

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADVANCED TELECOM GROUP, INC.,)	
)	DOCKET NO. UT-993003
Petitioner,)	
)	U S WEST'S ANSWER TO PETITION
v.)	FOR ENFORCEMENT OF
)	INTERCONNECTION AGREEMENT
U S WEST COMMUNICATIONS, INC.,)	AND MOTION FOR SUMMARY
)	DETERMINATION
Respondent.)	
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Pursuant to WAC 480-09-530 and WAC 480-09-426, U S WEST Communications, Inc., (U S WEST) hereby files the following answer to Advanced TelCom Group, Inc.'s (ATG) petition for enforcement of its interconnection and motion for summary determination of the petition.

I. INTRODUCTION

As will be set forth more fully herein, U S WEST believes that ATG's petition and motion should be denied. The relief requested and the result sought by ATG is inconsistent with the Commission's draft interpretive and policy statement regarding Section 252(i) of the Telecommunications Act of 1996.

II.PARTIES

U S WEST does not dispute ATG's identification of the parties to this proceeding as set forth in paragraphs 1 and 2 of the petition.

III.JURISDICTION

U S WEST does not dispute the Commission's jurisdiction to hear this matter under Sections 251 and 252 of the Telecommunications Act of 1996 and under WAC 480-09-530.

U S WEST believes that this case should be governed by the Commission's Draft Interpretive and Policy Statement in its current form, or as modified after comments are received. As such, U S WEST does not object to the application of that Statement to relieve ATG of its obligations under WAC 480-09-530 to file a written notice of its intent to file a petition for enforcement prior to the filing of this petition.

IV.BACKGROUND

In general, ATG's statement of the background and history of this action is accurate. It is, however, incomplete in terms of setting forth U S WEST's view of those events.

ATG correctly describes that it opted-in to the Covad interconnection in its entirety, and that the Commission approved that agreement on December 9, 1998. However, it is inaccurate to suggest that ATG had "limited options" in terms of obtaining an interconnection agreement. Other agreements were also available for "opt-in" at that time, and there is no reason at all that ATG could not have sought to negotiate or arbitrate suitable terms when it first sought interconnection.

ATG did notify U S WEST of its desire to opt in to the MFS reciprocal compensation provisions as described in the petition, and U S WEST's initial response, on October 20, 1999, was as ATG described. At that time, U S WEST believed that the ATG request would be

governed by the interpretation of the law as set forth in the Nextlink decision.¹ While U S WEST disagreed with that outcome, it was in fact the most recent Commission discussion of the interpretation and application of Section 252(i) and Rule 809 of which U S WEST was aware. Subsequent to U S WEST's response to ATG, U S WEST had an opportunity to review and evaluate the Commission's Draft Interpretive and Policy Statement (issued October 15, received by U S WEST October 18). In U S WEST's view, this Interpretive and Policy Statement is a sufficient departure from the ruling in Nextlink that U S WEST believed it could and should modify its response to ATG. U S WEST's modified response, provided to ATG on October 29, 1999, describes why U S WEST believes that ATG is not entitled to the reciprocal compensation provisions from the MFS agreement, and why that outcome is consistent with the principles set forth in the Statement.

V. U S WEST IS NOT IN VIOLATION OF THE LAW

A. Section 252(i) And Rule 809 Do Not Require ATG's Outcome

ATG claims that U S WEST's denial of the reciprocal compensation provisions from the MFS agreement violate Section 252(i) of the Act and FCC Rule 809. ATG is incorrect. While it is clear that ATG is entitled to opt-in to certain provisions from other carriers' interconnection agreements, the provisions that ATG has selected for opt-in in this instance are not available for the reasons set forth below. Whether the provisions ATG has selected are available for opt-in is of course the core issue in this docket. It is U S WEST's position that the opt-in ATG has selected is inconsistent with the Washington Commission's preliminary interpretation of the requirements of Section 252(i) and Rule 809.

¹ *Nextlink Washington v. U S WEST*, Docket No. UT-990340, Order Adopting Recommended Decision (Sept. 9, 1999)

B. There Is No Discrimination

ATG claims that U S WEST's refusal to permit ATG to opt-in to the reciprocal compensation provisions from the MFS agreement is discriminatory because other carriers have been permitted to opt-in to those provisions. Whether or not U S WEST's actions are discriminatory is of course dependent upon what U S WEST's requirements are in any given situation. U S WEST believes it has not engaged in discriminatory conduct because it has treated all carriers in accordance with the law that is in effect at the time. Other carriers who have been permitted to opt-in to the MFS language have been treated in accordance with requirements in effect at that time, which mandated that U S WEST allow such an opt-in.

In the Televerse order, cited in ATG's petition, U S WEST permitted Televerse to opt-in to an entire existing interconnection agreement. In the Nextlink case, U S WEST opposed Nextlink's right to opt-in to the reciprocal compensation provisions of the MFS agreement but was ordered by the Commission to allow Nextlink to do so. U S WEST was required, by the law in effect at the time of the Televerse decision, to allow Televerse to opt-in to an entire agreement. U S WEST will comply with the Commission's ruling in Nextlink as setting forth the applicable law for that case. The ATG request is not the same as either Televerse or Nextlink. ATG is not seeking an entire agreement as Televerse was, and U S WEST believes that the current interpretation of the law as set forth in the Commission's Draft Interpretative and Policy Statement is sufficiently changed from the Nextlink ruling that different treatment is warranted for ATG. In all cases, U S WEST has treated carriers in accordance with the requirements of the laws that are in effect at the time. If this results in different treatment for different carriers, it is not the result of any discrimination by U S WEST, but is simply the result of a clearly permissible differentiation in

treatment based on a different state of the law at any particular time.

C. MFS Is Not Available For Opt-In

It is U S WEST's position in this docket that the MFS agreement has, by its own terms, expired, and that the reciprocal compensation provisions from that agreement should not be made available to carriers for Section 252(i) purposes. The MFS agreement stated an explicit term of two-and-a-half years, and thus expired on July 9, 1999. The agreement did state that it would continue in force and effect until a new agreement becomes effective between the parties. It also contains a requirement that the parties commence negotiations on that new agreement no later than two years after the agreement becomes effective. The "continuation" provisions in the MFS agreement are solely for purposes of allowing the parties to negotiate a new agreement, and do not give perpetual life to this contract. Thus, consistent with guiding Principle No. 6 from the Draft Interpretive and Policy Statement, U S WEST does not believe that this reciprocal compensation provision should be available. Principle 6 states that "a requesting carrier may not receive arrangements from any agreement that is not longer effective." The principle goes on to explain that if carriers were allowed to adopt arrangements from expired agreements, the result would be to extend the effective period of any particular interconnection arrangement and that such an extension would be unreasonable and unduly burdensome. Thus, the Commission should conclude that the MFS agreement is no longer available for opt-in purposes pursuant to Principle 6.

D. ATG Would Be In Default Of The Agreement It Seeks

The section of the MFS interconnection agreement regarding the term of the agreement reads as follows:

V. Term of Agreement

This Agreement shall be effective for a period of 2 1/2 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 becomes effective.

In this section of its petition, ATG argues that it should not be required to accept the second sentence of the MFS “term of agreement.” This is simply absurd. The Commission’s Draft Interpretative and Policy Statement clearly state that a carrier who opts-in to an arrangement accepts that arrangement on the same terms and conditions as the existing contract (Principle 4). Additionally, the electing carrier is bound by the same term as in the original contract (Principle 8). Thus, ATG would necessarily be required to accept the entire section from the MFS contract describing the term of the agreement and would have been required to begin negotiations with U S WEST on a new agreement no later than January 8, 1999. As such, ATG would necessarily be in default of this provision immediately upon its effectiveness. Such a result is both bad law and bad policy.

E. U S WEST Did Not Act In Bad Faith

ATG claims that U S WEST has negotiated in bad faith in violation of Section 251(c)(i). This is simply incorrect. U S WEST has explained to ATG why it modified its position with regard to the opt-in. U S WEST did not have an opportunity to review the Commission’s Draft Interpretative and Policy Statement until after its response to ATG on October 20, 1999. U S WEST advised ATG of its modified position slightly more than one week later and explained why it had modified its position. There is no bad faith associated with U S WEST’s attempt to protect its rights under what it believes to be a change in the law or interpretation of the law.

VI. MOTION FOR SUMMARY DETERMINATION

U S WEST agrees with ATG that there is no disputed or genuine issue of material fact in this case and the Commission may decide this case as a matter of law. U S WEST believes that the Commission's decision should be consistent with the principles in its Draft Interpretative and Policy Statement and that such decision results in a determination that ATG is not in fact entitled to pick and choose the reciprocal compensation provisions from an expired agreement. As such, the Commission should deny ATG's motion for summary determination and dismiss the petition.

VII. CONCLUSION/REQUEST FOR RELIEF

U S WEST requests that the Commission deny this petition and motion. ATG is not entitled to the reciprocal compensation provisions of the MFS agreement, as that agreement terminated on July 7, 1999.

Respectfully submitted this 10th day of November, 1999.

U S WEST Communications, Inc.

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