BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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. Section 252(b) of the Telecommunications Act of 1996.	))))))))	Docket No. UT-960307

AT&T'S OPPOSITION TO GTE'S MOTION FOR CLARIFICATION AND RECONSIDERATION

GTE Northwest, Inc. ("GTE") asks the Commission to clarify or reconsider its August 25 decision approving GTE and AT&T's Interconnection Agreement (the "Agreement"). In its request GTE makes much of the fact that the Commission corrected errors that the Arbitrator supposedly made in making his decision. GTE's efforts are wasted, however, for the Commission's changes do not alter the soundness of its or the Arbitrator's decisions. In fact, GTE's present motion raises issues immaterial under the controlling law and serves only to delay. GTE's motion should be denied.

A. The Proceedings Before the Commission, and the Commission's Correction of Minor Errors Do Not Support GTE's Request for Clarification or Reconsideration

GTE makes two arguments. First, it says, the Commission staff, and, therefore, the Commission, misunderstood GTE to have negotiated the Agreement's element combination requirements. Second, GTE argues that the Commission's modification of the Arbitrator's decision on Issue 31 was improper and makes no sense. Neither argument has merit.

First, AT&T has never suggested that the Agreement's provisions regarding element combinations were negotiated, and the Arbitrator understood that he was to decide the issues relating to element combinations. Moreover, GTE made its position regarding element combinations abundantly clear in its August 1, 1997 Comments and

Requests for Modification in Light of the Eighth Circuit's Opinion. Even if the Commission mistakenly assumed that the element combination provisions were negotiated, therefore, the assumption is harmless.

Second, GTE declares that the Arbitrator and the Commission mistakenly concluded that the Arbitrator's resolution of Issue 31 included a typographical error referring to GTE instead of AT&T. *See* GTE Mem. at 4-5. GTE has no support for this assertion. As GTE itself admits, the Arbitrator noted on the record that the reference was a mistake, *id.* at 2 n.2, 4, and GTE offers no evidence to suggest that the Arbitrator misunderstood his own decision. The Arbitrator's statement should be and is conclusive. Even if it were not, however, the fact is that the Arbitrator's decision on Issue 31 makes no sense if the reference to GTE is not changed. GTE never proposed to "restrict" its "***ability***" to combine network elements. It proposed to restrict its ***obligation*** to do so. The only entity whose "ability" GTE might have proposed restricting is, of course, AT&T. In short, leaving the Arbitrator's decision on Issue 31 untouched is contrary to the Arbitrator's understanding of that issue and makes no sense.

B. GTE Must Provide Combined Elements on Request

GTE's argument that the Commission must reconsider its decision regarding element combinations tracks the Arguments it made in its August 1 filing. The Eighth Circuit ruled that GTE cannot be required to combine network elements, GTE reasons, and any provision of the Agreement that requires it to do so therefore must be stricken. However, it is clear from the discussion beginning on page 4 of GTE's filing that GTE also seeks to require AT&T to combine elements that are already combined in GTE's network, which necessarily means that GTE would first separate those elements.[1] As AT&T already has demonstrated, these arguments are wrong, for a number of reasons.

First, GTE's argument attacks a position that AT&T has not taken. AT&T does not claim that GTE must combine elements willy-nilly on AT&T's demand. Instead, GTE is obligated to provide to AT&T combinations of elements that already exist in GTE's network (*i.e.*, that it already provided to itself).

[1] On page 4 of GTE's August 1 filing, GTE uses the term "recombine" and on page 5 GTE uses the term "rebundling." The principles set out by GTE on page 9 of its August 1 filing clearly set forth the GTE position that AT&T should be required to combine elements already combined in GTE's network, i.e., the port and the loop.

Second, AT&T already has demonstrated that GTE's obligation to provide pre-existing combinations is firmly grounded in the law. The Eighth Circuit did not vacate all of the FCC's element combination rules, for example. Instead, the Court left untouched 47 C.F.R. § 51.315(b), which prohibits GTE from "separat[ing] requested network elements that the incumbent LEC currently combines." *See Iowa Utilities Board v. FCC,* 1997 WL 403401, at *32 n.39 (8th Cir. July 18, 1997) (vacating 47 C.F.R. § 51.315(c)-(f) but not § 51.315(b)). The Court also rejected all of GTE's arguments that sought to prevent AT&T from using existing combinations of elements to compete efficiently with incumbents. *Id.* at *25-*28. In other words, *Iowa Utilities Board* confirms AT&T's right to order, and GTE's obligation to provide, combinations of network elements. *See* AT&T's August 13 Reply at 5-6. In short, the Eighth Circuit's holding that an ILEC should not have to "do all the work" of combining elements, 1997 W.L. 403401, at *25, is not relevant when the ILEC already has combined the elements. Finally, AT&T's earlier brief also demonstrated that GTE's obligation was firmly rooted in other regulations that the Eight Circuit left untouched, as well as in the nondiscrimination requirements of Section 251(c)(3) of the Act. *See* AT&T's August 13 Reply at 6-7 (discussing requirements of 47 C.F.R. §§ 51.313(b), 51.309(a), and 51.307(b)).

Third, as AT&T's August 13 brief also demonstrated, none of the provisions in the Agreement that GTE hopes to avoid requires GTE to combine elements that it does not already combine for itself. Instead, the Agreement's references to combinations are necessary to ensure that GTE meets its obligation to provide to AT&T those element combinations that GTE provides to itself. As a result, nothing in the Agreement runs afoul of the Eight Circuit's decision, and nothing needs modification.[2]

CONCLUSION

C. GTE Filed Its Motion To Hamper Competition

It is clear that the Arbitrator and the Commission were correcting what amounted to clerical errors in changing Issue 31's reference from GTE to AT&T. It is equally clear that AT&T's position is that GTE is obligated to provide AT&T with element combinations that GTE provides to itself. AT&T is not demanding, as GTE again

[2] Perhaps the provision of the Agreement that comes closest to requiring new combinations — which is not very close—is Section 32.5, which dealt with providing combinations that are "technically feasible." In its August 13 brief, AT&T proposed that the phrase "technically feasible" be replaced with "exists in GTE's network," *see* AT&T August 13 Reply at 20, and it is still willing to have this change implemented.

suggests, that GTE is obligated to combine network elements any time AT&T demands. GTE's motion thus boils down to a claim that it is not required to provide to AT&T even those combinations of network element that already exist in GTE's network or that GTE already provides to itself. But the Eighth Circuit could not have more clearly left untouched the regulations that impose on GTE this very obligation.

For all the foregoing reasons, GTE's motion should be denied.

DATED this 2d day of October, 1997.

Respectfully submitted,

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