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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADVANCED TELECOM GROUP, INC.,	)	
	)	DOCKET NO. UT-993003
Petitioner,	)	
	)	U S WEST'S DECEMBER 17, 1999
v.	)	BRIEF
	)	
U S WEST COMMUNICATIONS, INC.,	)	
	)	
Respondent.	)	
_____	)	

On December 6, 1999, the Administrative Law Judge issued an order setting forth a schedule for briefing, and questions to be addressed in the briefs. U S WEST submits this filing in accordance with that order.

**A. What Impact Does The FCC's Order In Global NAPS/BA-NJ, CC Docket No. 99-154, FCC 99-199, Footnote 25, Have On Interconnection Agreements Previously Approved By The Commission?**

The FCC's order in Global NAPS/BA-NJ, CC Docket No. 99-154, FCC 99-199 contains the following text in footnote 25:

Thus, for example, a carrier should be able to notify the local exchange carrier that it is

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2 exercising this right by submitting a letter to the local exchange carrier identifying the  
3 agreement (or portions of an agreement) it will be using and to whom invoice, notice  
4 regarding the agreement, and other communications should be sent. In such circumstances,  
5 the carrier opting-into an existing agreement takes all the terms and conditions of that  
6 agreement (or the portions of that agreement), *including its original expiration date*. It  
7 appears from the record that one of the disputes between the parties was over the  
8 termination date of the agreement being opted-into. This dispute underscores the  
9 importance of contractual terms that unambiguously establish a termination date.  
10 (emphasis added)

11 Of course, the issue of the expiration date of the agreement to be opted-into is at the heart  
12 of the dispute in this matter. U S WEST has already described in its answer to ATG's petition that  
13 the MFS agreement that ATG wishes to opt-into was effective for 2 1/2 years and that it would be  
14 inappropriate for ATG to be permitted to opt-into any terms of an agreement that has already  
15 expired. U S WEST believes that the FCC's statement that a carrier must accept all of the related  
16 terms, including the expiration date, of an agreement that is to be opted-into is directly on point in  
17 this case and that the Washington Commission holding should be consistent with that FCC  
18 determination.

19 **B. Does The MFS/U S WEST Agreement Unambiguously Establish A Termination**  
20 **Date?**

21 U S WEST believes that the MFS/U S WEST agreement does unambiguously establish a  
22 termination date. The term of the agreement is set forth in § XXXIV.V of the interconnection  
23 agreement as 2 1/2 years. The agreement was approved and effective on January 7, 1997 and was  
thus effective through July 7, 1999. The agreement does continue in effect after its stated term to  
enable the parties to negotiate a new agreement. As such, ATG may argue that the agreement has  
no termination date or that the termination date is ambiguous. However, the statement within the  
agreement itself that the duration of the agreement shall be for 2 1/2 years is unambiguous and the  
2 1/2 years is easily calculated. For that reason, U S WEST believes that the termination date of

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the agreement is not ambiguous and that to the extent that U S WEST and MFS continue to operate under that agreement, it is under a continuation clause which extends the life of the agreement beyond the stated termination date for purpose of renegotiation.

**C. Does The Commission’s Section 252(i) Interpretive And Policy Statement Apply To Agreements Previously Approved By The Commission?**

U S WEST believes that the Commission’s Interpretative and Policy Statement does apply to agreements previously approved by the Commission. An Interpretative and Policy Statement, by definition, is a statement of the Commission’s current opinion, approach, and likely course of action. They are advisory only. RCW 34.05.230(8). As such, the adopted Interpretative and Policy Statement in Docket UT-990355 is simply an expression of the Commission’s current opinion, approach and likely course of action with regard to handling issues that arise in connection with § 252(i) of the Telecom Act. Previously approved agreements are still subject to the Commission’s approach when it is faced with a present-day dispute. Just as a rule adopted today would apply to interconnection agreements previously approved by the Commission, so should the Interpretative and Policy Statement which was recently adopted apply to interconnection agreements previously approved by the Commission.

**D. On What Date Was 47 C.F.R. 51.809 Reinstated?**

It is U S WEST’s position that the FCC’s Rule 809 was reinstated effective with the date of the Eighth Circuit’s mandate, June 10, 1999. This does not appear to be a contested issue between the parties. Although the Supreme Court reversed the circuit’s determination regarding Rule 809 in January 1999, the Supreme Court left it to the Eighth Circuit to issue a mandate effecting that ruling. The court’s action was not effective until the issuance of that mandate which occurred in June.

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**E. Is A State Requirement That Parties Adopting Agreements Prior To Reinstatement Of FCC Rule 51.809 Be Entitled To Request Arrangements From Previously Approved Agreements For A Reasonable Period Of Time Not Inconsistent, And If Not, What Would Be A Reasonable Period Of Time?**

In this section, the Commission asks the parties whether the Commission may determine that carriers who reached agreements with incumbent LECs prior to June 10, 1999 may, for a reasonable period of time, opt into arrangements from previously approved agreements. If the answer to that question is the affirmative, the Commission inquires as to what a reasonable period of time would be. That is, of course, the situation presented in this case. ATG, a carrier who obtained an interconnection agreement with U S WEST prior to June 10, 1999, is now attempting to opt into a term or a set of terms and conditions from a previously approved agreement, specifically, the MFS agreement. If the Commission determines that such an approach is appropriate, U S WEST does not disagree that six or nine months is a reasonable period of time. However, a carrier should only be permitted to request arrangements from previously approved agreements during the time those previously approved agreements are effective. In this case, ATG is attempting to select arrangements from an agreement that has already expired. As such, ATG's request is not appropriate and has not been made within a reasonable period of time.

**F. Is A State Requirement That Section 252(i) Requests Be Submitted To The Commission For Approval Under Section 261(c) Not Inconsistent With The Telecom Act Or FCC Regulations?**

In this section, the Commission asks whether it may require carriers to submit § 252(i) requests to the Commission for approval and whether such requirement would be inconsistent or not inconsistent with the Telecom Act or FCC regulations. U S WEST believes that agreements or arrangements reached under 252(i) are not agreements or arrangements which are subject to state commission approval under § 252(e) of the Telecom Act. In accordance with § 252(e), only

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2 agreements that are reached through negotiation or arbitration are to be submitted to the state  
3 commission for approval. A § 252(i) agreement is not reached through either negotiation or  
4 arbitration, but rather is reached through the electing carrier exercising its rights under § 252(i) to  
5 obtain agreements or arrangements from other agreements already approved. As such, the  
6 Commission requirements that the agreements be submitted for approval would not appear to be  
7 permitted under § 252(e) of the Telecom Act. That said, such a requirement would not, however,  
8 be inconsistent with § 261(c) of the Act, which permits the state commission to impose additional  
9 requirements on carriers that are necessary to further competition. U S WEST does not object to  
10 the Commission requirement that the agreements be submitted for approval as to their form and/or  
11 for Commission recordkeeping requirements. Additionally, Commission approval of the  
12 agreement provides both parties with the benefit of a definitive effective date and enables the  
13 Commission to have an understanding of the level of competitive activity in the state, at least  
14 insofar as that is evidenced by interconnection agreements with incumbents. Thus, the  
15 Commission cannot approve these agreements under § 252(e), but may require that they be  
16 submitted for approval under § 261(c).

17 **G. Is A State Requirement That Arrangements Approved Pursuant To Section 252(i) Be**  
18 **Made Available To Other Carriers Not Inconsistent With The Telecom Act Or FCC**  
19 **Regulations?**

20 In this section, the Commission asks whether a state requirement that “252(i)”  
21 arrangements be made available to other carriers is not inconsistent with the Telecom Act or FCC  
22 regulations. U S WEST believes that a state requirement that 252(i) arrangements be made  
23 available to other carriers would in fact be squarely inconsistent with the Telecom Act and with  
the FCC’s Rule 809. In both cases, the only agreements or arrangements that are required to be  
made available are agreements or arrangements which a state commission has previously

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approved. As discussed above, the only agreements which a state commission may approve under § 252(e) are those which were negotiated or arbitrated. Thus, while U S WEST believes that the state commission may still require 252(i) agreements or arrangements to be submitted for Commission approval, the Commission approval would not be approval under § 252(e) of the Telecom Act, but rather under some other general Commission authority. The Act is very specific in § 252(i) that only arrangements or agreements approved “*under this section*” must be made available. That means that the only agreements or arrangements that must be made available under § 252(i) are agreements or arrangements which were approved under § 252(e). A 252(i) arrangement is not such an arrangement. Thus, any state requirement that 252(i) agreements or arrangements be made available to requesting carriers would be squarely inconsistent with the Telecom Act.

Respectfully submitted this 17th day of December, 1999.

U S WEST Communications, Inc.

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Lisa A. Anderl, WSBA No. 13236