BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between	)	DOCKET NO. UT-990390
AMERICAN TELEPHONE TECHNOLOGY, INC., and GTE NORTHWEST, INCORPORATED	)	ARBITRATOR'S REPORT AND DECISION
Pursuant to 47 U.S.C. Section 252.	)	
. . . . .	)	

BACKGROUND

Procedural History: On April 3, 1999, American Telephone Technology, Inc. (ATTI), requested to negotiate an interconnection agreement (Agreement) with GTE Northwest, Incorporated (GTE). GTE is an incumbent local exchange carrier (ILEC) and ATTI is a competitive local exchange carrier (CLEC).

On September 9, 1999, ATTI filed with the Washington Utilities and Transportation Commission (Commission) a petition for arbitration and request to receive arrangements previously approved by the Commission pursuant to 47 U.S.C. §§ 252(b)(1) and 252(i) of the Telecommunications Act of 1996, Public L. No. 104-104, 110 Stat. 56 (1996) (Telecom Act). ATTI requests that GTE make arrangements available from the interconnection agreement between GTE and AT&T Communications of the Pacific Northwest, Inc. (AT&T).[1]

The Commission entered an Order on Arbitration Procedure, appointed an Arbitrator, and entered a Protective Order on September 14, 1999. GTE filed its response on September 24, 1999.

On September 28, 1999, a prehearing conference was held to establish a procedural schedule, and a prehearing conference order was entered on October 8, 1999. Both parties filed direct testimony on October 15, 1999, and rebuttal testimony on October 19, 1999.

An arbitration hearing was conducted on November 2, 1999, at the Commission's offices in Olympia, WA. Both parties filed post-hearing opening briefs on November 12, 1999, and reply briefs on November 17, 1999.

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[1] *In the Matter of the Petition for Arbitration of An Interconnection Agreement Between AT&T Communications of the Pacific Northwest, Inc. and GTE Northwest, Incorporated*, Docket No. UT-960307, Commission Order Approving Interconnection Agreement (August 25, 1997) (AT&T Agreement).

Appearances: Lawrence Freedman, attorney, Arter & Hadden, Washington, D.C., appeared on behalf of ATTI, and Judith Endejan, attorney, Williams, Kastner & Gibbs, appeared on behalf of GTE.

Unresolved Issues: The parties submitted one legal and three factual open issues to be resolved by arbitration, and they prepared an unresolved issues matrix which presented the issues, positions of the parties, and proposed contract language. The instant Arbitrator's Report and Order (Arbitrator's Report) follows a similar sequence in presenting decisions. As stated in the prehearing conference order, the Arbitrator is not bound to make decisions based on proposed contract language.

The legal and factual issues addressed in the Arbitrator's Report are:

A. How Should GTE Allocate the Costs to Condition Collocation Space Among Carriers? (Issue #1)

B. Should GTE Be Required to Make Combinations of Unbundled Network Elements Available to ATTI? (Issue #2)

C. Should ATTI Employees Be Required to Complete GTE's Certification of Background Investigation Form? (Issue #3)

D. What Is a Reasonable Period of Time for GTE to Notify ATTI of Collocation Space Availability after Receiving a Request? (Issue #4)

Resolution of Disputes and Contract Language Issue: As a general matter, the Arbitrator's Report is limited to the disputed issues presented for arbitration. 47 U.S.C. § 252(b)(4). Prior to the start of the hearing the Arbitrator ordered that this proceeding would *not* be based on "baseball-style" arbitration.

The parties were required to present proposed contract language on all disputed issues to the extent possible, and the Arbitrator reserved the discretion to either adopt or disregard proposed contract language in making decisions. Each decision of the Arbitrator is subject to and qualified by the discussion of the issue. Contract language adopted pursuant to arbitration remains subject to Commission approval. 47 U.S.C. § 252(e).

This Arbitrator's Report is issued in compliance with the procedural requirements of the Telecom Act, and it resolves all issues which were submitted to the Commission for arbitration by the parties. The parties are directed to engage in good faith negotiations and resolve any precursory issues not expressly addressed, consistent with the Arbitrator's decisions. If the parties are unable to submit a complete interconnection agreement due to an unresolved issue they shall notify the Commission in writing prior to the time for filing the Agreement. At the conclusion of this Report, the Arbitrator addresses procedures for review to be followed prior to entry of a Commission order approving an interconnection agreement between the parties.

MEMORANDUM

I. Relevant Proceedings

A. The Commission's Generic Cost and Pricing Proceeding

1. As part of its effort to fully implement the Telecom Act, the Commission entered an Order on October 23, 1996, declaring that a generic proceeding would be initiated in order to review costing and pricing issues for interconnection, unbundled network elements, transport and termination, and resale. The Commission stated that rates adopted in the pending arbitration proceedings being conducted pursuant to the Telecom Act would be interim rates, pending completion of the generic proceeding. That proceeding is underway.[2] Accordingly, the prices approved in every interconnection agreement are interim rates and are subject to the Commission's decisions in the Generic Case.

B. Proceedings to Implement the Telecommunications Act of 1996

1. The FCC's pick and choose rule

2. Following the passage of the Telecom Act, the Federal Communications Commission (FCC) issued its First Report and Order (Local Competition Order), including Appendix B - Final Rules (FCC Rules), promulgating regulations to implement the local competition provisions of the Act.[3] Numerous parties petitioned for judicial review of the Local Competition Order to the Eight Circuit Court of Appeals and asked that court for a stay of the order.[4]

3. On September 27, 1996, the Eighth Circuit temporarily stayed the entire body of the FCC's Rules. Ultimately, the Eighth Circuit stayed only the FCC's pricing provisions and 47 C.F.R. 51.809 (the "pick and choose" rule) pending judicial review. On October 15, 1996, the U. S. Court of Appeals, Eighth Circuit stayed

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[2] *In the Matter of the Pricing Proceeding For Interconnection, Unbundled Elements, Transport and Termination, and Resale*, UT-960369 (general), UT-960370 (U S WEST), UT-960371(GTE); Order Instituting Investigations; Order of Consolidation; and Notice of Prehearing Conference, November 21, 1996 (Generic Case). On April 16, 1998, the Commission entered an interlocutory order determining costs in Phase I of the Generic Case. The Commission held hearings in October and December 1998 to set permanent prices. On August 30, 1999, the Commission entered an Order determining prices in Phase II of the proceeding (17th Supplemental Order). Phase III of the Generic Case and other proceedings have been commenced to further investigate the cost and pricing of collocation, to consider deaveraged loop pricing proposals for different geographic zones, and to consider all other unresolved cost and pricing issues deferred by the Commission in the 17th Supplemental Order.

[3] *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 F.C.C.R. 15499, First Report and Order (August 8, 1996), Appendix B- Final Rules.

[4] *Iowa Util. Bd. v. Federal Communications Comm'n*, 109 F.3d 418, 421 (8th Cir. 1996).

operation of the FCC Rules relating to pricing of interconnection and the pick and choose provisions.[5]

4. On July 18, 1997, the Eighth Circuit entered an order vacating numerous FCC Rules.[6] On October 14, 1997, the Court entered an order on rehearing vacating additional FCC Rules.[7] Several parties filed writs of certiorari to the United States Supreme Court.[8] On January 25, 1999, the Supreme Court entered a decision holding that the FCC Rules, with the exception of 47 C.F.R. §51.319, are consistent with the Telecom Act (*AT&T Corp.*).[9] On June 10, 1999, the Eighth Circuit entered an order reinstating the FCC's pick and choose rule.[10]

2. The FCC's combination of unbundled network elements rule

5. Among the rules initially vacated by the Eighth Circuit was the combination of unbundled network elements (UNEs) rule, 47 C.F.R. §51.315(c)-(f), and the court later vacated 47 C.F.R. §51.315(b).[11] On appeal, parties challenged the order vacating the FCC's rule prohibiting ILECs from disassembling UNEs already combined in their network before making them available to requesting CLECs (Rule 51.315(b)).

6. With respect to the FCC's UNE combination rule, the Supreme Court rejected the argument that the Act requires CLECs to combine network elements for themselves and reversed the Eighth Circuit's decision that Rule 315(b) violates the Telecom Act. Although the Eighth Circuit Court presently is considering the validity of Rule 315(c)-(f), the United States Court of Appeals for the Ninth Circuit recently reviewed the Supreme Court's decision regarding UNE combinations (MFS case).[12]

7. In that case, U S WEST appealed the decision of the Commission approving an arbitrated interconnection agreement between U S WEST and MFS (MFS Agreement) and the decision of the federal District Court granting summary judgment on all issues to the Commission and MFS. The Ninth Circuit Court relied upon the

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[5] *Id.* at 427 and n.8.

[6] *Iowa Utilities Bd. v. Federal Communications Comm'n*, 120 F.3d 753 (8th Cir. 1997).

[7] *Id.*

[8] *See* 118 S.Ct. 879 (1998).

[9] *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999).

[10] *Iowa Utilities Bd. v. Federal Communications Comm'n*, ___ F.3d ___ (8th Cir. June 10, 1999).

[11] *Iowa Utilities Bd. v. Federal Communications Comm'n*, 120 F.3d 753, 813 (8th Cir. 1997)

[12] *U S WEST Communications, Inc. v. MFS Intelenet, Inc.,* Case No. 98-35146, 1999 U.S. App. LEXIS 25032 (9th Cir. (Wash.) Oct. 8, 1999).

Telecom Act and the Supreme Court's interpretation of the Act, and affirmed the provision in the MFS Agreement that requires U S WEST to combine elements at the request of MFS.[13]

C. The Commission's Duty Under the Telecommunications Act of 1996

8. The primary goals of the Telecom Act are the nondiscriminatory treatment of carriers and the promotion of competition.[14] The Telecom Act contemplates that competitive entry into local telephone markets will be accomplished through interconnection agreements between ILECs and CLECs, which will set forth the particular terms and conditions necessary for the ILECs to fulfill their duties under the Act. 47 U.S.C. § 251(c)(1). Each interconnection agreement must be submitted to the Commission for approval, regardless of whether the agreement was negotiated or arbitrated, in whole or in part. 47 U.S.C. § 252(d).

9. Section 252(i) of the Telecom Act permits third parties to obtain access to any individual interconnection, service, or network element arrangement on the same terms and conditions as those contained in any agreement approved under Section 252.[15] The FCC concluded that Section 252(i) entitles all parties with interconnection agreements to "most favored nation" status, and adopted 47 C.F.R. § 51.809, enabling requesting carriers to pick and choose arrangements contained in any agreement that is approved by a state commission.[16]

10. The FCC further concluded that requesting carriers must be permitted to obtain their statutory rights on an expedited basis, and left to state commissions in the first instance the details of implementing expedited procedures for making arrangements available.[17] The Commission issued an Interpretive and Policy Statement consisting of ten guiding principles to implement Section 252(i) of the Telecom Act and the FCC's pick and choose rule (Section 252(i) Policy Statement).[18]

D. Standards for Arbitration

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[13] *Id.* at [*21] and [*22].

[14] Local Competition Order, 11 FCC Rcd at 16139, ¶ 1315.

[15] Local Competition Order, 11 FCC Rcd at 16139, ¶ 1314.

[16] Local Competition Order, 11 FCC Rcd at 16139-40, ¶ 1316.

[17] Local Competition Order, 11 FCC Rcd at 16141, ¶ 1321.

[18] *In the Matter of the Implementation of Section 252(i) of the Telecommunications Act of 1996*, Interpretive and Policy Statement, Docket No. UT-990355 (November 30, 1999).

11. The Telecommunications Act states that in resolving by arbitration any open issues and imposing conditions upon the parties to the agreement, the state commission is to: (1) ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC under Section 251; (2) establish rates for interconnection services, or network elements according to Section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C. § 252(c).

II. ISSUES, DISCUSSION, AND DECISIONS

A. How Should GTE Allocate the Costs to Condition Collocation Space Among Carriers? (Issue #1)

1. ATTI's Position

12. ATTI argues that the costs to condition collocation space should be allocated among carriers based on the percentage of total conditioned square feet of space they occupy and their pro rata use of HVAC and power.

2. GTE's Position

13. GTE argues that the costs to condition collocation space should be allocated among carriers based on an actual average fill factor calculated by determining the number of wire centers where collocation occurs and the total number of completed and pending requests for collocation.

3. Discussion and Recommended Decision

14. The FCC's Advanced Services Order[19] states:

> We conclude, based on the record, that incumbent LECs must allocate space preparation, security measures, and other collocation charges on a pro-rated basis so the first collocator in a particular incumbent premises will not be responsible for the entire cost of site preparation.

Advanced Services Order, 14 FCC Rcd at 4789.

15. The FCC deferred to state commissions the determination of the proper pricing methodology to ensure that incumbent LECs properly allocate site preparation costs among new entrants. The Commission tentatively concluded that

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[19] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, 14 FCC Rcd 4761 (1999) (Advanced Services Order).

these provisions of the FCC's order were binding on the Commission, and the Commission sought further comment on this issue by parties in the Generic Case.[20]

16. Furthermore, The Commission required GTE to file a new collocation cost study in Phase III of that proceeding in compliance with the FCC's Advanced Services Order.[21] Subsequently, the Commission ordered that a new proceeding be opened to address cost and pricing issues for UNEs and, as relevant, cost studies and pricing of collocation.[22]

17. No decision is to made in this proceeding regarding the allocation of collocation costs because the determination of just, reasonable, and nondiscriminatory collocation costs and prices has begun in the Generic Case, and the allocation space conditioning costs should properly be addressed in the same proceeding as GTE's collocation cost study. The allocation of costs to condition space affects all parties requesting collocation from GTE, the determination of interim rates is impractical, and a piecemeal approach to collocation cost and pricing is not consistent with the public interest or necessity.

B. Should GTE Be Required to Make Combinations of Unbundled Network Elements Available to ATTI? (Issue #2)

1. ATTI's Position

18. ATTI requests that GTE make available terms and conditions related to unbundled network elements (UNEs) from the AT&T Agreement, but that combinations of UNEs be made available as an individual arrangement. ATTI seeks to obtain UNE combinations by arbitration, and it proposes specific contract language for approval.

19. ATTI requests that GTE both make available combinations of UNEs that it currently combines and those that are not already combined. ATTI argues that it is entitled to receive the same UNEs that are provided in the AT&T Agreement, and that any changes to that list must be made subject to the "regulatory changes" and "amendments" provisions.

2. GTE's Position

20. GTE argues that its obligation to provide UNEs does not extend to all network elements but only to those elements that meet the "necessary and impair" test

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[20] Generic case, 17th Supplemental Order, ¶ 284, at p.73.

[21] Generic case, 17th Supplemental Order, ¶ 531, at p.119. GTE must file its collocation cost study on or before January 31, 2000.

[22] Generic Case, Nineteenth Supplemental Order - Prehearing Conference Order, Section I.D., at p. 4 (November 9, 1999). The new proceeding has not yet been opened.

in Section 251(d)(2) of the Telecom Act and that the FCC has specifically required ILECs to unbundle. GTE argues that ATTI is not entitled to unbundled access to, or combinations of, other network elements, and that GTE is not required to combine UNEs that are not already combined in its network.

3. Discussion and Recommended Decision

21. The parties presented UNE-combinations as a disputed legal issue to be resolved. However, ATTI's proposed contract language for combined UNEs raises factual issues that are not addressed in the record or are indirectly related to combined UNEs. For example, ATTI proposes terms regarding pricing adjustments, provisioning intervals, circuit conversions, and Operations Support System (OSS) functions. Accordingly, the decisions that ensue are not based upon ATTI's proposed language, and that language is not adopted.

22. GTE's obligation to provide UNEs does not extend to all network elements but only to those elements that meet the "necessary and impair" test in Section 251(d)(2) of the Telecom Act and that the FCC has specifically required ILECs to unbundle. Any changes to the list of network elements in the AT&T Agreement must be made pursuant to Sections 9 (Regulatory Matters), 15 (Alternative Dispute Resolution), and 23.8 (Regulatory Agency Control).

23. The Commission retains jurisdiction to require ILECs to unbundle additional network elements, but would be required to apply the same standard as the Supreme Court mandated in its remand to the FCC. Although ATTI requests that GTE be required to combine "individual Network Elements" with "other Network Elements" or "network components," ATTI does not identify any additional network element with the requisite specificity to determine whether access is "necessary" or whether lack of access "impairs" its ability to provide service.

24. The Telecom Act states, in pertinent part, that it is:

> "The duty [of the incumbent LEC] to provide, to any requesting telecommunications carrier *for the provision of a telecommunications service*...access to network elements on an unbundled basis[.] An incumbent local exchange carrier shall provide such unbundled network elements in a manner *that allows requesting carriers to combine such elements in order to provide such telecommunications service."*

47 U.S.C. § 251(c)(3) (emphasis added).

25. The Telecom Act, on its face, therefore, expressly permits the combination of elements by a requesting carrier for the purpose of providing a telecommunications service. The FCC takes this view, finding no basis to conclude from the Act's language "a limitation or requirement in connection with the right of new

entrants to obtain access to unbundled elements."[23] Consistent with this interpretation, the FCC Rules permit the combination of unbundled elements by requesting carriers to provide a telecommunications service. 47 C.F.R. § 51.315(a).

26. As discussed in the memorandum section, the Eighth Circuit initially vacated the FCC's Rules requiring ILECs to combine network elements for CLECs (vacating 47 C.F.R. §§ 51.315(c)-(f)), and on rehearing also vacated Rule 315(b), which prohibited an ILEC from separating network elements it currently combines in its network unless requested by the CLEC.

27. On January 25, 1999, the Supreme Court issued its decision in *AT&T Corp*. With respect to the FCC's combination rule, the Supreme Court reversed the Eighth Circuit's decision that Rule 315(b) violates the Act. In affirming this rule, the Court rejected the argument that the Act requires CLECs to combine network elements for themselves. Accordingly, GTE must provide UNE combinations to ATTI that it currently combines in its network.

28. The United States Court of Appeals for the Ninth Circuit also reviewed the Supreme Court's decision regarding UNE combinations in the MFS case. The Commission approved terms requiring an ILEC to combine UNEs at the request of a CLEC:

> USWC [U S WEST] agrees to perform and MFS agrees to pay for the functions necessary to combine requested elements in any technically feasible manner either with other elements from USWC's network, or with elements possessed by MFS.

MFS Agreement, ¶ XXXI.A.3, at 71.[24] The District Court had previously held that this provision does not violate the Telecom Act because it provides for compensation to the ILEC for performing the functions necessary to combine the elements; thus, it does not upset pricing distinctions between unbundled elements and resold services.

29. The Ninth Circuit Court affirmed the provision in the MFS Agreement that requires an ILEC to combine elements at the request of a CLEC. The Court did not rely on the FCC's Rules to affirm the provision, rather it relied upon the Telecom Act and the Supreme Court's interpretation of the Act. According to the Court:

> The district court's holding sustaining the provision in the MFS Agreement requiring U S WEST to combine unbundled network elements at MFS's request before leasing must be affirmed under the rationale of [*AT&T Corp.*], sustaining a provision prohibiting an

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[23] Local Interconnection Order, 11 FCC Rcd at 15666, ¶ 328.

[24] *In the Matter of the Petition for Arbitration of An Interconnection Agreement Between MFS Communications Company, Inc., and U S WEST Communications, Inc.*, Docket No. UT-960323, Order Approving Negotiated and Arbitrated Interconnection Agreement (January 8, 1997) (MFS Agreement).

> incumbent from separating already-combined elements before leasing.

MFS case, at [*19]. The Ninth Circuit Court did not rely on the federal regulations and its decision does not unlawfully intrude on the Eighth Circuit Court's jurisdiction as argued by GTE.

30. The Supreme Court considered whether the Telecom Act mandates that elements must never be provided in a combined form. In resolving this issue, the Supreme Court held:

> Because [47 U.S.C. § 251(c)(3)] requires elements to be provided in a manner that "allows requesting carriers to combine" them, incumbents say that it contemplates the leasing of network elements in discrete pieces. It was entirely reasonable for the [FCC] to find that the text does not command this conclusion. It forbids incumbents to sabotage network elements that are provided in discrete pieces, and thus assuredly contemplates that elements may be requested and provided in this form. . . . But it does not say, or even remotely imply, that elements must be provided only in this fashion and never in combined form.

AT&T Corp., 119 S. Ct. at 737. It follows, the Court held, that the FCC regulation prohibiting an ILEC from separating already-combined network elements was not inconsistent with the Telecom Act.

31. The Ninth Circuit Court followed that holding:

> It also necessarily follows from [*AT & T Corp.*] that requiring US West to combine unbundled network elements is not inconsistent with the Act: the MFS combination provision does not conflict with the Act because the Act does not say or imply that network elements may only be leased in discrete parts.

MFS case at *[21]. The Ninth Circuit Court found that the Supreme Court opinion undermined the Eighth Circuit's rationale for invalidating 47 C.F.R. § 51.315(c)-(f), and concluded that it must follow the Supreme Court's reading of the Telecom Act by upholding the terms in the MFS Agreement despite the Eighth Circuit's prior invalidation of the nearly identical FCC regulation.

32. Likewise, the Commission must follow the Ninth Circuit Court's decision. Procedural objections aside, GTE presents no compelling argument in support of its position that it should not be required to combine network elements at the request of other carriers. GTE must perform and ATTI must pay for the functions necessary to combine requested UNEs in any technically feasible manner either with other UNEs from GTE's network, or with network elements possessed by ATTI.

However, GTE need not combine UNEs in any manner requested if not technically feasible, but must combine UNEs ordinarily combined in its network in the manner they are typically combined.

C. Should ATTI Employees Be Required to Complete GTE's Certification of Background Investigation Form? (Issue #3)

1. ATTI's Position

33. ATTI objects to the requirement that ATTI employees be required to complete GTE's Certification of Background Investigation form (CBI) because the form requires that drug screening be performed as part of an investigation. ATTI does not require employee drug testing. ATTI argues that GTE's requirement is discriminatory because it imposes a greater administrative burden on ATTI than it does on GTE.

34. ATTI also argues that the CBI drug screening requirement results in increased collocation costs without the concomitant benefit of providing necessary protection of GTE's equipment. ATTI argues that GTE fails to establish that its drug screening requirement is reasonable or necessary.

2. GTE's Position

35. GTE requires that all collocators fill out a CBI in order to obtain a keycard and access to GTE facilities. The CBI requires that a drug screen be conducted on those employees certified by the collocator for access.

36. GTE claims that it treats all of its employees and collocators the same with respect to the issue of drug testing, and argues that the FCC's Advanced Services Order provides that GTE may impose security requirements on other carriers that are as stringent as those it imposes on itself. GTE argues that it is not required to establish that drug screening is reasonable or necessary because it is not discriminatory.

37. GTE argues that the drug screening requirement only applies to ATTI employees seeking access to ATTI's facilities, and that there is no persuasive evidence that ATTI would incur burdensome costs. Even if its drug screening policy constitutes a discriminatory security requirement, GTE argues that it provides necessary protection of its equipment.

3. Discussion and Recommended Decision

38. The FCC's Advanced Services Order states:

> We conclude, based on the record, that incumbent LECs may impose security arrangements that are as stringent as the security arrangements that incumbent LECs maintain at their own premises either for their own employees or for authorized contractors. To

> the extent existing security arrangements are more stringent for one group than the other, the incumbent may impose the more stringent requirements. Except as provided below, we conclude that incumbent LECs may not impose more stringent security requirements than this. As stated differently, the incumbent LEC may not impose discriminatory security requirements that result in increased collocation costs without the concomitant benefit of providing necessary protection of the incumbent LEC's equipment.

Advanced Services Order, ¶ 47, 14 FCC Rcd at 4787-8.

39. The FCC defers to the business practices of ILECs to determine what security requirements are reasonable. This deference is marked by the requirement that other carriers comply with the more stringent of two security standards imposed by ILECs (and not the least stringent). In the event that an ILEC seeks to impose security requirements on carriers that differ from those imposed on its own employees or its authorized contractors, the ILEC must demonstrate that the requirement provides necessary protection for its equipment.

40. Although the record in this case reveals that Nortel, one of GTE's authorized contractors, requires its employees to submit to drug testing and that GTE imposes the same security requirements on all CLEC contractors, there is no evidence in the record regarding requirements imposed by GTE on its *group* of authorized contractors, other than Nortel. Therefore, based on the record, the requirements imposed by GTE on its own employees must be regarded as the more stringent of the two groups.

41. The record also reveals that GTE's employees hired before 1990 are exempt from its drug screening requirement.[25] However, there is no evidence disclosing how many GTE employees with access to its wire centers are exempt, and how many are required to comply with the drug screening requirement. If only some, but not all, GTE employees with access to its wire centers are required to comply with the drug screening requirement, then GTE cannot persuasively argue that it seeks to impose the same security arrangements on other carriers that it imposes on itself. Therefore, GTE seeks to impose a requirement on ATTI that it does not impose on its own employees.

42. GTE's argument that its requirements are not discriminatory because they do not apply to CLEC employees hired before 1990 is rejected. Although a few collocating CLECs may have begun operations prior to 1990, the local exchange carrier market did not become competitive until passage of the Telecom Act in 1996 and there was little (if any) need for CLECs to hire qualified central office technicians prior to that date. GTE's hiring-date cut-off of 1990 is self-serving and discriminatory.

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[25] Transcript, volume 2, page 26, lines 13-19.

43. Although ATTI exaggerates the increased collocation costs caused by drug screening, some cost certainly would be incurred. The mere fact that a collocating carrier may incur costs in order to implement a compliance program does not lead to the conclusion that the imposition of security requirements is discriminatory. ATTI's argument that the costs it would incur are unconscionably disproportionate to GTE because of their relative financial resources is rejected.

44. Testimony by GTE witness R. Kirk Lee that CLEC employees have no incentive to protect GTE's equipment is unsupported by other evidence and is not credible. ATTI employees are responsible for protecting ATTI's customers connected through GTE's equipment, as well as ATTI's own expensive equipment. There is no basis in the record or in common sense to conclude that ATTI's unscreened employees pose any greater risk to GTE's equipment than GTE's unscreened employees.

45. GTE's drug screen merely requires collocating carriers to certify that an employee seeking access to GTE's wire centers has passed a test. Drug screening provides a snapshot of an employee's compliance at one singular point in time, and there is no evidence in the record that drug screening would achieve any appreciable necessary protection of GTE's equipment that is not provided by the other information required on the CBI.[26] The test is not randomly performed, repeat testing is not required, and ATTI is not required to report whether its employees have failed to pass the test on prior occasions.

46. GTE fails to demonstrate that the imposition of a discriminatory drug screening requirement provides necessary protection of its equipment. The other information requested by GTE on the CBI does not result in increased collocation costs to ATTI and provides necessary protection of GTE's equipment.

D. What Is a Reasonable Period of Time for GTE to Notify ATTI of Collocation Space Availability after Receiving a Request? (Issue #4)

1. ATTI's Position

47. ATTI proposes a 10 day interval for GTE to notify ATTI of collocation space availability and feasibility after GTE receives an ATTI collocation request. ATTI argues that its proposal is consistent with the FCC's Advanced Services Order, and that
a reference to 10 days, in the normal course of things, means ten calendar days and *not* ten business days. ATTI also argues that a collocation space assessment can reasonably be conducted by GTE in 10 calendar days.

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[26] Other background questions that must be answered on the CBI include whether the employee: has been convicted of a felony within the prior seven years; has ever been employed by or discharged for cause by GTE; and has ever worked for a contractor on GTE premises or been removed from GTE premises for cause.

2. GTE's Position

48. GTE proposes a fifteen calendar-day interval to achieve system-wide consistency. Alternatively, GTE argues that it is unclear on the face of the Advanced Services Order whether the FCC intended the collocation assessment interval to be ten calendar days or ten business days. GTE argues that the FCC expressly relied on comments filed by GTE which supported a ten business-day interval in making its determination.

49. Finally, GTE asserts that this issue is really about "reasonableness." According to GTE, a ten calendar-day interval is not reasonable, particularly during holidays and traditional vacation periods because of staffing schedules and work loads.

3. Discussion and Recommended Decision

50. GTE appropriately asserts that this issue is really about the reasonableness of the competing proposals. In a prior proceeding before the Commission, all parties agreed that fifteen days was a reasonable period for an ILEC to perform a collocation space assessment, and all intervals established were stated in calendar days.[27]

51. Subsequent to the Commission's Collocation Order, the FCC issued its Advanced Services Order providing for a 10 day interval.[28] In the same way that the Commission referred to and relied on responses by parties that fifteen calendar days was a reasonable interval in the Collocation Order, the FCC referred to and relied on GTE's response that ten business days was a reasonable interval in the Advanced Services Order.

52. Consistent standards between jurisdictions promotes effective and efficient business operations, but GTE's business operations should not take precedence over FCC requirements. In addition to finding that the FCC intended the collocation assessment interval be ten business days, the ten business-day interval also is the approximate equivalent of the fifteen-day calendar interval that the Commission previously found reasonable.

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[27] The Commission combined three proceedings to review denials of collocation requests because of space limitations; *In the Matter of the Petition for Arbitration of An Interconnection Agreement Between MFS Communications Company, Inc., and U S WEST Communications, Inc.*, *In the Matter of the Petition for Arbitration of An Interconnection Agreement Between TCG SEATTLE and U S WEST Communications, Inc.*, *In the Matter of the Interconnection Agreement Between Electric Lightwave, Inc., and U S WEST Communications, Inc.*, Docket No. UT-960323, UT-960326, and UT-960337, Commission Decision and Final Order Modifying Initial Order, In Part, and Affirming, In Part (November 11, 1999) (Collocation Order).

[28] Advanced Services Order, ¶ 55, 14 FCC Rcd at 4791.

53. GTE must notify ATTI of collocation space availability and feasibility within ten business days of ATTI's request to collocate.

III. IMPLEMENTATION SCHEDULE

54. Pursuant to 47 U.S.C. § 252(c)(3), the Arbitrator is to "provide a schedule for implementation of the terms and conditions by the parties to the agreement." In this case the parties did not submit specific alternative implementation schedules. Specific contract provisions, however, may contain implementation time lines. The parties shall implement the agreement pursuant to the schedule provided for in the contract provisions, and in accordance with the 1996 Act, the applicable FCC Rules, and the orders of this Commission.

55. In preparing a contract for submission to the Commission for approval, the parties may include an implementation schedule.

IV. CONCLUSION

56. The foregoing resolution of the disputed issues in this matter meets the requirements of 47 U.S.C. § 252(c). The parties are directed to submit an interconnection agreement consistent with the decisions in this Arbitrator's Report to the Commission for approval pursuant to the following requirements.

A. Petitions for Review and Requests for Approval

57. The parties may petition for review of the Arbitrator's Report and Decision by the Commission. Petitions for review shall be in the form of a brief or memorandum, and must state all legal and factual bases in support of arguments that the Arbitrator's Report should be modified.

58. The parties also must file a request that the Commission approve negotiated terms, arbitrated terms for which review is not requested, and terms requested pursuant to Section 252(i) which are not disputed. Parties filing a petition for review must present their request for approval in the same pleading.

59. Parties requesting approval of negotiated terms must summarize those provisions of the agreement, and state why those terms do not discriminate against other carriers, are consistent with the public interest, convenience, and necessity, and are consistent with applicable state law requirements, including relevant Commission orders.

60. Parties also requesting approval of arbitrated terms must summarize those provisions of the agreement, and state how the agreement meets each of the applicable specific requirements of Sections 251 and 252, including relevant FCC regulations, and applicable state requirements, including relevant Commission orders.

61. The petition for review and/or request for approval may reference or incorporate previously filed briefs or memoranda. Copies should be attached to the extent necessary for the convenience of the Commission. The parties are *not* required to file a proposed form of order.

62. **Petitions for review and/or requests for approval must be filed on or before January 21, 2000. Either party may file a reply to the opposing party's petition for review and/or request for approval on or before February 1, 2000.**

63. Requests for approval shall be filed with the Secretary of the Commission in the manner provided for in WAC 480-09-120. In addition, requests for approval shall be served on all parties who have requested service (the list is available from the Commission Records Center). The service rules of the Commission set forth in WAC 480-09-120 and 420 apply except as modified by the Commission or Arbitrator. Unless filed jointly, post-hearing pleadings and any accompanying materials should be served on the opposing party by delivery on the day of filing.

64. The parties shall file an original and six (6) copies of all post-hearing briefs or pleadings. **All post-hearing briefs or pleadings also *must* be filed on diskette formatted in either WordPerfect 5.1 through 6.1.** Attachments or exhibits to pleadings and briefs which do not pre-exist in an electronic format do not need to be converted.

B. Filing of an Interconnection Agreement for Approval

65. The parties must file a complete copy of the signed interconnection agreement, including any attachments or appendices, and incorporating all negotiated terms, terms requested pursuant to Section 252(i), and terms intended to fully implement arbitrated decisions. The Agreement must clearly identify arbitrated terms by font style and identify the arbitrated issue which relates to the text by footnote.

66. **The Agreement must be filed on or before February 1, 2000.** The Commission reserves discretion to reject the filing of the Agreement in advance of that date, and the deadline may be extended by the Commission for good cause. The Commission does not interpret the nine-month time line for arbitration under Section 252(b)(4)(C) to include the approval process.

C. Approval Procedure

67. The requests for approval will be assigned to Commission Staff to review and present a recommendation to the Commission. The Commission does not interpret the approval process as an adjudicative proceeding under the Washington Administrative Procedure Act.

68. Any person wishing to comment on a request for approval may do so by filing written comments with the Commission no later than 10 days after the date of

request for approval. Comments shall be served on all parties to the Agreement, and parties to the Agreement may file written responses to comments within 7 days of service.

69. The requests for approval will be considered at a public meeting of the Commission. Any person may appear at the public meeting to comment on the requests. The Commission may in its discretion set the matter for consideration at a special public meeting.

70. The Commission will enter an order, containing findings and conclusions, approving or rejecting the Agreement within 30 days of its being filed. Agreements containing both negotiated and arbitrated provisions are treated as arbitrated agreements subject to the 30-day approval deadline specified in the Telecom Act.

DATED at Olympia, Washington and effective this th day of December 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAWRENCE J. BERG
Arbitrator