

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Approval of an
Interconnection Agreement Between

Docket No. UT-990390

AMERICAN TELEPHONE TECHNOLOGY,
INC., and
GTE NORTHWEST, INC.

AMERICAN TELEPHONE
TECHNOLOGY BRIEF IN
SUPPORT OF REQUEST FOR
APPROVAL OF ARBITRATOR'S
DECISION AND FOR
APPROVAL OF
INTERCONNECTION
AGREEMENT

Pursuant to 47 USC Section 252

INTRODUCTION

Pursuant to Section III of the Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements under the Telecommunications Act of 1996 ("Interpretive and Policy Statement") issued by this Commission in Docket No. UT-960269, and the Arbitrator's Report and Decision in this docket, American Telephone Technology, Inc. ("ATTI") hereby submits its Request for Approval, by the Washington Utilities and Transportation Commission ("Commission"), of the Arbitrator's Decisions included in his Report and Decision dated December 29, 1999.

On September 9, 1999, ATTI filed a petition for arbitration and request to receive arrangements previously approved by the Washington Utilities and Transportation Commission (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 requested that GTE make available arrangements from a previously approved interconnection agreement between GTE and AT&T Communications of the Pacific Northwest, Inc. (AT&T Agreement).¹ Following an arbitration hearing on November 2, 1999, Arbitrator Lawrence J. Berg issued an Arbitrator's Report and Decision (Arbitrator's Decision) on December 29, 1999. ATTI requests Commission approval of the Arbitrator's Decisions.

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, Inc., Docket No. UT-960307, Commission Order Approving Agreement (August 25, 1997)

SUMMARY OF THE ARBITRATED ISSUES

The Arbitrator decided the following four issues. ATTI has chosen not to petition for review of

any of the four issues and therefore asks that the Arbitrator's Decision be approved.

Allocation of Collocation Conditioning Costs. The Arbitrator did not decide this

issue but deferred it to the so-called Generic Case.² While ATTI believes this decision could have been made outside of the Generic Case, it will not contest the decision to refer it to that case. However, the Commission should make it clear that any decision made in that case will be applied retroactively to any collocation space costs incurred by ATTI between approval of this agreement and a final decision on this issue in the Generic Case.

Combination of Unbundled Network Elements. ATTI requested that GTE make available terms and conditions related to unbundled network elements (UNE's) from the AT&T Agreement, but that combinations of UNEs also be made available as an individual arrangement. The Arbitrator decided that "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." Arbitrator's Decision at 11.

ATTI is entitled to obtain an interconnection contract that clearly and accurately reflects the current state of the law. Section 251(c)(3) of the Act obligates GTE "to provide...nondiscriminatory access to network elements on an unbundled basis..." 47 U.S.C. 251 © (3). The FCC adopted rule 51.315(b), which states that "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently

² In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale, UT-960369.

combines.” 47 C.F.R. 51.315(b). The United States Supreme Court has upheld that rule. According to the Court:

Rule 315(b) forbids an incumbent to separate already-combined network elements before leasing them to a competitor...In the absence of Rule 315(b)...incumbents could impose wasteful costs...it is well within the bounds of reason for the commission to opt in favor of ensuring against an anticompetitive practice.

AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721, 737-38 (1999). Therefore, it is clear, as the Arbitrator concluded, that GTE must provide UNEs that it currently combines, in their currently combined state, to ATTI. The following sections of ATTI’s proposed language clearly reflect this conclusion and should be approved by the Commission:

GTE shall offer each Network Element individually and in
Combination that it currently combines within its network...
When ATTI orders combinations of currently connected
Network Elements, GTE shall ensure that such Network
Elements remain connected and functional without any
disconnection or disruption.

The Arbitrator was also correct to conclude that GTE must combine UNEs ordinarily combined in its network in the manner they are typically combined. This is consistent with the FCC’s “all elements rule” and the Supreme Court decision upholding that rule. *See FCC Local Competition Order at 328-40 and AT&T Corp*, 119 S.Ct. at 736-37.

Likewise, the Arbitrator correctly concluded that the Commission must follow the Ninth Circuit Court decision that the Telecom Act requires incumbent carriers like GTE to combine UNEs at the request of other carriers.³ Thus the Arbitrator’s conclusions on this issue should be approved by the Commission.

Drug Screening of ATTI Employees. The Arbitrator concluded that the drug screening requirement in GTE’s Certification of Background Investigation (CBI)

³ See, *GTE Communications, Inc. v. MFS Intelenet, Inc.* 1999 WL 799082 (9th Cir. Wash.) OCT. 8, 1999.

process was discriminatory and that GTE had failed to demonstrate that the requirement provided necessary protection of its equipment. The Arbitrator's Decision should be approved. GTE's right to impose security requirements on ATTI must be limited in instances where such a requirement is discriminatory and would result in greater collocation costs without concomitant benefit to the security of GTE's equipment. The evidence demonstrated and the Arbitrator concluded that imposition of GTE's drug screening policy on ATTI would have a disproportionate impact on ATTI that is not offset by any appreciable benefit to the security of GTE's equipment. The Arbitrator's Decision should be approved and the drug screening requirement should be removed from the CBI process.

Reasonable Period of Time to Notify ATTI of collocation Space Availability. ATTI proposed a 10 calendar-day interval for GTE to notify ATTI of collocation space availability upon an ATTI request. GTE proposed a fifteen calendar-day interval. The Arbitrator decided that GTE must notify ATTI within ten business days. The Arbitrator's Decision should be approved.

In summary, the Commission should approve the Arbitrator's Decision and order that it be incorporated into the agreement.

THE REMAINDER OF THE AGREEMENT SHOULD BE APPROVED.

In addition to the provisions in the interconnection agreement relating to the issues discussed above, the Commission should approve the remainder to the interconnection agreement that ATTI and GTE will submit on February 1, 2000. As previously stated, the great majority of the agreement is based upon the interconnection agreement between GTE and AT&T that the Commission has previously approved.

The Arbitrated/Negotiated Agreement sets forth terms, conditions, and prices under which GTE agrees to provide services in each LATA in which both ATTI and GTE operate within the State of Washington. The Agreement also has terms, conditions, and prices under which the parties agree to provide interconnection and reciprocal compensation for the exchange of local traffic for the purpose of offering telecommunications services. The Agreement will be submitted for approval pursuant to Section 252(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the

“Act”), and the requirements of the Commission’s Interpretive and Policy Statement on or before February 1, 2000. ATTI requests the Commission to approve the proposed interconnection agreement as modified by the Arbitrator’s decisions.

Section 252(e)(2) of the Act directs that a State Commission may reject an agreement reached through negotiation and/or arbitration only if the Commission finds that:

The agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement; or
The implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

ATTI respectfully submits that neither the Arbitrator’s Decision nor the remainder of the agreement provides a basis for either of these findings and thus request that the Commission approve the Arbitrator’s Decision.

First, the Agreement does not discriminate against any other telecommunications carrier. There is no finding that the terms of this Agreement are more favorable than terms provided to other carriers.

Second, the Agreement is consistent with the public interest as identified in the pro-competitive policies of the State of Washington, the Commission, the U. S. Congress, and the Federal Communications Commission. The agreement will enable ATTI to interconnect with GTE’s network under terms and conditions that are consistent with the Act. In addition, because this Agreement does not discriminate against any other telecommunications carrier, state law policies prohibiting unreasonable discrimination are preserved by approval of this Agreement.

CONCLUSION

For the foregoing reasons, ATTI respectfully requests approval of the Interconnection Agreement between ATTI and GTE that will be submitted on February 1, 2000.

Respectfully submitted this _____ day of _____, 2000.

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