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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADVANCED TELECOM GROUP, INC.,)	
)	DOCKET NO. UT-993003
Petitioner,)	
)	U S WEST'S JANUARY 21, 2000 BRIEF
v.)	
)	
U S WEST COMMUNICATIONS, INC.,)	
)	
Respondent.)	
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On January 14, 2000, the Administrative Law Judge issued a Recommended Decision resolving the disputed issues in this case and calling for additional briefing to be filed on January 21, 2000. U S WEST submits this filing in accordance with that order. U S WEST takes issue with the conclusions in the Administrative Law Judge's ruling as follows:

The Commission should reverse the ALJ's conclusion that ATG may opt into a reciprocal compensation arrangement from an interconnection agreement between U S WEST and MFS Communications Company, Inc. ("MFS") that became effective on January 8, 1997, and provided for a term of two and one-half years. ATG cannot opt into an agreement or any portion of an

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agreement that has expired. At the very least, the ALJ's decision should be modified to strike the provision permitting ATG to continue to use the arrangement from the MFS agreement for 90 days *after* a new agreement between U S WEST and MFS becomes effective.

The ALJ's decision would permit ATG to opt into the reciprocal compensation provisions of an interconnection agreement between U S WEST and MFS. However, the MFS agreement became effective January 8, 1997, and the parties agreed to a term of two and one-half years. The "Term of Agreement" provision of the MFS agreement states:

This Agreement shall be effective for a period of 2 ½ years, and thereafter the Agreement shall continue in force and effect unless and until a new agreement, addressing all of the terms of this Agreement, becomes effective between the Parties. The Parties agree to commence negotiations on a new agreement no later than two years after this Agreement become effective.

In accordance with this provision, the MFS agreement expired on July 7, 1999, and is no longer available for adoption under section 252(i).

The ALJ reasoned here, consistent with his decision in the ATTI arbitration, that because U S WEST and MFS have extended the agreement pending their negotiation and execution of a replacement agreement, the MFS agreement continues to be available to ATG for opt-in. To facilitate negotiation of the follow-on contract, U S WEST and MFS agreed to operate under the existing agreement until a new agreement is in place. This accommodation was for the parties' convenience only and was to ensure continuity, as well as the ability to negotiate a new agreement, without the need to agree on "interim" agreements during their negotiations. This accommodation does not mean that the term of the agreement can be ignored for the benefit of third parties.

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In *NEXTLINK of Washington, Inc. v. U S WEST Communications, Inc.*, Docket No. UT-990340, Sixth Supplemental Order; Recommended Decision at 20 (Aug. 25, 1999), the Commission permitted NextLink to opt-in to the reciprocal compensation provision of the expired MFS agreement. However, subsequent to *NEXTLINK*, this Commission issued its Section 252(i) Policy Statement, Principle 8 of which establishes that parties cannot opt into interconnection agreements that have expired:

An interconnection arrangement made available pursuant to Section 252(i) must be made available for the specific time period during which it is provided under the interconnection agreement from which it was selected. For example, if the interconnection arrangement was included in an agreement that expired on December 31, 2000, it must be available to other carriers only until December 31, 2000. The purpose of limiting availability of interconnection arrangements to the time period during which they are available *under the original agreement* is to ensure non-discriminatory treatment of carriers, including the carrier who negotiated or arbitrated the initial agreement.

Policy Statement at 6 (emphasis added).

This principle establishes that the parties and the Commission must look to the expiration date of the *original* agreement to determine whether a carrier can opt into that agreement. In the present case, the expiration date of the original agreement was July 7, 1999. Accordingly, the arrangement ATG seeks is not available for opt-in.

The ALJ's decision also is inconsistent with Principle 6 of the Commission's Section 252(i) Policy Statement, which provides:

The "reasonable period of time" during which arrangements in any interconnection agreement (including entire agreements) must be made available for pick and choose by a requesting carrier extends until the expiration date of that agreement. A

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2 requesting carrier may not receive arrangements from any agreement that is no longer
3 effective. If carriers were allowed to adopt arrangements from expired agreements,
4 the result would be to extend the effective period of any particular interconnection
5 arrangement. Such an extension would be unreasonable and unduly burdensome to
6 ILECs because it could require an ILEC's continuing performance of obligations that
7 were based on outdated assumptions.

8 Policy Statement at 5.

9
10 ATG's request to opt into the U S WEST/MFS agreement would effectively delete the
11 words "expiration date" from Principle 6 entirely and, thus, undermine the policies that underlie
12 that principle. Simply put, the U S WEST/MFS agreement has an expiration date – July 7, 1999 –
13 and, under Principle 6, the reciprocal compensation arrangement of that agreement is not available
14 for opt-in after that date.

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16 The ALJ recognized that if ATG can opt into the MFS arrangement, "it would be
17 inequitable to U S WEST if ATG received the MFS arrangement for an indefinite term."
18 Recommended Decision, ¶ 44 at 12. Accordingly, the Recommended Decision provides that:

19 . . . either 1) the arrangement expires 90 days after a new agreement between
20 U S WEST and MFS becomes effective, or 2) the arrangement expires
21 contemporaneous with the other negotiated and arbitrated terms in the Agreement,
22 whichever event occurs first.

23 Id. However, the effect of this provision is to give ATG the benefit of the MFS arrangement for
90 days longer than MFS itself – a clear violation of Principles 6 and 8 of the Commission's Policy
Statement. If ATG can opt into this arrangement at all, it should not be permitted to do so for a
longer period than MFS itself. To protect ATG from an abrupt termination of this arrangement,
U S WEST would agree to provide ATG with 90 days advance written notice that the original
agreement with MFS will no longer be in effect.

U S WEST respectfully requests that the ALJ's decision be modified to prohibit ATG from
opting into the reciprocal compensation arrangement between U S WEST and MFS. Instead, the

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interconnection agreement between ATG and U S WEST should include the bill and keep compensation scheme that is in the U S WEST/Covad agreement that ATG has already opted into. Alternatively, if the Commission permits ATG to opt into this arrangement, the interconnection agreement should provide that this arrangement terminates either (1) 90 days after notice from U S WEST that its original agreement with MFS will no longer be in effect, or (2) contemporaneously with the other terms in the U S WEST/ATG agreement, whichever event occurs first.

CONCLUSION

For the reasons stated, the Commission should modify the ALJ's decision as requested and deny ATG's request to opt into an expired agreement.

Respectfully submitted this 21st day of January 2000.

U S WEST Communications, Inc.

Lisa A. Anderl, WSBA No. 13236