BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

UT-960307

In the Matter of the Petition of AT&T Communications of the Pacific Northwest, Inc. For Arbitration of Interconnection Rates, Terms and Conditions with GTE Northwest Incorporated, Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996.	)

AT&T'S COMMENTS TO MAY 2, 1997 HEARING ISSUES

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INTRODUCTION

AT&T Communications of the Pacific Northwest, Inc. ("AT&T") files these Comments for the purpose of providing Karl Craine, the appointed "Decisionmaker" in these proceedings, with supplemental information and discussion requested by him at the May 2 hearing (the "Hearing") between AT&T and GTE Northwest Incorporated ("GTE")(together, the "Parties"). AT&T believes that twelve main issues were raised by the Decisionmaker requiring follow-up by at least one of the Parties. In these Comments, AT&T discusses each of these issues sequentially, according to the section number (or attachment number) of the Agreement to which that particular issue relates.

I. MAIN AGREEMENT, SECTION 9.3.

Issue: Must the Decisionmaker adopt GTE's proposed language in Section 9.3 as a matter of law?

AT&T Response: No. The Decisionmaker is not required as a matter of law to adopt GTE's proposed language in Section 9.3 of the Agreement.

GTE alleges that it cannot be required to adhere to its obligations under the Agreement after such obligations no longer exist under the Telecommunications Act of 1996 (the "Act") or the FCC's First Report and Order (the "FCC Order"). See Transcript of Proceeding, May 2, 1997 (the "Transcript"), Pages 71-78. This allegation is incorrect.

AT&T agrees with GTE that the obligations of both Parties under the Agreement should be based on the Act and on the FCC Order. See 252(c)(1). Further, the proposed language of both Parties recognizes that upon changes in law that materially affect material terms of the Agreement, those affected terms should be renegotiated.[i]

However, despite the fact that many terms of the Agreement are based on requirements of the Act and the FCC Order, no provision of the Act or the FCC Order requires an **immediate or instantaneous** change of terms of an interconnection agreement upon any effective legal event affecting the obligations of an ILEC or CLEC. Even GTE's proposed language, upon a material change in law, assumes that GTE will comply with materially affected terms of the Agreement throughout the specified period of thirty days of negotiation, and throughout the indefinitely described period of mediation that follows. The issue is simply one of when it is most proper to renegotiate the affected terms.

AT&T's proposal is more efficient and promotes greater certainty than GTE's in that it avoids the difficult process of

negotiation, a process the Parties have struggled with for many months now, until a change in law affecting a material term of the Agreement is final and no longer subject to appeal or reversal. AT&T's proposed language recognizes that requiring renegotiation between the Parties when the legal basis for changing such terms could later be modified or overturned would be a significant waste of each Party's time, energy and money. Such a process could also adversely affect the provision of service to customers. AT&T's language applies equally to changes in law that benefit AT&T or GTE; it is not biased in favor of either AT&T or GTE, and therefore is the more balanced and reasonable contract language.

AT&T's language should also be adopted because AT&T's proposed methods for resolving disputes that arise during renegotiations of affected terms of the Agreement are much more clear and practical than GTE's proposed procedures. AT&T's language incorporates the dispute resolution procedures that the parties have agreed to for resolution of all disputes that arise under the contract; it also efficiently avoids the 135-day arbitration procedure in front of the Commission. See Attachment 1 of the Agreement.

GTE's attempts to use "voluntary" mediation rather than binding arbitration are, at best, ambiguous, costly and will merely thrust the parties into mediated negotiations after the parties have already failed to come to any agreement after thirty days of non-mediated negotiations. GTE's language is also ambiguous and fails to explain how the Parties will resolve the dispute if no conclusion is reached through the mediation process.

Further, AT&T's proposed dispute resolution process does not impair the Commission's ability to approve any change made to the Agreement. Section 2.1.2 of Attachment 1 allows federal or state regulatory agencies to exercise jurisdiction over such disputes, and Section 11.2 of Attachment 1 allows either party to appeal an arbitrator's decision to the Commission or to the FCC when such matter is in the jurisdiction of that body. Thus, any decision of the

[1] The reasoning behind the Parties use of Attachment 1 was "the expeditious, economical, and equitable resolution of disputes between GTE and AT&T arising under this Agreement, and to do so in a manner that permits uninterrupted, high quality services to be furnished to each Party's customers." See Attachment 1, Section 1 of the Agreement. AT&T's language accomplishes these goals.

Arbitrator could be brought before the Commission under Attachment 1.

II. MAIN AGREEMENT, SECTION 28.6.

Issue: Should GTE provide emergency service numbers associated with each individual NPA/NXX to AT&T on an equal basis at no additional charge?

AT&T Response: Yes. AT&T requests that GTE provide to AT&T the emergency public agency telephone numbers linked to each NPA-NXX. GTE and AT&T agree that to the extent GTE provides such an emergency database to itself, that it should also provide it to AT&T. See Transcript, Page 166, lines 6-11; Page 196, lines 6-9. However, at the Hearing, GTE denied that it compiles such a database, although it did agree to supplement the record with more factual information on this issue. Transcript, Page 162, lines 19-23; Page 167, line 15.

AT&T would be very surprised, as a public safety matter, if GTE did not maintain or receive up-to-date emergency information in some organized format. Whatever this format, to the extent GTE receives such information for itself, it must provide it to AT&T upon equal terms and conditions, and any unwillingness by GTE to provide this information to AT&T would be discriminatory and an unreasonable restriction on resale. See Act, Section 251(c)(4)(B); FCC Order, Para. 525; and 47 C.F.R. Section 51.603.

In addition, GTE's current recovery of 911 service costs is sufficient and should not be further supplemented by additional charges to AT&T pursuant to this Section. AT&T should pay for costs associated with the provision of this information only to the extent that AT&T requests to receive this information in a manner superior to the manner in which GTE provides such information to itself. If AT&T and GTE mutually agree to such an arrangement, e.g., electronic provision of such information to AT&T, then such costs should be recovered only on a cost-based, competitively neutral basis pursuant to Section 252(d) of the Act.

III. MAIN AGREEMENT, SECTION 37.10.1.

Issue: Will GTE's charge of a "pro rata selective router fee per trunk termination" result in double recovery for GTE?

AT&T Response: Yes. GTE is seeking to charge an additional "selective router fee" over and above the regular charge to AT&T

[2] AT&T reserves the right to comment further on this issue, if necessary, after GTE provides more information.

for 911/E911 services. AT&T believes that these specific "selective router fee" costs GTE seeks to impose on AT&T are already recovered by GTE in its 911/E911 service rates paid by the County or public agency. Commission Staff raised this same point at the Hearing. See Transcript, Page 324. Such a practice would be consistent with the practices of other ILECs around the country. For example, in testimony in Colorado, US West recently stated that it does not have a selective router charge because it recovers such costs from the "public agency":

> The first of these charges is the Automatic Number Identification/ Automatic Location Indentification/ Selective Routing charge that applies to each MFS access line each month… US West does not propose any such charges, as the cost it incurs from the provision of E911 service is recovered from the public agency.

See Direct Testimony of US West Communications, Inc. (Brian G. Johnson), September 6, 1996, at page 342-43 (attached as Exhibit 1 to these Comments). Thus, GTE's proposed language probably results in a double recovery for GTE.

IV. ATTACHMENT 2, SECTION 13.1.

Issue A: Should cooperative testing between the Parties include testing of standard elements that are not necessarily "designed" services?

AT&T Response: AT&T's proposed language in Attachment 2, Section 13.1 of the Agreement permits it to accept or reject any network element if testing reveals that the element does not meet the technical requirements specified in the Agreement. See Attachment 2, Section 13.1.2.16. GTE proposes that only specially designed elements be tested, thereby denying AT&T the ability to enforce the technical requirements for any standard element. While AT&T agrees on the need to cooperatively test custom-designed network elements for initial turn-up and maintenance, cooperative testing should not be so limited. If AT&T purchases a standard network element from GTE, that element should comply with the technical requirements set forth in Attachment 2A of the Agreement. One of the most basic rights granted to a buyer under contract law principles is the buyer's right to accept or reject nonconforming goods and services.

Issue B: Were the obligations set forth in this Section previously presented to the Arbitrator?

AT&T Response: At the Hearing, GTE claimed that AT&T's

proposed language had not been arbitrated, and thus, such testing requirements could not be imposed by the Decisionmaker upon GTE. See Transcript, Page 244-245. First, AT&T does not necessarily agree with the underlying argument of GTE that language relating to a non-arbitrated issue cannot be imposed on a Party. Further, regardless of whether or not GTE's underlying argument is a correct one, GTE is simply wrong that this issue was not presented to and considered by the Arbitrator. AT&T's proposed language appeared without the word "designed" in both AT&T's Best and Final Offer dated November 15, 1996 (the "BFO") and in AT&T's Petition for Arbitration with GTE (August, 16, 1996) (the "August 16 Petition"). Moreover, unlike in the MCI/GTE proceeding, the Arbitrator in this case decided that AT&T language should be adopted on all points which the Arbitrator did not specifically award GTE language. See Arbitrator's Decision, Issue 65, Page 59. Thus, in this proceeding, the Arbitrator clearly considered and ruled on all language submitted by the Parties at that time, and Section 13.1 is just one of the sections where AT&T language was specifically awarded pursuant to the Arbitrator's Decision. See BFO, Attachment 2, Section 13.1 and the August 16 Petition, Exhibit 4, Attachment 2, Section 13.1 (relevant pages attached as Exhibit 2 to these Comments). Additional proof that AT&T submitted this issue to the Arbitrator is found at Page 50 of AT&T's Matrix submitted as Exhibit 3(d) to AT&T's August 16 Petition, which includes as one of AT&T's requirements for Local Switching: "testing (loop, trunk, switch)." See August 16 Petition, Exhibit 3(d), Page 50, left column (relevant page attached as part of Exhibit 3 to these Comments).

Arguments by GTE that the contracts filed by AT&T on August 16, 1996 and November 15, 1996 are not part of AT&T's petitions filed on those dates are ridiculous. The August 16 contract was filed as a clearly-labeled exhibit ("Exhibit 4") to the August 16 Petition, and thereby was incorporated therein. Further, the August 16th Petition itself clearly requests adoption of its attached contract, as does the November 15th Post-Arbitration Brief. See August 16 Petition, at page 80; AT&T Post-Arbitration Brief, November 15, 1996, at Page 51 (relevant pages attached as part of Exhibit 4 to these Comments). Thus, the contracts were filed as part of AT&T's petitions and are available for consideration by the Commission pursuant to Section 252(b)(4) of the Act.

Issue C: Will GTE agree to AT&T's proposed language in Attachment 2, Section 13.1.2.16 if such language is reworded to

read “the requirements in this Agreement” rather than “the requirements herein”?

AT&T Response: GTE stated at the Hearing that it would confirm with its technical people whether it could agree to AT&T’s boldface language in Attachment 2, Section 13.1.2.16 of Attachment 2, if the words “the requirements herein” were changed to read “the requirements in this Agreement.” See Transcript, Page 252, lines 24-25, and Page 253, lines 4-5. AT&T supports the adoption of its proposed language, or the modification described in the last sentence. The Parties have already agreed to technical performance requirements (such as in Attachment 2, Appendix A). Such requirements should be referenced in Attachment 2, Section 13.1.2.16 to make clear that these performance standards are the ones GTE must meet when a network element is ordered by AT&T, as opposed to some set of undefined standards. It should be further noted that GTE, if it wishes, has the right to propose substitute technical references pursuant to Section 23.19 of the Agreement.

V. ATTACHMENT 2, SECTION 13.5.1.

Issue: Does GTE have a duty to provide SS7 Network Interconnection to AT&T for purposes other than providing local exchange service?

AT&T Response: Yes. The Act does not limit AT&T’s access to such functionalities solely to the purpose of providing local exchange or exchange access services. Sections 251(c)(3) of the Act specifically requires that ILECs provide nondiscriminatory access to network elements to “**any requesting telecommunications carrier**” for the provision of a “**telecommunications service**.” See Act, Section 251(c)(3)(emphasis added). The definitions of “telecommunications carrier” and “telecommunications service” are broad, encompassing much more than local carriers or offerings of local exchange service. Because the Act provides that

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[3] SS7 Network Interconnection enables the exchange of SS7 messages between AT&T local or tandem switching systems and GTE’s local or tandem switching systems, and between AT&T local or tandem switching systems and other third-party local or tandem switching systems with signaling connectivity to the same Signal Transfer Points (STPs).

[4] The definition of “telecommunications carrier” is any provider of telecommunications services (with minor exceptions), and the definition of “telecommunications service” means the “offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” See Act, Section 3(a)(49) and (51). The definition of “telecommunications” is the “transmission, between or

telecommunications carriers are entitled to access to these functionalities, and because the definitions of "telecommunications carrier" and "telecommunications service" are not specifically limited to local carriers or the provision of local exchange service, GTE's proposed language is unnecessarily restrictive. Such a restriction runs counter to the competitive purpose of the Act and will serve to limit customer choices.

VI. ATTACHMENT 2, SECTION 14.2.6 and 14.2.7.

Issue: Should GTE's proposed language concerning the provision of dark fiber be excluded from the Agreement because it unfairly restricts the availability of dark fiber to AT&T, and because this language was not previously submitted to the Arbitrator?

AT&T Response: Yes. The Arbitrator's Decision held that dark fiber is a network element that must be offered by GTE to AT&T in accordance with the Act. See Arbitrator's Decision, Issue 39, Page 37. AT&T's proposed language incorporates the Arbitrator's Decision and proposes that the price for dark fiber be established by the Commission using the pricing principles of the Telecommunications Act.

GTE's new proposed language in Attachment 2, Sections 14.2.6 and 14.2.7 attempts to impose unacceptable restrictions on the provision of dark fiber that are not supported by the Arbitrator's Decision or by law. Further, these proposed restrictions were not specifically submitted to the Arbitrator in GTE's Post-Arbitration Brief or its Best and Final Offer. Therefore, according to GTE's own argument that language relating to a non-arbitrated issue should not be imposed on a Party, these restrictions should not be imposed upon AT&T. See GTE's Post Arbitration Brief, November 15, 1996, at page 83-84 ("No specific contract provision exists on this issue").

The restrictions proposed by GTE would unfairly provide GTE with the power to unilaterally decide to terminate the provision of dark fiber to AT&T if GTE demonstrates that the subject fiber is needed to meet GTE's (or another LSP's) bandwidth requirements. Thus, GTE would be able to terminate AT&T's actual or imminent use of fiber in favor of its own (or other new entrants') subsequent requirements as determined solely by GTE.

In addition, GTE proposes a twenty-five percent limitation on the dark fiber capacity available to AT&T in a particular

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among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." Act, Section 3(a)(48).

feeder or dedicated interoffice transport segment. This is an arbitrary limitation with no basis for support in the Arbitrator's Decision or elsewhere, and one that would stymie AT&T's ability to add customers in a scenario of rapid-growth. Because AT&T will be charged for all of the dark fiber capacity that it receives, it will have an economic incentive to use all that it purchases.

Finally, GTE's proposed language does not provide parity to AT&T. If adopted, any restrictions that GTE imposes on AT&T in Attachment 2, Sections 14.2.6 and 14.2.7 should also be imposed equally on GTE and all other carriers.

VII. ATTACHMENT 3, SECTIONS 2.2.1 and 2.2.1.1.

Issue: Should AT&T's proposed language, which incorporates the concepts of the FCC Order where it governs GTE's tariff on collocation, be included in the Agreement?

AT&T Response: Yes. The Arbitrator's Decision with respect to collocation issues (at pages 23 and 28-29) not only invokes the use of GTE's tariff for the provision of collocation space to AT&T, but it also cites and clearly embraces the concepts contained in the FCC's rules and the FCC Order. Thus, AT&T's proposed language incorporating these concepts does not surpass the scope of the Arbitrator's Decision.

AT&T's proposed language ensures that GTE will provide space to AT&T for collocation of equipment in controlled environmental vaults, huts and cabinets, as well as central offices. AT&T requires space in these locations in order to have access to necessary elements in GTE's network. Under 47 CFR Section 51.323, GTE is required to "make space available within or on its premises." Paragraph 573 of the FCC Order states that the term "premises" should be interpreted broadly to include LEC central offices, serving wire centers and tandem offices, buildings or similar structures owned or leased by the ILEC that house LEC network facilities, and all structures housing LEC network facilities on public rights-of-way, such as vaults or other similar structures. This interpretation should properly include environmental vaults, huts and cabinets.

Further, with respect to Section 2.2.1.1 of Attachment 3, AT&T would agree to GTE reserving space, if GTE was not able to reserve space for itself upon terms that are more favorable than

[5] At the Hearing, the Decisionmaker requested that GTE attach its tariff for the purpose of resolving this issue. AT&T reserves the right to comment further on this issue after review of GTE's tariff, if necessary.

those made available to other carriers. GTE currently proposes language that would permit it to reserve space for future use without any appropriate limitations on that future use. It could reserve space for future offices, filing rooms, etc., while denying such space to AT&T for collocation purposes. GTE proposes to apply the nondiscrimination rules only when it reserves space for telecommunications equipment that is permitted to be collocated under the Agreement. If GTE reserves space for other equipment or purposes, it should be required to apply the nondiscrimination rules as well.

Upon review of the Arbitrator's Decision at p.29 (Issue 53), it is clear that the language proposed by AT&T more closely reflects the Arbitrator's Decision.

VIII. ATTACHMENT 3, SECTION 2.2.3.

Issue: Is the language "at AT&T's expense" a component of GTE's expanded interconnection service and collocation tariff?

AT&T Response: At the Hearing, GTE argued that this language is a component of its tariff and promised to attach the tariff and reference the relevant section in its brief. See Transcript, Page 266, lines 18-22, and Page 267, lines 1-3. AT&T objects to paying for an escort service when there is no limitation on when an escort may be required or how much will be charged to AT&T for the escort. AT&T is also concerned that a separate GTE escort service fee could result in double recovery by GTE of necessary security costs. However, if this language is indeed a component of GTE's tariff, and if the language in the tariff is not contradicted by the FCC's rules, then AT&T does not object.

IX. ATTACHMENT 9, SECTION 2.1.

Issue: Was Attachment 9, Section 2.1 submitted to the Arbitrator in a prior filing without the words "at AT&T's expense?"

AT&T Response: Yes. This issue arose because GTE argued at the Hearing that Attachment 9 was not arbitrated, and as a result, the Decisionmaker requested that AT&T indicate in these Comments whether or not GTE was correct. See Transcript, Page 292, lines 22-24.

First, GTE is incorrect. Attachment 9 was submitted as part of AT&T's BFO, and as part of Exhibit 4 to AT&T's August 16

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[6] AT&T reserves the right to comment further on this issue after review of GTE's tariff, if necessary.

[7] The point is largely moot because Attachment 9 is agreed to by the Parties, except for the three words "at AT&T's expense" proposed by GTE.

Petition. The language of Section 2.1, although now slightly modified through negotiations between the Parties, was therefore presented to and considered by the Arbitrator without the words "at AT&T's expense." See Exhibit 5 to these Comments. Thus, according to the same argument discussed above in Part IV of these Comments (and not reargued here), arguments by GTE that the Decisionmaker may not impose AT&T's proposed language on GTE with the words "at AT&T's expense" are baseless.

Second, if the Decisionmaker agrees with GTE's argument that issues not previously presented to the Arbitrator cannot be imposed now upon a Party, then isn't GTE the Party who should have to prove that the disputed language in Section 2.1 of Attachment 9 (which GTE wishes to impose on AT&T) was previously before the Arbitrator? GTE has, as of yet, failed to show that it previously submitted the words "at AT&T's expense" to the Arbitrator, and thus, under its own arguments should not be granted its language.

Most importantly, AT&T believes that the costs of providing such information are already recovered through the wholesale price of resale services or the price of unbundled network elements. To the extent GTE can show that such expenses are not recovered through such prices, AT&T would be willing to accept modified language providing that it pay for the expenses of supplying information generated by fraud prevention or revenue protection features of GTE's network relevant to fraudulent use of services by AT&T's customers. However, this is true only if such expenses are determined by GTE's cost pursuant to Section 252(d) of the Act and the Arbitrator's Decision. Prices should be cost-based and, where appropriate, recovered on a competitively neutral basis.

X. ATTACHMENT 11, "INTERCONNECTION."

Issue: Should the Decisionmaker adopt AT&T's proposed definition of "Interconnection"?

AT&T Response: Yes. AT&T's proposed language was submitted as part of its BFO, and therefore, was considered by and adopted by the Arbitrator pursuant to Issue 65 of the Arbitrator's Decision. AT&T believes that the connection of separate pieces of equipment, facilities or platforms can take place either **between** networks or **within** networks, which is consistent with usage of the term "interconnection" in the Telecommunications Act. See Act, Section 251(c)(2); see also, 47 CFR 51.305. GTE wants to restrict interconnection to "**between**" networks, thereby limiting AT&T's ability to interconnect within GTE's network

using UNEs, collocation, ROW, etc.

AT&T fears that GTE will use its interpretation of "interconnection" to overcharge AT&T for the provision of combined network elements. If GTE combines certain elements in the provision of its own telecommunications services, it should not disconnect and then reconnect these same elements in providing them to AT&T, and thereafter charge AT&T an interconnection for doing so. The FCC Order supports this argument:

[S]ection 251(c)(3) bars incumbent LECs from separating elements that are ordered in combination, unless a requesting carrier specifically asks that such elements be separated… We therefore reject NYNEX's contention that the statute requires requesting carriers, rather than incumbents, to combine elements.

See FCC Order, Paragraph 293.

Error! No index entries found.**XI. ATTACHMENT 14, SECTION 3, PARAGRAPH 4.**

Issue: Should GTE advise AT&T of extraordinary costs to be incurred within ten business days of AT&T's request for space?

AT&T Response: Yes. AT&T's proposed language at Section 3, Paragraph 4 of Attachment 14, was contained in its BFO. See Exhibit 6 to these Comments. Therefore, unless "thirty days" is required under GTE's tariff, AT&T prevails on this issue pursuant to Issue 65 of the Arbitrator's Decision (at page 59). This information is to be provided by GTE through the attachment of its tariff. See Transcript, Page 305, lines 23-24.

XII. ATTACHMENT 14, APPENDIX 1, SECTION 2.

Issue: Should the "Initial Service Order charge" proposed by GTE in Appendix 1, Section 2 of Attachment 14 be rejected?

AT&T Response: Yes. GTE attempts to apply a nonrecurring "Initial Service Order charge" as opposed to non-recurring "change or record charges" for the conversion of existing customers of GTE services to AT&T local service. At the hearing, GTE agreed to clarify in its brief, the relationship between the OUTPLOC charge in Section 1.1 of Attachment 14 (Page 2) and the non-recurring charge it proposes in Attachment 14, Appendix 1, Section 2 (page 6). See Transcript, Page 310, lines 6-14. AT&T believes that GTE's proposed language in Attachment 14, Appendix

[8] AT&T reserves the right to comment further on this issue after review of GTE's tariff, if necessary.

[9] AT&T reserves the right to comment further on this issue after GTE makes this clarification, if necessary.

1, Section 2 attempts to double-recover charges from AT&T for conversion of GTE local customers to AT&T, similar to Section 1.1 of Attachment 14. Thus, no charges should be levied in Appendix 1, Section 2.

There should be no difference between the OUTPLOC charge and the charge in Attachment 14, Appendix 1, Section 2, therefore, AT&T's proposed language in Section 2 of Appendix 1 should be adopted. GTE's proposed Initial Service Order charge is not cost-based and is typically significantly higher than "change or record charges." In a local service resale environment, local service is simply transferred (requiring a record change) as opposed to newly established. The high costs that would result from an adoption of GTE's language would create a significant competitive disadvantage to new entrants. Further, such charges are simply without basis in the Arbitrator's Decision.

DATED this _____ day of May, 1997.

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[i] AT&T's proposed language is actually stronger than GTE's. Whereas GTE's language merely gives the Parties the right to renegotiate the affected terms ("may… request that such term(s) be renegotiated"),

AT&T's language states the Parties may require renegotiation ("may… require that such terms be renegotiated, and the Parties shall renegotiate…).