BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of Cox Nebraska Telcom, LLC, Omaha, seeking arbitration and approval of an interconnection agreement pursuant to Section 252 of the Telecommunications Act of 1996, with Qwest Corporation, Denver, Colorado.	)	Application No. C-3796 ORDER APPROVING AGREEMENT Entered: January 29, 2008

BY THE COMMISSION:

On April 16, 2007, Cox Nebraska Telcom, LLC, (Cox) Omaha, Nebraska, filed a Petition for Arbitration with this Commission for arbitration of open issues related to its interconnection negotiations with Qwest Corporation, (Qwest), Denver, Colorado, pursuant to Section 252(b) of the Telecommunications Act of 1996 (the Act). Cox and Qwest agreed to arbitration before John P. Kern. The Arbitrator issued a decision on the arbitrated issues on November 13, 2007. Both Cox and Qwest filed comments on the Arbitrator's decision on January 14, 2008. Further, Qwest requested oral arguments before the Commission on the Arbitrator's decision. Oral arguments were held before the Commission on January 22, 2008. Ms. Deonne Bruning appeared on behalf of Cox. Mr. Thomas Dethlefs and Ms. Jill Vinjamuri-Gettman appeared on behalf of Qwest.

OPINION AND FINDINGS

Qwest challenges the Arbitrator's decision regarding its obligation under the Act to provide transit service and further, whether those services must be offered at Commission approved TELRIC-based rates (Issue 2). Qwest's written comments also challenge the Arbitrator's decision regarding the proper treatment of Local Wholesale Switching (LWS) services (Issue 3), however, Qwest did not address Issue 3 in its oral arguments. Qwest does not challenge the Arbitrator's decision with respect to the remaining issues (Issues 1, 5, 6, and 7). Cox does not challenge the Arbitrator's decision on any of the issues.

Qwest argues that it is not obligated under the provisions of the Act to provide transit services. However, Qwest agreed to voluntarily provide the service, but argued it was under no obligation to offer the transit service at TELRIC-based rates. Qwest contends that the Arbitrator's decision relies upon an erroneous reading of Sections 251(a) and 251(c) of the Act and should be rejected. Qwest argues it should be allowed to have pricing freedom to set pricing for the transit services it offers and neither the Act nor the FCC requires these services be provided at TELRIC-based rates.

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Cox contends that Qwest is obligated under the Act to provide transit service and to provide them at the Commission adopted TELRIC-based rates, as Cox adds, Qwest is currently doing. Cox further asserts that Qwest's argument depends on a narrow reading of Section 251(a) separate and apart from Section 251(c) of the Act. Cox argues that these Sections must be read and considered together and in light of congressional intent to further competition. Considered together, these Sections support the Arbitrator's decision on Issue 2. Cox also contends that the transit issue has been resolved in Cox's favor in three other states.

We find that the Arbitrator appropriately found that Qwest is obligated under the Act to provide transit service and must do so at TELRIC-based rates. Furthermore, we find Cox's proposed language does not constitute an erroneous reading of Sections 251(a) and 251(c) of the Act. We, therefore, find that the Arbitrator's recommendation should be adopted and Cox's proposed language relating to Issue 2 should be approved.

With respect to Issue 3 regarding the proper treatment of LWS services, Qwest argued in its written comments that LWS traffic should be treated as transit traffic, as Qwest's systems do not possess the capability to distinguish between Qwest customers and LWS customers. Qwest further contends that it has no legal duty to provide records to Cox enabling them to bill the appropriate LWS carrier.

Cox addressed Qwest's written comments regarding Issue 3 during its oral arguments. Cox contends that Qwest's arguments on Issue 3 are inconsistent. Qwest argues it must be properly compensated for its own LWS traffic but it is unable to furnish Cox with detailed records to allow Cox to bill the proper party for their LWS traffic. Further, Cox argues that industry standards since 1998 have addressed the issue of distinguishing between types of traffic and a resolution released in 2003 by the industry reached a consensus regarding the content of new billing records identifying LWS traffic. Finally, Cox argued that Qwest's comments raised new arguments that they had not previously raised in the course of the arbitration proceedings and therefore should be disregarded.

We find that the Arbitrator's decision on Issue 3 is consistent with the Act, FCC rules, and industry standards. We therefore find that the Arbitrator's decision should be adopted with respect to Issue 3 and Cox's proposed language approved.

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Upon full consideration of the facts and circumstances, the Commission finds that the Arbitrator's decision should be adopted in its entirety and that the Interconnection Agreement filed by the parties should be approved.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Arbitrator's decision in the above-captioned matter shall be and is hereby approved.

IT IS FURTHER ORDERED that the Interconnection Agreement filed by the parties as a result of the arbitration in the above-captioned matter should be and hereby is approved without revision.

MADE AND ENTERED at Lincoln, Nebraska, this 29th day of January, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Gerald L. Vap

Reed Hutchinson

Tim Schram

//s//Anne C. Boyle
//s//Frank E. Landis

Chair Anne Boyle

ATTEST:

Michael Hybl

Executive Director

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