2003, be stricken and that there should not be separate rating and routing points for a WWC NPA-NXX. The Commission approves Great Plains' final offer with regard to Issue 8 that a WWC NPA-NXX rated as local to a Great Plains exchange should route to a point of interconnection within the same local service area,

¹³ *Id.* It is noted that the Oklahoma Commission decision is currently pending on appeal before the Oklahoma Federal Court. See, Exhibit 133.

¹⁴ See, Dialing Parity Order, *supra*.

including those service areas connected via an Extended Area Service (EAS) arrangement.¹⁵

Issue 3

Is Great Plains' proposed reciprocal compensation rate appropriate pursuant to 47 U.S.C. §252(d)(2)?

32. Great Plains initial proposed reciprocal compensation rate was \$0.0333 per minute of use (MOU).¹⁶ After the hearing before the Arbitrator, Great Plains made several reductions to the proposed rate and submitted a final offer of \$0.0232 per MOU. The reductions are summarized as follows:

<u>Reduction</u>	<u>Change</u>
Removal of DSF Investment	\$0.0017
Include fiber sharing at 3.61 percent	0.0005
Land and Building Adjustment	0.0006
Add Internet minutes of use	0.0043
Adjust special access circuit counts using Rate Equivalency Method	0.0030

33. WWC's initial proposed reciprocal compensation rate was \$0.004414 per minute of use (MOU).¹⁷ WWC's final offer of a reciprocal compensation rate was \$0.00609 per MOU.

34. The Arbitrator, utilizing issue-by-issue final offer arbitration, adopted WWC's final offer as "com[ing] closest to being a reasonable approximation of the additional costs of terminating calls subject to reciprocal compensation."¹⁸

35. The Arbitrator based his decision on Issue 3 on three additional adjustments to the rate of \$0.0232. The cumulative effect of these changes was to reduce Great Plains' proposed reciprocal compensation rate by \$0.0092 to \$0.0140 per MOU. These deductions were:

¹⁵ The Commission notes that the record demonstrates that Great Plains has offered to provide local dialing parity to WWC if WWC's NPA-NXXs are rated to a Great Plains local service area and are routed via a direct connection to a point of interconnection within a local service area. See, e.g., Exhibit 158, p. 7, ln. 14-15 and Exhibit 159, p. 22, ln. 6-10 and Tr. 580-581. Ex. 122 is a map of Great Plains' service area.

¹⁶ Ex. 160 at p. 19.

¹⁷ Exhibit 220, p. 40 (revised).

¹⁸ Decision at p. 18.

\$0.0060 was deducted as the Arbitrator concluded that switching costs should not be recovered on a usage-sensitive basis, but rather should be assigned to the loop on a flat rate;

\$0.0024 was deducted because the Arbitrator stated the switching functionality of remote control units (RCUs) benefit only users of intra-exchange landline service, not users of transport and termination services such as WWC; and

\$0.0008 was deducted by the Arbitrator citing the appropriate base for allocation of trunk side minutes to be all minutes of use.

36. The Arbitrator expressed dissatisfaction with both parties' final offers. Apparently, because the adjusted rate of \$0.0140 was mathematically closer to WWC's final offer of \$0.00609 per MOU than to Great Plains' final offer of \$0.0232 per MOU, the Arbitrator, pursuant to final offer arbitration, accepted WWC's proposal.

37. The Commission has thoroughly reviewed the reasoning of the Arbitrator as set forth in the Decision relating to Issue 3.¹⁹ Based on such review, the Commission finds that the Arbitrator's calculation of the adjusted rate of \$0.0140 is the proper point from which our evaluation of the rate should proceed. In other words, based upon our review of the record as a whole and the Arbitrator's evaluation thereof, the Commission finds that no further reductions in such rate are warranted. We therefore turn our attention to an evaluation of the appropriateness of the three above-cited adjustments that the Arbitrator made to Great Plains' final offer reciprocal compensation rate.

38. With regard to the total reduction in switching costs, we find that the Arbitrator made a mathematical error in the total adjustment made to switching costs. Great Plains' FLEC Study shows that the total switch processor/matrix cost included in the Study was \$.0078.²⁰ However, the two adjustments made by the Arbitrator to switching total \$.0084. The Arbitrator actually deducted \$0.0006 more from Great Plains' rate than was originally included in the final offer.

¹⁹ *Id.*, pp. 10-22.

²⁰ See, Great Plains' Issue-by-Issue Final Offer and Post-Hearing Brief, Schedule III, "Switch Proc/Mtrx" cost per unit.

39. We also reject the Arbitrator's conclusion that switching costs "are incurred as a function solely of lines, irrespective of traffic."²¹ Great Plains presented credible evidence to support the conclusion that the switch investment included in its FLEC Study is properly classified as usage sensitive.²² Mr. Weston provided examples of non-port factors that are considered in switch design including toll usage, local phone usage, and EAS.²³ In addition, compliance with the Commission's service standards affects the amount of switch capacity that must be engineered by a LEC.²⁴ Mr. Aanerud testified that vendor ordering information relies on busy-hour estimates for all users of the switch and that the processor and matrix costs are based on these estimates and are traffic sensitive.²⁵ Great Plains' FLEC Study excluded 30 percent of switch costs as non-traffic sensitive and attributable to line-related switching costs.²⁶

40. Additionally, we find that the Arbitrator's exclusion of switching costs as non-traffic sensitive is inconsistent with pricing of reciprocal compensation rates based on forward-looking economic cost. See, 47 CFR §§ 51.705 and 51.505. The Commission is of the opinion that switch costs should be shared by users of switching resources. Therefore, the Commission finds that the Arbitrator incorrectly concluded that the switching cost component of Great Plains' final offer should be reduced by the amount of \$0.0060 per MOU. This amount should be reinstated to the reciprocal compensation rate. In addition, because the removal of \$0.0060 per MOU attributed to switch cost was the basis for the \$0.0006 mathematical error identified in ¶ 38, this adjustment also offsets that error.

41. As noted above, the Arbitrator also excluded from switching costs the amount of \$.0024 per MOU attributable to the remote control unit or RCU costs. The Decision in this regard was driven by the Arbitrator's conclusion that WWC's traffic terminated to Great Plains' network would not be switched by the RCUs.²⁷ The Commission finds that such decision is supported by the record and as such the RCU costs were properly excluded and will not be reinstated to the reciprocal compensation rate.

²¹ Decision at p. 18.

²² See, Exhibits 151 and 152.

²³ Tr. 315, ln.9 through 318, ln.5.

²⁴ See, e.g., Commission Quality of Service Rule 002.12 "Dial Service Objectives".

²⁵ Tr. 75, ln. 19 through 76, ln. 4.

²⁶ Tr. 72, ln. 17-24 and Tr. 88, ln. 11-22.

²⁷ Decision at pp. 19-20.

42. The Commission notes that Great Plains included dial-up internet MOU in the demand in Great Plains' final offer. In so doing, Great Plains made an adjustment in its final offer to reduce the reciprocal compensation rate by \$0.0043 per MOU.²⁸ The Commission concludes that the further adjustment of \$0.0008 made by the Arbitrator regarding this issue is unjustified. This amount should be reinstated to the reciprocal compensation rate.

43. In summary, the Commission reverses, in part, the Arbitrator's Decision with regard to Issue 3 and finds that the reductions related to Great Plains' final offer made by the Arbitrator totaling \$0.0068 as described above should not have been made. Therefore, the Commission orders that the reciprocal compensation rate of \$0.0208 per MOU shall be included in Section 5.2 of the Interconnection Agreement.

Issues 1 and 2

What should the definition of Great Plains' "Local Service Area" be for the purposes of the parties' Interconnection Agreement?

What traffic should be subject to reciprocal compensation in accordance with applicable FCC Rules?

44. Due to the inter-relationship between Issues 1 and 2, the Commission will address these Issues together as well. The Arbitrator found that, based on ¶1036 of the *First Report and Order*, "the FCC has unambiguously declared its intentions regarding the local service area for CMRS traffic. That intention is that the MTA is the local service area for CMRS-LEC calls regardless of the call's origination. Therefore, WWC's final offer is adopted for this issue."²⁹

45. The principal disagreement between the parties with regard to these issues relates to the question of whether traffic originated by a wireline subscriber within a Great Plains exchange to a WWC subscriber with an NPA-NXX outside of such exchange (and therefore carried by the subscriber's pre-selected IXC) is properly subject to reciprocal compensation. This Commission has previously found that §251(g) of the Act specifically preserves the access charge regime, and found support for this conclusion in ¶¶1034 and 1043 of the *First*

²⁸ See, Great Plains' Final Offer and Post-Hearing Brief at pp. 19, 36-37 and Exhibit A.

²⁹ Decision at p. 6.

*Report and Order.*³⁰ With the indirect connections that have existed and currently exist between WWC and Great Plains, a call originated from a Great Plains customer that dials a WWC customer is delivered to the calling party's pre-selected long distance provider which transports the call to WWC.

46. WWC takes the position that it is entitled to receive access revenue for terminating the traffic delivered to WWC by IXCs.³¹ CMRS providers may negotiate rates, terms and conditions on which traffic will be exchanged. Thus, WWC has the opportunity to obtain compensation for the MOUs delivered to WWC by IXCs. Such traffic is not traffic delivered by Great Plains to WWC (as would be the case if direct connections were established), but rather is IXC traffic for which WWC may obtain access revenues. Consequently, the Commission rejects the Arbitrator's Decision regarding the definition of Great Plains' local service area.

47. We recognize that the FCC has stated that the MTA is the area that establishes the geographic scope in which reciprocal compensation applies:

With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the *for the purpose of applying reciprocal compensation obligations* under Section 251(b)(5).

. . .

[I]n light of this Commission's exclusive authority to define the authorized license areas of wireless carriers, we will define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under Section 251(b)(5).³² (emphasis added).

48. However, in consideration of the evidence before us, the Commission is unpersuaded at this time to deviate from the traditionally accepted local exchange service areas which have been the accepted basis for structuring the level of

³⁰ Application No. C-2738, order at p. 4.

³¹ Exhibit 115.

³² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC 15499, FCC 96-325, ¶¶ 1035-1036 (1996).*

compensation for traffic and use of the network. Therefore, we decline to accept the Arbitrator's definitions for local traffic.

49. The Commission is of the opinion and finds that "local traffic" should be defined based upon the local service area and cost structure of the originating carrier. Therefore, the following local service area definitions should be incorporated into the Interconnection Agreement:

WWC's local service area shall be defined as the MTA for calls that originate from WWC and terminate within the same MTA.

Great Plains' local service area shall be defined as the local exchange service areas, which are on file and have been approved by the Nebraska Public Service Commission, for calls that originate and terminate in the same Great Plains local service area. Great Plains' local service areas shall also include those service areas connected via an Extended Area Service (EAS) arrangement.

50. Applying the definitions set forth above, a call that originates and terminates in the originating company's local service area should be subject to reciprocal compensation as a local call, as set forth in Section 5.2 of the Interconnection Agreement. However, in the case where a direct connection between Great Plains and WWC does not exist, either carrier may continue to route calls to IXCs, on a toll-basis, for delivery to its intended destination. Such calls would remain subject to any access charges paid by the IXC to Great Plains or WWC.

51. To provide otherwise, would upset the traditional mechanisms available to support both the local and long distance networks. Furthermore, such a result is consistent with Great Plains' equal access and toll dialing parity obligations.

52. For the reasons set forth above, the Commission reverses the Arbitrator's Decision on Issues 1 and 2 to the extent that the Commission finds that traffic delivered, on a toll-basis, to WWC by IXCs is not subject to reciprocal compensation. The Commission orders that Section 3.5 set forth below shall be included in the Interconnection Agreement:

3.5 The traffic that is exchanged between the Parties through an Interexchange Carrier, on a toll-basis, is not Local Traffic and is not subject to this

Agreement, but rather is subject to §251(b)(3) and §251(g) of the Act.

Issue 6

How should interconnection facilities be priced, and how should charges be shared?

53. The Arbitrator found in his Decision that "[t]he Filed Rate Doctrine controls the pricing of facilities for interconnection between the parties. The purpose of this legal principle is to prevent discrimination by common carriers among their customers."³³

54. However, by accepting WWC's final offer regarding this Issue 6, the Arbitrator proceeded to allow WWC to select between Great Plains intrastate and interstate tariffs so as to purchase interconnection facilities at Great Plains lowest published rate.³⁴ This resolution of this Issue is inconsistent. According to Great Plains FCC Tariff No. 3, interstate traffic on a facility must constitute more than 10 percent of total traffic on such facility for Great Plains' interstate tariff to apply.³⁵ WWC may not simply pick the lowest published rate irrespective of the nature of the traffic carried by the facility in question.

55. If WWC requests a direct connection from Great Plains, the Point of Interconnection (POI) will be the Great Plains end office switch. The Commission finds that when such facilities are requested by WWC, WWC is responsible for paying the appropriate charges associated with such facilities.

56. The Commission reverses the Arbitrator's ruling on Issue 6 and orders that interconnection facilities should be priced in accordance with applicable tariff rates based upon the nature of the traffic carried on such facilities. If and when WWC requests facilities from Great Plains in order to establish a direct connection with WWC on the WWC side of the POI, WWC should bear the charges for such facilities.

Issue 4

What is the appropriate effective date and term of the Interconnection Agreement, and what rate and total compensation

³³ Decision at p. 27.

³⁴ *Id.*

³⁵ See, Exhibit 159, p. 16, ln. 17-23, and Exhibit 134, Section 2.3.10(A)(7).

for transport and termination of WWC's telecommunications traffic on Great Plains' network is payable for the period prior to the effective date of the Interconnection Agreement pursuant to 47 C.F.R. §51.715(d)?

57. The first portion of Issue 4 is not at issue. The parties agree that the effective date of the Interconnection Agreement should be the date of the approval by this Commission. The parties also agree that the term of such Agreement should be three (3) years from the effective date.

58. The Arbitrator found that Great Plains should receive compensation at the rate per MOU established in connection with the resolution of Issue 3 above for minutes terminated by WWC on Great Plains' network from March 1998 until the effective date of the Interconnection Agreement. WWC argues that finding an interim compensation arrangement existed prior to August 26, 2002, for the purposes of 47 CFR § 51.715 is contrary to law.

59. The Commission believes that the policy of §51.715 is that a requesting telecommunications carrier (in this case WWC) should receive interconnection promptly following a request for same and as a quid pro quo, an incumbent LEC should receive interim compensation. See *First Report and Order* ¶¶1065 and 1068. Specifically, §51.715(a)(2) provides that a telecommunications carrier may take advantage of an interim arrangement only after it has requested negotiations.

60. Therefore, while the Commission believes that interim compensation is warranted, we disagree with the Arbitrator's utilization of the March 1998 commencement date. According to the FCC, in order to take advantage of interim arrangements, negotiations must have been requested by the parties. The record demonstrates that on August 26, 2002, WWC transmitted to Great Plains a bona fide request for the commencement of negotiations for purposes of § 252 of the Act. As such, the Commission finds that the applicable rate per MOU determined by this Commission with regard to Issue 3 shall apply to such MOUs beginning on August 26, 2002, and orders that Section 19 of the Interconnection Agreement shall reflect this modification.

61. While WWC also argues that retroactive compensation should not be applied because it is not "reciprocal," the Commission is not persuaded by this argument. Reciprocal compensation is based on a percentage allocation according to the amount of traffic respectively terminated on each network. In this case, Great Plains delivered traffic destined to WWC's network to IXCs for termination to WWC. Great Plains terminated

no minutes on WWC's network. All minutes originating on Great Plains' network were terminated by IXCs to WWC.³⁶ WWC was entitled to receive terminating access charges from those IXCs. As noted above, WWC specifically advocated in FCC Docket WT 01-316 its right to seek and obtain compensation for the access services rendered to IXCs. The decision by WWC to not seek such compensation from the IXCs does not mean that such MOUs are subject to reciprocal compensation.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Arbitrator's Decision is approved as modified herein.

IT IS FURTHER ORDERED that an interconnection agreement containing the terms and conditions set forth herein shall be filed with the Commission not later than October 7, 2003.

MADE AND ENTERED in Lincoln, Nebraska on this 23rd day of September, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

CONCURRING OPINION FILED BY COMMISSIONERS ANNE BOYLE AND LOWELL JOHNSON ATTACHED

³⁶ Tr. p. 481, ln. 14 through p. 482, ln. 4 and Exhibit 157, p. 5.

CONCURRENCE: Commissioner Boyle and Commissioner Lowell Johnson

With regard to the reciprocal compensation rate adopted in this order, we feel it is important to recognize the Commission has not completed a full independent analysis of the cost study submitted by Great Plains in this proceeding as, based on the Arbitrator's decision, only the three rate issues³⁷; the usage sensitive nature of switching, the inclusion of RCU costs in switching investment, and the appropriate base for allocation of trunk side minutes, are ripe for review. Therefore, we concur with the opinion of the majority of the Commission.

However, as the Commission has not reviewed some aspects of the Great Plains model, questions exist regarding certain elements of the methodologies used by Great Plains. Thus, we do not endorse all aspects of the cost model used to develop the reciprocal compensation rate submitted by Great Plains and ultimately used, by this Commission and the Arbitrator³⁸, as the basis for determining the reciprocal compensation rate adopted in this order. Most notably, the cost of capital, special circuit counts, aircraft account balance (2112), and the depreciation/salvage values used in the Great Plains model are of interest.

Consistency with respect to cost modeling must be considered as we strive to adopt appropriate prices for all types of interconnection. Absent a full Commission review of the Great Plains model, that consistency cannot be verified.

In our opinion, either party to this order may petition the Commission for review of other aspects of the cost model. In that event, the Commission should have the authority to review additional aspects of the model and order any necessary changes on a prospective basis.

Anne C. Boyle, Chairman

Lowell C. Johnson

³⁷ *In the Matter of the Petition of Great Plains Communications, Inc. for Arbitration to Resolve Issues Relating to an Interconnection Agreement with WWC License L.L.C.*, Application No. C-2872, Redacted Amended Arbitrator's Decision, (filed July 8, 2003) ("Decision") at 18-20.

³⁸ *Id.* at 20.