BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Implementation of Section 252(i) of the Telecommunications Act of 1996	))))	Docket No. UT-990355

COMMENTS OF GTE NORTHWEST INCORPORATED

GTE Northwest Incorporated (GTE) submits these supplemental comments on the Washington Utilities and Transportation Commission's (Commission) draft interpretive and policy statement regarding 47 USC § 252(i) and 47 CFR § 51.809 (collectively, the Pick-And-Choose Rule):[1]

INTRODUCTION

GTE's comments are divided into two sections. The first section proposes that the Commission adopt another general principle relating to the implementation of the Pick-And-Choose Rule. This proposed principle clarifies that a CLEC with an existing agreement should not be allowed to pick and choose arrangements from other Commission-approved agreements that were in existence when the CLEC negotiated the existing agreement. This proposed principle further clarifies that any adoption must be subject to the following express limitations of the Pick-and-Choose Rule:

---

1 By filing these comments, GTE is not waiving, and hereby expressly reserves, its UNE *status quo* position in its brief entitled, "GTE Northwest Incorporated's Analysis of the Iowa Utilities Board Decision," which was filed on February 18, 1999, in Docket Nos. UT-960369, UT-960370 and UT-960371.

1.ILECs are not required to allow adoptions of individual arrangements when the costs of providing a particular arrangement to a requesting carrier are greater than the costs of providing the arrangement to the carrier that originally negotiated the arrangement. Moreover, ILECs are not obligated to make available particular arrangements where their provision is not technically feasible.

2.A CLEC's existing agreement, if any, is superceded to the extent it is inconsistent with the adoption.

3.Upon receipt of an adoption request, the ILEC must provide to the requesting CLEC the requested arrangement language and legitimately related terms and conditions, the CLEC then must review the language, and the parties must then submit the adoption in writing to the Commission.

The second section sets forth GTE's position on each of the principles proposed by the Commission.

I. A CLEC SHOULD ONLY BE PERMITTED TO ADOPT ARRANGEMENTS FROM AGREEMENTS (1) APPROVED AFTER THE CLEC'S EXISTING AGREEMENT AND (2) SUBJECT TO THE EXPRESS LIMITATIONS OF THE PICK-AND- CHOOSE RULE.

As stated above, the Commission should adopt the following additional principle:

> Subject to, and in accordance with the Commission's remaining principles, a CLEC shall have the right to adopt any agreement (or any interconnection, service and/or network element arrangements contained therein) for the state of Washington to which an ILEC is a party and that is approved by the Washington Commission pursuant to section 252 of the Telecommunication Act of 1996 (the "Act"), subsequent to the approval of the CLEC's existing interconnection agreement with an ILEC, if any. This right shall be exercised in accordance with, and subject to, the requirements of 47 U.S.C. § 252(i) and 47 CFR § 51.809, including, without limitation, the following: (a) the ILEC shall not be required to provide a given arrangement to a CLEC if it is either (i) more costly than providing it to the original carrier, or (ii) technically infeasible; (b) the CLEC's existing agreement, if any, will be superseded to the extent inconsistent with the adoption; and (c) the parties shall document said adoption in writing and make an appropriate filing with the

Washington Commission pursuant to applicable procedures.

II. GTE'S POSITION ON THE COMMISSION'S PROPOSED PRINCIPLES.

Principle 1

Although many CLECs have adopted previously approved interconnection agreements under the § 252(i), adopted agreements are not negotiated agreements, as set forth in the second sentence of Principle 1. The language of § 252(i) and the FCC's First Report and Order confirm this fact. Pursuant to § 252(i), an ILEC is obligated to make available to any other requesting telecommunications carrier any interconnection service provided in an approved agreement "upon the ***same*** terms and conditions as those provided in the agreement." (Emphasis added). According to the FCC's First Report and Order:

> A carrier seeking interconnection, network elements, or services pursuant to § 252(i) need not make such requests pursuant to the procedures for initial § 252 requests, but shall be permitted to obtain its ***statutory rights*** on an expedited basis...We conclude that the nondiscriminatory, pro-competition purpose of § 252(i) would be defeated were requesting carriers required to undergo a ***lengthy negotiation***...

First Report and Order at ¶ 1321 (emphasis added).

Because the Act and the First Report and Order distinguish between adopted agreements and negotiated agreements, GTE recommends that the second sentence of Principle 1 be deleted. In a similar vein, GTE recommends that last sentence of Principle 1 be revised as follows:

> Thus, parties ~~may~~shall request approval of any adoption under Section 252(i), including any complete approved agreement for the state of Washington, or any individual interconnection, service and/or network

element arrangement contained therein, whether the agreement or any such arrangement was negotiated or arbitrated, in whole or in part ~~an interconnection agreement that is a hybrid of negotiated and arbitrated terms, and of individual arrangement that result from pick and choose~~.

Principle 2

GTE agrees with this principle.

Principle 3

Consistent with Principles 1 and 2, GTE agrees that an amended interconnection agreement must be made available pursuant to § 252(i) only in its amended form. However, subsequent amendments should also automatically apply to the adopting CLEC, because an adopting CLEC is subject to all the terms and conditions relating to the adoption, including the amendment provision. The adoption is thus inextricably linked to the underlying agreement, including subsequent amendments. Therefore, the word "not" should be deleted from the last sentence of Principle 3.

In many instances, this suggested revision would benefit the adopting CLEC. For example, if the underlying CLEC amended its agreement to include the new collocation arrangements ordered by the FCC, the adopting CLEC would automatically have the benefit of the new collocation arrangements, saving both the ILEC and the adopting CLEC the time and effort of negotiating new language.

The concomitant reduction in filings would also benefit the Commission.

In addition, these benefits would not come at the cost of the parties' flexibility. If the ILEC and the adopting CLEC did not want to make an amendment to the

underlying agreement, they could subsequently agree not the make the change and file the agreement with the Commission.

Principle 4

GTE agrees with this principle.

Principle 5

GTE agrees with this principle.

Principle 6

Although this principle is generally sound, a CLEC's ability to pick and choose should expire at some time prior to the expiration of the existing agreement. Otherwise, the parties and the Commission could be left with a situation where there is insufficient time to implement the terms of the agreement. This could cause damaging disruptions of service and unnecessary administrative burdens on the ILEC, the adopting CLEC and the Commission. Accordingly, the Commission should replace the word "until" in the first sentence of this principle with the phrase "six months prior to."

Principle 7

Given the dynamic nature of the telecommunications marketplace, the Commission should make two modifications to this proposed principle: (1) the reasonable period should be changed from nine months to one year; and (2) the limitation should apply to all carriers, not just those "who have already entered into interconnection agreements with that particular incumbent carrier." Specifically, all language after the word "carriers" should be deleted in the first sentence of this

principle. In the second sentence, the phase "with existing agreements" should be deleted, and the phrase "nine (9)" should be replaced with phase "twelve (12)."

Principle 8

GTE agrees with this principle.

Principle 9

GTE agrees with this principle.

Principle 10

GTE agrees with the last sentence of this principle. Otherwise, a CLEC's ability to adopt individual interconnection, service or network element arrangements could be compromised. However, all legitimately related terms and conditions, including all general provisions, must be consistently provided to each CLEC, so an ILEC is able to provide each CLEC with the same terms and conditions, in accordance with the non-discriminatory requirements of 47 U.S.C. § 252(i). The general provisions are legitimately related terms and conditions, because these provisions govern the original party's implementation of, and operation under, the adopted arrangement.

Consistency becomes extremely important when a CLEC with an existing agreement seeks to adopt arrangement(s) from a newly approved agreement, as provided for in Principle 7. If a CLEC with an existing agreement is not required to take all the legitimately related terms and conditions from the underlying agreement, that CLEC has not made a 252(i) adoption "upon the same terms and conditions" as another CLEC who attempts to do the same thing with its existing agreement.

Furthermore, a CLEC without an existing agreement, must be required to adopt all the legitimately related terms and conditions, including all general provisions. Otherwise, the CLEC would not have a complete set of terms.

The approach outlined above ensures that:

1. CLECs are able to adopt an existing agreement on a nondiscriminatory basis "upon the same terms and conditions as those provided in the agreement," as required per 252(i); and

2. ILECs will provide CLECs with available arrangements in any existing approved agreement on an expedited basis, because there is greater certainty about what terms must be adopted.

For the foregoing reasons, the following sentence should be inserted at the end of Principle 10:

> All general terms and conditions relating to a particular interconnection, service or unbundled network element arrangement shall be considered legitimately related and thus constitute part of such arrangement.

Time Frame for Responding to Requests

GTE agrees that 15 business days is a reasonable time frame for an ILEC to respond to an adoption request. A minimum of fifteen business days is necessary, because responding to an adoption request can be a time-consuming process. Upon receipt of an adoption request, the ILEC must provide to the requesting CLEC the requested arrangement language and legitimately related terms, the CLEC then must review the language, and the parties must then attempt to resolve their differences, if any. This process may be complicated because the CLEC may adopt a single

arrangement from a large, arbitrated agreement or multiple arrangements from multiple agreements.

Procedures for Implementing Adoption Requests

GTE generally concurs with the Commission's proposed procedures for implementing adoption requests. However, because the ILEC bears the burden of proving the costs of providing a particular arrangement to a requesting carrier are greater than the costs of providing the arrangement to the carrier that originally negotiated the arrangement, and the provision of particular arrangements is not technically feasible, this section should provide expressly that the ILEC has the right to conduct discovery and submit facts and evidence on these issues.

III. CONCLUSION

As evidenced by its limited comments, GTE generally concurs with most of the Commission's proposed principles and procedures regarding the implementation of § 252(i) adoptions. At the same time, GTE has recommended a few practical and well-substantiated modifications that will help ensure an efficient, effective and pro-competitive process for all parties involved.