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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

COMMISSION

2

3 ADVANCED TELCOM GROUP, INC.,)

4 Petitioner,)

5 vs.)

6 U S WEST COMMUNICATIONS, INC.,)

7 Respondent.)

DOCKET NO. UT-993003

Volume II
Pages 51 - 75

8

9 A hearing in the above matter was held on
10 January 31, 2000, at 9:05 a.m., at 1300 South Evergreen
11 Park Drive Southwest, Olympia, Washington, before
12 Commissioners MARILYN SHOWALTER, WILLIAM R. GILLIS, and
13 RICHARD HEMSTAD.

14

The parties were present as follows:

15

16 U S WEST COMMUNICATIONS, INC., by LISA A.
17 ANDERL, Attorney at Law, 1600 Seventh Avenue, Suite
18 3206, Seattle, Washington 98191.

17

Also Present: Mark Reynolds

18

19 ADVANCED TELCOM GROUP, INC., by GREGORY J.
20 KOPTA, Attorney at Law, Davis Wright Tremaine, 1501
21 Fourth Avenue, Suite 2600, Seattle, Washington
22 98101-1688.

20

21 THE WASHINGTON UTILITIES AND TRANSPORTATION
22 COMMISSION, by SHANNON E. SMITH, Assistant Attorney
23 General, 1400 South Evergreen Park Drive Southwest,
24 Post Office Box 40128, Olympia, Washington 98504-0128.

23

Also Present: Jing Roth.

24

25 Kathryn T. Wilson, CCR
Court Reporter

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1 P R O C E E D I N G S

2 CHAIRWOMAN SHOWALTER: Good morning. This is
3 the continuation of our open meeting for the purposes
4 of hearing oral argument in Cause No. UT-993003. I
5 think we'll hear first from Ms. Anderl.

6 MS. ANDERL: Thank, Your Honor. Lisa Anderl
7 representing U S West Communications. I believe you
8 have a clear history and background of this case laid
9 out before you in the written pleadings filed by the
10 parties. Just a very brief summary, in the September
11 and October time frame, U S West and ATG began
12 discussing ATG's request to opt into certain provisions
13 of the MFS Interconnection Agreement. ATG currently
14 has the Kovad Agreement that they opted into about a
15 year ago.

16 U S West -- and I think this is reflected
17 fairly clearly in the initial petition -- talked to ATG
18 about that and agreed preliminarily that ATG could opt
19 into the reciprocal compensation provisions from the
20 MFS that are the interconnection agreement based on our
21 previously having had that issue decided against us in
22 the Nextlink case.

23 Then, however, the draft Interpretive Policy
24 Statement was issued, which was adopted in essentially
25 its initial form in the November time frame, and it was

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1 based on our initial review of that that we felt that
2 perhaps we ought to tee this up again and ask the
3 Commission to take another look at it, and the issue
4 before you being, of course, whether the MFS Agreement
5 has quote unquote, expired, so that the reciprocal
6 compensation terms and conditions are no longer
7 available for opt-in, Section 252(i) of the
8 Telecommunications Act.

9 I think that the recommended decision
10 considered the issue thoroughly and set forth a clear
11 decision on it, but I can perfectly well understand we
12 continue to disagree with it. We do believe that while
13 not perfectly worded, the MFS does have an expiration
14 date in it that on its face ought to be interpreted to
15 indicate that the agreement is expired after
16 two-and-a-half years, which would have been in July,
17 and that the terms and conditions of that agreement are
18 no longer available to carriers under 252(i) opt-in,
19 and that's really where we are, and it was the
20 issuance, as I said, of the Interpretive Policy
21 Statement in the September or October time frame that
22 led us to believe that maybe the Commission would take
23 another look at this because of that issue of whether
24 or not it's expired.

25 The only other issue directly raised by the

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1 petition and mentioned in staff's memorandum was
2 whether or not U S West had negotiated in bad faith by
3 initially agreeing with ATG that they could have this
4 opt-in or preliminarily agreeing and then withdrawing
5 that offer, and we believe that the Administrative Law
6 Judge's decision on that issue is correct, kind of on a
7 two-part basis: One, there is no real duty to
8 negotiate under 252(i), but to the extent that we were,
9 in fact, negotiating with ATG, we did not do so in bad
10 faith and changed our position based on what we
11 believed to be a change in the law or potentially in
12 the Commission's interpretation of the review of the
13 law and therefore asked that it be decided again.

14 I'm available for specific questions, but we
15 continue to believe, as we did in our initial
16 pleadings, that the reciprocal comp provision should
17 not be available for opt-in.

18 CHAIRWOMAN SHOWALTER: Do you have a
19 question?

20 COMMISSIONER HEMSTAD: Assuming we decide
21 that the MFS Agreement has not expired, then what is
22 your position?

23 MS. ANDERL: Thank you for mentioning that,
24 and, of course, there was the other issue that the
25 staff's memorandum addresses, and that is if ATG gets

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1 this term, how long do they get it for, and we would
2 suggest that they get it for the shorter of the term of
3 the MFS Agreement when the MFS Agreement is replaced
4 with a new agreement or their own agreement, so either
5 through -- was it May 2001, which is when the ATG
6 Agreement expires, or through the date when a new
7 agreement comes into effect to replace the existing MFS
8 Agreement, and we would, of course, as we stated, be
9 willing to notify ATG as much as 90 days in advance on
10 when we were planning on filing a replacement
11 interconnection agreement. It might not be precise to
12 the day we would be able to do that because sometimes
13 when you are in negotiations, you agree to extend to
14 deadlines, but I think we would know reasonably three
15 months in advance because we would already be in
16 negotiations with MFS, and we would be able to notify
17 ATG, and ATG would be able to take the appropriate
18 steps to get ready to replace that term in its own
19 contract. It does, however, seem incorrect that ATG
20 would get the benefit of MFS terms and conditions for
21 90 initial days beyond when MFS got it, if that's what
22 we're trying to fix.

23 CHAIRWOMAN SHOWALTER: What about the staff's
24 idea that it would be 90 days after a request for
25 approval of a new agreement?

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1 MS. ANDERL: That's kind of a compromise --

2 CHAIRWOMAN SHOWALTER: Or 60 days. At least
3 you know when that happens, if it happens. That's my
4 next question. Supposing things aren't going well with
5 MFS. Wouldn't one possibility be that U S West comes
6 in and requests arbitration or somehow a resolution of
7 an incomplete negotiation with MFS?

8 MS. ANDERL: We certainly could.

9 CHAIRWOMAN SHOWALTER: Have we accounted for
10 that situation here, or do we just wait for May 1st,
11 2001 in that case?

12 MS. ANDERL: At a certain point in time, you
13 are going to know you either have a negotiated
14 agreement, or you're going to have to file in the
15 arbitration window, the 135 to 160 days. I think if
16 you know that you have a negotiated agreement, then
17 you've got at least 30 days before it's effective;
18 maybe more by the time you get signatures and
19 everything else.

20 If you know you don't have a negotiated
21 agreement, you file in the arbitration window, 135 to
22 160 days. If you notify ATG during that time, then
23 they know that thereafter at the nine-month time frame
24 the arbitrator is going to issue a decision, order a
25 new agreement to be filed, and it gives you a time

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1 certain when the 1997 agreement will terminate.

2 CHAIRWOMAN SHOWALTER: Does that mean
3 possibly we are talking about the shorter of three
4 possible dates: May 1, 2001, which is when the ATG
5 Agreement ends, or 90 days or 60 days after request for
6 approval of MFS. That would be a real date.

7 MS. ANDERL: Right.

8 CHAIRWOMAN SHOWALTER: Or when a new MFS
9 Agreement is approved by the Commission, whichever is
10 earlier; and the third one might be in the event that
11 you don't come in with a request for approval.

12 MS. ANDERL: Right. Our position is that
13 they ought to get the shorter of two dates, either
14 their own or the MFS, and the 1997 MFS Agreement is
15 going to go away, by anybody's reading, when a new
16 agreement is approved. It's just a matter of how that
17 new agreement gets approved, through filing a
18 negotiated agreement or actually producing an
19 arbitrated agreement.

20 CHAIRWOMAN SHOWALTER: So you are saying it
21 should be just the earlier of the May 1st, 2001, or the
22 Commissioners' approval of a new MFS Agreement.

23 MS. ANDERL: Right, however you get there,
24 and either way, my belief is that ATG would get
25 reasonable notice that a new MFS Agreement was going to

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1 be offered for approval.

2 CHAIRWOMAN SHOWALTER: Thanks. Mr. Kopta?

3 MR. KOPTA: Thank you. Greg Kopta on behalf
4 of Advanced Telecom Group, Inc. We support the
5 recommended decision by the ALJ in all respects save
6 for the one that you were just discussing with
7 Ms. Anderl, and there are two concerns that ATG has
8 with respect to that particular proposal: One is
9 that --

10 CHAIRWOMAN SHOWALTER: Are you talking now
11 about the timing?

12 MR. KOPTA: The timing of how long this
13 provision would be effective for ATG. The first
14 problem is that this is keying to an event that is
15 uncertain about when or even if it's going to happen.
16 I know in the Interpretive Policy Statement based on
17 FCC's Global-NAPS decision that there is a concern on
18 the part of the Commission that provisions from a
19 negotiated agreement between the incumbent and another
20 carrier carry the termination date that comes from that
21 agreement, which is what the genesis of this particular
22 dispute is.

23 Here, there is a problem because there isn't
24 a definite date, so there is no way that ATG will know
25 when or even if that particular provision of the

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1 agreement that is adopted from the MFS Agreement may
2 expire, so there is nothing that ATG can do to prepare
3 for that if it even happens, and from a practical
4 impact, which is the second concern, the 90 days, as
5 Ms. Anderl was discussing under the Act, you can't get
6 a new agreement within 90 days unless something is
7 negotiated.

8 So let's say U S West and MFS agree to
9 replace the current agreement and they give ATG 90 days
10 notice, and ATG begins to negotiate with U S West and
11 they don't reach an agreement. No petition for
12 arbitration can even be filed until 135 days, and there
13 is really no realistic opportunity to get a replacement
14 for this portion of the agreement for maybe nine
15 months, and yet it expired after 90 days, and part of
16 the problem here is that pursuant to U S West's
17 request, ATG has asked for the entire interconnection
18 section of the agreement, so suddenly after 90 days,
19 there is no agreement on interconnection between ATG
20 and U S West. What does ATG do? They are stuck
21 without an agreement, and unless they are able to
22 negotiate or opt into another carrier's agreement, then
23 they have no agreement, and it's going to be another
24 six months before they can get an agreement, so from a
25 practical standpoint, ATG is up a creek, and I think,

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1 again, we are dealing with unusual circumstances here
2 because of the fact that the 252(i) was stayed and then
3 reinstated, and we have unusual circumstances, and I
4 think in this case, the only thing that really makes
5 sense is to allow this to be effective for the entire
6 time of the ATG Agreement, and, in fact, given the fact
7 that the determination provision or the effectiveness
8 provision in the MFS Agreement said it would be for
9 two-and-a-half years and thereafter until replaced by
10 one of the parties, that's the same thing you would be
11 giving ATG here. The parties in this case being ATG
12 and U S West, not a third party that's not part of the
13 ATG Agreement, so it's consistent with taking over the
14 effectiveness provision of the MFS Agreement into the
15 ATG Agreement.

16 You are giving them the same thing that U S
17 West has with MFS; in other words, the parties to the
18 agreement have to decide when and if to replace the
19 agreement, not have to wait and decide what some other
20 third party that's not even a party to the agreement
21 decides to do.

22 CHAIRWOMAN SHOWALTER: Ms. Anderl, do you
23 have an answer as to what ATG is supposed to do if you
24 negotiated a new agreement but they haven't had time to
25 negotiate a new one themselves?

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1 MS. ANDERL: It seems so me that they would
2 just revert back to the terms and conditions that are
3 in the agreement they've got right now, which is the
4 Kovad Agreement. It's a stand-alone agreement. It
5 contains all the necessary terms. It has an
6 interconnection section in it, and if the MFS Agreement
7 expires or the provisions from the MFS Agreement are no
8 longer effective and they haven't had time to get new
9 terms and conditions or begun negotiating with U S West
10 on that, it seems to me that the safety net is that
11 they revert to the Kovad Agreement that they had
12 originally opted into.

13 This is potentially going to be a problem if
14 people pick and choose from different agreements where
15 you've got the interconnection section that expires in
16 June 2001, the retail section that expires in August
17 2002, and the collocation section that expires in
18 October 2000. You can cobble together an agreement
19 like that, and if the carriers can do that, that's to
20 me maybe the downside risk that they have by availing
21 themselves of the most favorable terms. They just have
22 to have a business plan to deal with that, but they
23 can't just say, This is going to be hard for us so give
24 us the longest term.

25 CHAIRWOMAN SHOWALTER: That sounds like a

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1 practical thing to do, to fall back on the old
2 agreement, but legally how does that work, because
3 legally if U S West and ATG had abandoned the Kovad
4 Agreement for the time being or have abandoned it --

5 MS. ANDERL: Only part of it.

6 CHAIRWOMAN SHOWALTER: Say on part of it they
7 have, so now they've got a new agreement. Is there
8 anything in the current agreement that would adopt the
9 MFS, if we approve it, that says, And if this doesn't
10 work out, we revert back? Legally, how do we know that
11 you can revert back, that ATG can revert back?

12 MS. ANDERL: It may not happen automatically.
13 It may be something that you would want to put in an
14 order or that the parties would have to agree on as a
15 separate side deal that there just won't be an
16 agreement out there with a big hole in it, but as I
17 said, I don't think the solution is to kind of -- let's
18 say hypothetically we agree to negotiate with MFS or
19 MFS agrees to negotiate with us, and in April of this
20 year, we come up with a new agreement and we file it
21 with the Commission for approval. The Commission
22 approves it in May, and it has different reciprocal
23 compensation provisions in it. Does that mean that ATG
24 doesn't have to start negotiating with us until then,
25 and they get 160 days to negotiate, file the

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1 arbitration? They essentially get an additional nine
2 months of those terms and conditions? That's not fair
3 or right either.

4 CHAIRWOMAN SHOWALTER: I'm always trying to
5 think of the default position; if everything breaks
6 down, then what happens. In this case, does the
7 Commission have the authority to approve or to add in
8 this fall-back mechanism; that is, if the MFS Agreement
9 ends and you haven't got a new agreement with ATG, then
10 it reverts back to Kovad? Can we say that, or do we
11 have to act on what's brought before us between the two
12 of them?

13 MS. ANDERL: I don't want to answer off the
14 top of my head. I want to think about it for a minute.
15 It seems to me that you would have that authority to do
16 that, because it's within the scope of your authority
17 to approve interconnection agreements and insure they
18 are consistent with the public interest, et cetera, but
19 I'd probably want to do a little research.

20 CHAIRWOMAN SHOWALTER: Mr. Kopta, do you have
21 an opinion on that?

22 MR. KOPTA: I do, not surprisingly. Purely
23 from the standpoint of what's going on here, ATG has
24 requested a particular section of the agreement to
25 replace a section of its existing agreement. Once that

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1 happens, that modifies the agreement. The Commission
2 approves it. That is the agreement. The Kovad
3 Agreement no longer exists, so absent an order from the
4 Commission, ATG would have to reopt into those
5 provisions, which, of course, would be long after the
6 time of the original, so we run smack dab into the
7 Commission's Interpretive Policy Statement about when
8 you can opt into the particular provisions.

9 As far as the Commission having the authority
10 to say, Well, if this one goes away, this one
11 substitutes, that's certainly not something that ATG
12 has requested, and you are adding another layer of
13 complexity onto this agreement. Not only do we have to
14 wait for an uncertain event about whether U S West and
15 MFS are able to negotiate an agreement, but we have to
16 say, Well, if we can't reach another agreement, then we
17 have this other provision that we don't want in the
18 agreement back in the agreement, and no other carrier
19 that has opted into the U S West/MFS Agreement has that
20 kind of provision in their agreement.

21 U S West is claiming that this is somehow
22 unfair, but ATG will be in the same position as every
23 other carrier that is opted into the MFS Agreement. As
24 an example, GST opted into the MFS Agreement. As far
25 as I'm aware, there is nothing in the Commission order

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1 approving that agreement that requires once that U S
2 West and MFS have reached an agreement for GST to have
3 90 days to negotiate its own agreement or to somehow
4 pick another agreement from somebody else while theirs
5 has expired, and they don't have any other agreement
6 that's in place, so I think all we are asking for is
7 the same thing that other carriers have been provided
8 by the Commission, and I think that trying to do
9 something along the lines of what U S West has
10 suggested and what's recommended in the recommended
11 decision is just going to cause more problems and
12 uncertainties and more issues raised to the Commission.

13 CHAIRWOMAN SHOWALTER: So from a given
14 date -- obviously, you know when your own agreement
15 ends. That's pretty easy to figure out, but in the
16 case where you're relying on the MFS Agreement and you
17 don't know when it ends, if there is some kind of date
18 that triggers your knowledge that that will end, such
19 as a request for approval of a new MFS Agreement or our
20 approval of an MFS Agreement, what's the minimum time
21 period after that that you need? Is it the 135 days?

22 MR. KOPTA: I'm saying nine months after the
23 act because you have to leave open the possibility that
24 the parties aren't going to be able to negotiate an
25 agreement and would have to arbitrate, and that's the

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1 time frame that's provided under the Act, which sort of
2 raises another response to U S West saying if you are
3 going to pick and choose among various agreements and
4 have different termination dates, then that's kind of a
5 problem.

6 If you know that a particular section of your
7 agreement is going to expire in August 2001, then you
8 can start -- you can go nine months back from that
9 period of time and start the negotiation for a new
10 agreement and allow yourself enough time, and yes, that
11 does cause problems, and yes, we have problems with
12 that particular approach, but at least you have an
13 alternative.

14 CHAIRWOMAN SHOWALTER: But aren't you the
15 party that decided to choose the MFS Agreement with its
16 indefinite time period, so going in, you didn't know
17 when it was going to end?

18 MR. KOPTA: That's true, but we take the same
19 indefinite time period. That's part of the deal. You
20 get the same effectiveness or the same termination
21 date -- in this case, there isn't one -- but we are
22 willing to take that. We are willing to say this will
23 remain in effect until the end of our current agreement
24 or unless replaced as a result of an agreement between
25 U S West and ATG.

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1 CHAIRWOMAN SHOWALTER: So instead of saying
2 it's the indefiniteness of the MFS Agreement that you
3 somehow get to have the indefiniteness of your own
4 agreement.

5 MR. KOPTA: Just the indefiniteness of that
6 particular portion of the MFS Agreement. That's the
7 effectiveness of that agreement, so you step into the
8 same shoes as MFS, but you don't also allow them to
9 control when the agreement takes effect.

10 CHAIRWOMAN SHOWALTER: Why not?

11 MR. KOPTA: Look at all the other provisions.
12 When you are opting into an agreement, you're
13 substituting ATG for MFS. Do we have to, when we
14 adopt a provision, rely on negotiations with U S West
15 and MFS when it comes to trunk forecasting? I don't
16 think so. I think the agreement says the parties will
17 get together and design the ways that they want to
18 interconnect their network. ATG is not relying on the
19 way that U S West interconnects its network with MFS,
20 nor should it be.

21 So you step into the same shoes of the
22 agreement with the same terms and conditions of the
23 agreement, but not how that's implemented with another
24 carrier, and that's the same thing we are saying here
25 with the effectiveness; that we step into the same

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1 shoes, that there is an indefinite term, and it can be
2 replaced by the parties, but the parties to this
3 agreement, not the parties to another agreement.

4 CHAIRWOMAN SHOWALTER: Does staff have an
5 opinion?

6 MS. ROTH: The staff memo that listed all the
7 recommendations that staff is recommending the
8 Commission to adopt, but to address the date, I'm going
9 to try. Shannon is probably going to help.

10 First of all, that May, year 2001, is the
11 date that ATG will no longer have the MFS/U S West
12 reciprocal compensation arrangement. Then come to the
13 second question is 90 days from the date that U S West
14 and MFS filed the negotiated agreement or the start for
15 arbitration. To that extent, I would say the 90 days
16 would be enough for ATG to look around in various other
17 agreements this Commission has approved, such as
18 Televerse, Nextlink, next come before you next
19 Wednesday is ATTI, GST.

20 None of these parties mention they have,
21 especially AT&T, has the right to pick and choose from
22 other agreement in effect. The fact ATG from the very
23 beginning of this case pick MFS and U S West, it really
24 created a problem from the very beginning for this
25 case. If ATG has from the very beginning picked

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1 Nextlink/U S West Agreement, which the reciprocal
2 compensation, which is the same reciprocal compensation
3 as the U S West/MFS Agreement, we wouldn't have a
4 problem, and it would expire when ATG's agreement
5 expires, or when Nextlink and U S West agreement
6 expires, whichever comes first. So ATG only deserves
7 to the extent that either their agreement with U S West
8 expires or when U S West file a request for approval
9 with us, 90 days from that.

10 As far as if U S West file a petition or MFS
11 file a petition for arbitration, I don't know how to
12 count 135 days, but Shannon may be able to help me on
13 that.

14 MS. SMITH: I can't really provide a lot of
15 assistance with respect to counting the 135 days if
16 U S West and MFS were to come in and petition for
17 arbitration of a new agreement, but in this case, ATG
18 opted into an agreement with an indefinite expiration
19 date, and to that extent, ATG accepted that provision
20 somewhat at its peril understanding that MFS and
21 U S West could essentially reach another agreement with
22 respect to reciprocal compensation; and therefore, that
23 provision would not be available any longer in the MFS/
24 U S West interconnection agreement.

25 CHAIRWOMAN SHOWALTER: That's your

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1 interpretation of what they did, but their
2 interpretation of what they did is they bought into
3 their own indefiniteness; that is, that the indefinite
4 quality applied to the new parties, ATG and U S West,
5 so part of our thinking has to be what do we think they
6 opted into.

7 MS. SMITH: That's true. What ATG opted into
8 was a reciprocal compensation arrangement between U S
9 West and MFS, and when that particular arrangement is
10 no longer valid between those parties, it has expired,
11 and the Interpretive Policy Statement says that when an
12 arrangement or agreement has expired, it's no longer
13 available for pick and choose, and that ATG has to take
14 the same expiration date in the original agreement or
15 the arrangement, and the problem here is there isn't an
16 expiration date. It's somewhat open ended.

17 So the question for this Commission is when
18 to draw the line, the effectiveness of the reciprocal
19 compensation arrangement between MFS and U S West, and
20 the proposal that is before you from staff draws a line
21 and picks an effective date, but also allows ATG an
22 opportunity to continue to operate under that
23 arrangement until it can pick and choose from another
24 agreement or reach an agreement with U S West on its
25 own.

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1 COMMISSIONER HEMSTAD: Speaking for myself,
2 I'm of the opinion we have to draw a line. What the
3 parties need here is some definiteness. In a fact
4 situation, this just cries out for the parties to know
5 what the rules are and you can go on with your lives,
6 and it doesn't have to be perfect; it just has to be a
7 line. So I'd like to know from your best statement of
8 what you think that line should be. Mr. Kopta, your
9 position is that there is only one line, apparently,
10 and that's the May 2001 contract expiration date for
11 ATG.

12 MR. KOPTA: That's correct.

13 COMMISSIONER HEMSTAD: And that's it.

14 MR. KOPTA: Unless the parties can negotiate
15 a replacement --

16 COMMISSIONER HEMSTAD: If you can come up
17 yourselves with a new arrangement, that would be
18 different, but without that, the 2001 date.

19 MR. KOPTA: That's correct, and I guess part
20 of the problem, Commissioner Hemstad, is that staff
21 rather glibly says, Well, they can opt into another
22 agreement. The problem is the Nextlink Agreement
23 expires in August. All of the other agreements are
24 opt-in's to the MFS Agreement and they have the same
25 indefinite term, so does that mean we bind to the GST,

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1 or is the GST Agreement also subject to when U S West
2 and MFS happen to reach an agreement on a replacement
3 agreement, which would certainly be news, I'm sure, to
4 GST that suddenly their agreement evaporates in 90 days
5 after U S West and MFS reach an agreement.

6 So it wasn't a strategic decision as much as
7 that was what was available, and assuming that nothing
8 new comes in, there isn't anything else that's
9 available in terms of reciprocal compensation, except
10 for opt-in's to the MFS Agreement or some modification
11 thereof.

12 COMMISSIONER HEMSTAD: Ms. Anderl?

13 MS. ANDERL: Our position would be that the
14 line is in one of two places: either the May 2001 date
15 that the ATG Agreement expires or 90 days after
16 U S West notifies ATG that the MFS Agreement will no
17 longer be in effect on a date certain.

18 CHAIRWOMAN SHOWALTER: But your 90 days is an
19 arbitrary. There is nothing magical about 90 days. It
20 just seems a sufficient time.

21 MS. ANDERL: It seems reasonable.

22 COMMISSIONER HEMSTAD: And the staff position
23 modifies that to say -- how is the staff position
24 different from that?

25 MS. ROTH: It's different. U S West said

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1 it's 90 days, whenever they give to ATG a 90-day
2 notice.

3 COMMISSIONER HEMSTAD: And staff position is
4 90 days after they file --

5 MS. ROTH: They file with the Commission.

6 COMMISSIONER HEMSTAD: -- the completed
7 agreement. Your position is an extra 90 days.

8 MS. ANDERL: That gives them probably an
9 extra 60 days, because they file, then it's approved
10 after 30 days.

11 CHAIRWOMAN SHOWALTER: My question is, what
12 if you come instead with the request for arbitration?
13 What if you can't negotiate a new agreement with MFS
14 and you come here without a new agreement to approve?

15 MS. ANDERL: That would still give us an
16 ability to notify ATG 90 days, but at the time we filed
17 for arbitration with the Commission, that would serve
18 also as a 90-day notice to ATG that the MFS Agreement
19 is no longer going to be in effect after we're done
20 with the arbitration. That would probably give them
21 more than 90 days.

22 MS. ROTH: Can I just respond to Mr. Kopta
23 that earlier he said there are no longer other
24 provisions to pick and choose. That's not true. There
25 is arbitration case between ATTI and U S West before

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1 the Commission is going to come before you at next open
2 meeting on February 9th. The arbitrators recommended
3 decision is to award ATTI the reciprocal compensation
4 arrangement in MFS/U S West Agreement, but that's an
5 arbitrated issue. That's not a pick and choose result.
6 That is pick and choose issue, but to the extent that
7 Mr. Kopta said everything else expires, ATTI/U S West,
8 if the Commission adopted the arbitrator's decision,
9 then they would have another -- how many years, three
10 years?

11 JUDGE BERG: I'm not sure the term, but it's
12 a minimum of two years.

13 MS. ROTH: Minimum of two years to pick and
14 choose from that between AT&T and U S West.

15 MS. ANDERL: Commissioners, if I could just
16 respond to that. I don't want my silence seen as an
17 assent that U S West agrees with that position, and I
18 think I've explained in prior proceedings. It's our
19 position that if it's a 252(i) provision that was
20 received through opting into another carrier's
21 contract, if that provision itself is not available
22 under 252(i), I don't think that's a question you have
23 to decide today so I don't want to muddy the waters,
24 but I want to make sure our position on that is clear.

25 MR. KOPTA: And I think this goes to your

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1 point, Commissioner Hemstad, that if you do anything
2 other than say that these provisions that ATG has opted
3 into are effective for the same length of time as the
4 contract or subject to negotiation between U S West and
5 ATG, you are buying a lot of uncertainty and imposing a
6 lot of uncertainty on ATG. It may be that this
7 agreement will be available. It may be that it's not.
8 It may be that we'll be back before you because U S
9 West takes a different position than we do. Who knows?
10 It may be that it never comes it up. It may be that
11 MFS and U S West are going to be happy with their
12 agreement until at least May of 2001, but we need to
13 know what the provisions of our agreement are and how
14 long they are going to be effective in order to plan
15 the replacement and also to be able to operate our
16 business.

17 CHAIRWOMAN SHOWALTER: Any other comments,
18 questions? Thank you very much. The open meeting is
19 adjourned.

20 (Open meeting adjourned at 9:40 a.m.)

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