BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between **AMERICAN TELEPHONE TECHNOLOGY, INC., and U S WEST COMMUNICATIONS, INC.** **Pursuant to 47 U.S.C. Section 252**	**DOCKET NO. UT-990385** **U S WEST COMMUNICATIONS, INC.'s BRIEF IN SUPPORT OF PETITION FOR REVIEW AND REQUEST FOR APPROVAL OF INTERCONNECTION AGREEMENT WITH AMERICAN TELEPHONE TECHNOLOGY, INC.**

I.INTRODUCTION AND SUMMARY

This proceeding arises from an interconnection arbitration between U S WEST Communications, Inc. ("U S WEST") and American Telephone Technology, Inc. ("ATTI") pursuant to section 252 of the Telecommunications Act of 1996 (the "Act"). Following an arbitration hearing on October 28, 1999, Administrative Law Judge Lawrence J. Berg issued an Arbitrator's Report and Decision ("Arbitrator's Report") on December 23, 1999. Pursuant to paragraphs 85-92 of this report, U S WEST submits this petition for review and request for approval. U S WEST requests that the Commission modify three legal conclusions within the Arbitrator's Report and approve the remainder.

First, the Commission should reverse the Arbitrator's legal conclusion that ATTI could opt into a reciprocal compensation arrangement from an interconnection agreement between U S WEST and MFS Communications Company, Inc. ("MFS") that became effective on January 8, 1997, and provided for a term of two and one-half years. ATTI cannot opt into an agreement or any portion of an agreement that has expired. At the very

least, the Arbitrator's Report should be modified to strike the provision permitting ATTI to continue to use the arrangement from the MFS agreement for 90 days *after* a new agreement between U S WEST and MFS becomes effective.

Second, the Commission should reverse the Arbitrator's legal conclusion that U S WEST must (1) combine network elements when providing them to ATTI, even when U S WEST does not ordinarily combine those elements in its own network, and (2) combine its own elements with those of ATTI. The Arbitrator relied upon the Ninth Circuit's interpretation of certain FCC rules in *U S WEST Communication, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999), *pet. for rev. pending*. However, as U S WEST has pointed out to the Ninth Circuit in a pending petition for rehearing, the Eighth Circuit vacated these rules, and it has exclusive statutory jurisdiction under the Hobbs Act to review or re-instate them. Indeed, it is currently considering this very question. Under these circumstances, the Commission should not impose these obligations on U S WEST until after the Eighth Circuit has ruled.

Third, the Commission should reverse the Arbitrator's rulings that: (1) U S WEST is required to provide ATTI with collocation at sites that are not on U S WEST's property; and (2) U S WEST must provide off-premises collocation regardless whether space is available for collocation at U S WEST's central offices. The FCC rule implementing the portion of its Advanced Services Order that relates to adjacent collocation, 47 C.F.R. § 51.323(k)(3), requires incumbent local exchange carriers ("ILECs") to provide only "collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible" and only when "space is legitimately exhausted in a particular incumbent LEC premises." 47 C.F.R. § 51.323(k)(3). The Arbitrator's ruling conflicts with this rule by requiring U S

WEST to provide collocation outside its property and requiring U S WEST to provide this type of collocation even where space on U S WEST's premises is not "legitimately exhausted." These requirements are plainly inconsistent with the FCC's rule, and the Commission, therefore, should reverse the Arbitrator's ruling.

Finally, with the exception of the provisions in the interconnection agreement relating to the issues discussed above, the Commission should approve the remainder of the interconnection agreement that U S WEST and ATTI will submit on January 25, 2000. As discussed below, the majority of the agreement is based upon the interconnection agreement between U S WEST and AT&T that the Commission has previously approved.

II.DISCUSSION

A. The Commission should not permit ATTI to opt into the reciprocal compensation provision of the expired interconnection agreement between U S WEST and MFS.

The Arbitrator's Report permitted ATTI to opt into the reciprocal compensation provisions of an interconnection agreement between U S WEST and MFS. However, the MFS agreement became effective January 8, 1997, and the parties agreed to a term of two and one-half years. The "Term of Agreement" provision of the MFS agreement states:

> This Agreement shall be effective for a period of 2 ½ years, and thereafter the Agreement shall continue in force and effect unless and until a new agreement, addressing all of the terms of this Agreement, becomes effective between the Parties. The Parties agree to commence negotiations on a new agreement no later than two years after this Agreement become effective.

In accordance with this provision, the MFS agreement expired on July 7, 1999, and is no longer available for adoption under section 252(i).

The Arbitrator reasoned that because U S WEST and MFS have extended the

agreement pending their negotiation and execution of a replacement agreement, the MFS agreement continues to be available to ATTI for opt-in. Arbitrator's Report ¶¶ 24-25 at 10-11. To facilitate negotiation of the follow-on contract, U S WEST and MFS agreed to operate under the existing agreement until a new agreement is in place. This accommodation was for the parties' convenience only and was to ensure continuity, as well as the ability to negotiate a new agreement, without the need to agree on "interim" agreements during their negotiations. This accommodation did not justify the Arbitrator's utterly ignoring the term of the agreement for the benefit of third parties.

In *NEXTLINK of Washington, Inc. v. U S WEST Communications, Inc.*, Docket No. UT-990340, Sixth Supplemental Order; Recommended Decision at 20 (Aug. 25, 1999), the Commission permitted the Co-Provider to opt in to the reciprocal compensation provision of the expired MFS agreement. However, subsequent to *NEXTLINK*, this Commission issued its Section 252(i) Policy Statement, Principle 8 of which establishes that parties cannot opt into interconnection agreements that have expired:

> An interconnection arrangement made available pursuant to Section 252(i) must be made available for the specific time period during which it is provided under the interconnection agreement from which it was selected. For example, if the interconnection arrangement was included in an agreement that expired on December 31, 2000, it must be available to other carriers only until December 31, 2000. The purpose of limiting availability of interconnection arrangements to the time period during which they are available *under the original agreement* is to ensure non-discriminatory treatment of carriers, including the carrier who negotiated or arbitrated the initial agreement.

Policy Statement at 6 (emphasis added).

This principle establishes that the parties and the Commission must look to the expiration date of the *original* agreement to determine whether a carrier can opt into that

agreement. In the present case, the expiration date of the original agreement was July 7, 1999. Accordingly, the arrangement ATTI seeks is not available for opt-in.

The Arbitrator's Report also is inconsistent with Principle 6 of the Commission's Section 252(i) Policy Statement, which provides:

> The "reasonable period of time" during which arrangements in any interconnection agreement (including entire agreements) must be made available for pick and choose by a requesting carrier extends until the expiration date of that agreement. A requesting carrier may not receive arrangements from any agreement that is no longer effective. If carriers were allowed to adopt arrangements from expired agreements, the result would be to extend the effective period of any particular interconnection arrangement. Such an extension would be unreasonable and unduly burdensome to ILECs because it could require an ILEC's continuing performance of obligations that were based on outdated assumptions.

Policy Statement at 5.

ATTI's request to opt into the U S WEST/MFS agreement would effectively delete the words "expiration date" from Principle 6 entirely and, thus, undermine the policies that underlie that principle. Simply put, the U S WEST/MFS agreement has an expiration date -- July 7, 1999 -- and, under Principle 6, the reciprocal compensation arrangement of that agreement is not available for opt in after that date.

The Arbitrator recognized that if ATTI can opt into the MFS arrangement, "it would be inequitable to U S WEST if ATTI received the MFS arrangement for an indefinite term." Arbitrator's Report ¶ 38 at 14. Accordingly, the Arbitrator's Report provides that:

> . . . either 1) the arrangement expires 90 days after a new agreement between U S WEST and MFS becomes effective, or 2) the arrangement expires contemporaneous with the other negotiated and arbitrated terms in the Agreement, whichever event occurs first.

Id. However, the effect of this provision is to give ATTI the benefit of the MFS

arrangement for 90 days longer than MFS itself – a clear violation of Principles 6 and 8 of the Commission's Policy Statement. If ATTI can opt into this arrangement at all, it should not be permitted to do so for a longer period than MFS itself. To protect ATTI from an abrupt termination of this arrangement, U S WEST would agree to provide ATTI with 90 advance written notice that the original agreement with MFS will no longer be in effect.

U S WEST respectfully requests that the Arbitrator's Report be modified to prohibit ATTI from opting into the reciprocal compensation arrangement between U S WEST and MFS. Instead, the interconnection agreement between ATTI and U S WEST should include the bill and keep compensation scheme that is in the U S WEST/AT&T agreement that ATTI is opting into. Alternatively, if the Commission permits ATTI to opt into this arrangement, the interconnection agreement should provide that this arrangement terminates either 1) 90 days after notice from U S WEST that its original agreement with MFS will no longer be in effect, or 2) contemporaneously with the other negotiated and arbitrated terms in the U S WEST – ATTI agreement, whichever event occurs first.

B. U S WEST should not be required to combine network elements for ATTI when U S WEST does not ordinarily combine those elements in its own network or to combine its own elements with those of ATTI.

The Arbitrator's Report requires U S WEST to (1) combine unbundled network elements when providing them to ATTI, even when those elements are not ordinarily combined in U S WEST's own network and (2) combine its unbundled network elements with those of ATTI. The Arbitrator based this requirement upon the Ninth

Circuit's interpretation of certain FCC rules in *U S WEST Communication, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999), *pet. for review pending*. For the reasons stated below, the Commission should reverse the Arbitrator's ruling and order that the section in the interconnection agreement between ATTI and U S WEST relating to unbundled network elements shall be based upon the language in the existing Washington agreement between U S WEST and AT&T.

In *MFS*, the Ninth Circuit ruled that in *Iowa Utils. Bd. v. FCC,* 120 F.3d 753, 813 & n. 39 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) ("*Iowa Utilities Board*"), the Eighth Circuit had erred in vacating FCC rules 315(c)-(f) -- the rules that required ILECs to combine elements for CLECs.[1] Disagreeing with the Eighth Circuit's ruling, the Ninth Circuit stated that "requiring U S WEST to combine unbundled network elements is not inconsistent with the Act . . . ." 193 F.2d at 1121. However, as discussed below, in reaching that result, the Ninth Circuit impermissibly interfered with the Eighth Circuit's exclusive jurisdiction to determine whether rules 315(c)-(f) should remain vacated. The Eighth Circuit's ruling vacating this rule remains in effect, and the Commission, therefore, should not adopt ATTI's proposed language that, under ATTI's interpretation, would violate that ruling. Indeed, in the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking, released November 5, 1999 ("Third Report and Order"),[2] the FCC itself did not reinstate rules 315(c)-(f), citing the fact that the

---

[1] "Although the Supreme Court did not directly review the Eighth Circuit's invalidation of § 51.315(c)-(f), its interpretation of 47 U.S.C. § 251(c)(3) demonstrates that the Eighth Circuit erred when it concluded that the regulation was inconsistent with the Act." 193 F.3d at 1121.

[2] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (Rel. Nov. 5, 1999).

validity of those rules is currently pending before the Eighth Circuit. Third Report and Order at ¶ 481.

Following the Ninth Circuit's ruling in *MFS*, U S WEST filed a petition for rehearing and petition for rehearing en banc with the Ninth Circuit. U S WEST is attaching a copy of this petition as Attachment A and incorporates it by reference herein. The Ninth Circuit solicited responses from MFS and this Commission, which they filed on December 7, 1999, and U S WEST filed a motion for leave to file a reply on December 14, 1999. The motion and petition remain pending before the Ninth Circuit.

Regardless whether the Ninth Circuit grants U S WEST's petition and reconsiders its determination that U S WEST can be forced to combine network elements that are not ordinarily combined in its network or combine its own network elements with those of a requesting carrier, the prudent course of action for this Commission is to wait until after the Eighth Circuit rules on this question rather than impose what might be an illegal obligation upon U S WEST. The combinations issue has been fully briefed before the Eighth Circuit, oral argument was held on September 17, 1999, and the parties are awaiting a ruling.

1. The Eighth Circuit's decision that vacated FCC rules 315(c)-(f) remains valid.

As an initial matter, the Eighth Circuit's decision to vacate rules 315(c)-(f) is entirely consistent with the Supreme Court's decision in *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) ("*AT&T Corp.*"), as discussed in section 2 below. But, as U S WEST discusses here, under the Hobbs Act, 28 U.S.C. § 2341, *et seq.*, the Eighth Circuit has exclusive jurisdiction over this issue and its ruling must control.

The Eighth Circuit's exclusive jurisdiction arises from the fact that U S WEST and

numerous other parties appealed various parts of the FCC's Local Competition Order, including the rules concerning combining network elements, pursuant to the Hobbs Act. The panel on multidistrict litigation consolidated these appeals in the Eighth Circuit pursuant to 28 U.S.C. § 2112(a)(3). On July 18, 1998, the Eighth Circuit vacated, *inter alia*, the rules requiring ILECs to combine for CLECs elements that are not already combined. In vacating rules 315(c)-(f), the Eighth Circuit explained, that, "While the Act requires incumbent LECs to provide elements in a manner that enables the competing carriers to combine them, unlike the [FCC], we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements." *Iowa Utilities Board*, 120 F.3d at 813. "[T]he plain meaning of the Act," the court explained, "indicates that the requesting carriers will combine the unbundled elements themselves; the Act does not require the incumbent LECs to do *all* of the work." *Id.* (emphasis in original).

The FCC and other parties sought review by the Supreme Court of several aspects of the Eighth Circuit's decision. However, neither the FCC nor any other party sought review of the Eighth Circuit's decision to vacate rules 315(c)-(f). The Supreme Court ultimately remanded the case to the Eighth Circuit, where parties on both sides of the issues filed motions setting forth their positions concerning how the Eighth Circuit should revise its mandate to comport with the Supreme Court's decision and what additional proceedings should be held. In its motion, the FCC argued that the Supreme Court's rationale for upholding FCC rule 315(b) required upholding rules 315(c)-(f) as well. U S WEST, along with other carriers, argued that the Supreme Court's ruling did not affect the Eighth Circuit's decision to vacate those rules.

Consistent with the express terms of the Supreme Court's decision, the Eighth Circuit

reinstated rule 315(b). *Iowa Utils. Bd. v. FCC*, Nos. 96-3321 *et al.*, Order at 2 (8th Cir. June 10, 1999). However, the Eighth Circuit did not revise its earlier mandate vacating rules 315(c)-(f). Instead, the court directed the parties to submit briefs addressing "whether or not, in light of the Supreme Court's decision, this court should take any further action with respect to . . . § 51.315(c)-(f) (unbundling rules). *Id.* at 3 The parties have submitted their briefs, oral argument has been held, and the case remains pending before the Eighth Circuit. Significantly, as the FCC confirmed in its Third Report and Order, rules 315(c)-(f) remain vacated absent a further ruling from the Eighth Circuit or the Supreme Court.

The Ninth Circuit's ruling in *MFS* must be considered against this procedural backdrop. Under the Hobbs Act, the court of appeals reviewing an FCC order "has *exclusive* jurisdiction to make and enter . . . a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency." 28 U.S.C. § 2349(a) (emphasis added). If the court of appeals reverses the FCC order, in whole or in part, "it shall remand the case to the [FCC] to carry out the judgment of the court and it shall be the duty of the [FCC] . . . to forthwith give effect thereto." 47 U.S.C. § 402(h).

The Hobbs Act ensures the uniformity of FCC rules and regulations by entrusting a single court of appeals with the exclusive power to review an agency order. Litigants may not "evade these provisions" by "rais[ing] the same issues" in a different court, where the effect would be to review the same agency action subject to the provisions of the Hobbs Act. *See FCC v. ITT World Communications*, 466 U.S. 463, 468 (1984). If a case requires a court to "determine the validity of" an FCC order or rule, then the court lacks jurisdiction to decide the issue unless it is a proper court under the Hobbs Act. *Wilson v. Belo Corp.*, 87 F.3d 393, 397 (9th Cir. 1996) (quoting 47 U.S.C. § 2342).

Accordingly, under the Hobbs Act, the only court that can render a judgment on the validity of rules 315(c)-(f) – barring further review by the Supreme Court – is the Eighth Circuit, the court of appeals that reviewed the FCC order promulgating those rules and is the court most familiar with the Local Competition Order, the administrative and judicial record, and the history of the prior proceedings. The Eighth Circuit is in the process of rendering that judgment in light of the Supreme Court's decision. If the Eighth Circuit determines that the rules in question should remain vacated, then the FCC and this Commission must give effect to that decision.

The Ninth Circuit's decision in *MFS* improperly intrudes on the exclusive statutory jurisdiction of the Eighth Circuit to determine the validity of rules 315(c)-(f). If the Eighth Circuit decides that those rules must now be upheld on remand from the Supreme Court, then it will reinstate them, and U S WEST will be required to combine elements that it does not ordinarily combine. On the other hand, if the Eighth Circuit adheres to its original ruling that the rules are contrary to the Act and should remain vacated, the rules will be vacated on a national basis – precisely the type of uniformity the Hobbs Act was designed to ensure.

In the meantime, based on the Eighth Circuit's ruling and the FCC's statement in the Third Report and Order, rules 315(c)-(f) are not effective. Accordingly, the Commission should not adopt contract language that would require U S WEST to combine network elements that it does not ordinarily combine or to combine its elements with those of ATTI.

2. The Eighth Circuit's decision to vacate rule 315(c)-(f) is consistent with the Supreme Court's decision.

The Eighth Circuit's ruling that ILECs cannot be required to combine UNEs for CLECs is consistent with the express language of section 251(c)(3), which provides in

relevant part that ILECs shall provide UNEs "in a manner that allows *requesting carriers* to combine" them. (emphasis added). In *MFS*, the Ninth Circuit reasoned that the Supreme Court's rationale for upholding rule 315(b) in *AT&T Corp.* undermines the Eighth Circuit's rationale for striking down rule 315(c)-(f). 193 F.3d at 1121. However, that reasoning misreads the Supreme Court's decision.

The Supreme Court ruled that, in view of the nondiscrimination requirements in section 251, the FCC could rationally prohibit ILECs from "disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants." 119 S. Ct. at 737. The Court held that it would be discriminatory to force an ILEC's competitors to recombine elements that, but for the ILEC having disconnected them, would already be combined, since ILECs would not have to engage in that wasteful exercise. But rules 315(c)-(f) have nothing to do with such discrimination. Because these rules address elements that are *not* already combined, either the ILEC or its competitor must combine these elements to provide a new service. Leaving the task of recombining to the competitor, therefore, does not impose any wasteful costs. Instead, it requires the competitor to incur the *same* costs that the ILEC would incur if it decided to offer a service requiring this new combination. Thus, the Supreme Court's rationale for reinstating rule 315(b) is inapplicable to rules 315(c)-(f).

C. The Arbitrator's rulings relating to adjacent collocation conflict with the governing FCC rule and should be reversed.

In its Advanced Services Order released March 31, 1999, the FCC further defined the obligations of ILECs to provide collocation.[3] The FCC was particularly concerned about the

---

[3] In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed

ability of competitive local exchange carriers ("CLECs") to collocate when space inside an ILEC's central office is exhausted. Accordingly, the FCC ruled that "when space is legitimately exhausted in a particular LEC premises," ILECs are required "to permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible." Advanced Services Order ¶ 44 (footnote omitted). In requiring adjacent collocation, the FCC also recognized that ILECs "may have a legitimate reason to exercise some measure of control over design or construction parameters" for this type of collocation. The Arbitrator's ruling violates several of these fundamental principles that the FCC established in the Advanced Services Order.

First, the Arbitrator's ruling requires U S WEST to provide adjacent collocation even when space is available inside a U S WEST central office. Arbitrator's Report ¶ 65. This requirement violates the FCC's ruling that ILECs are to provide adjacent collocation only when space inside a central office is "legitimately exhausted." Indeed, the Arbitrator himself recognized that he was going beyond the Advanced Services Order, stating that the FCC's rule "envisions a situation where a carrier requests to physically collocate on-premises but space is unavailable . . . ." Id. ¶ 65. Moreover, ATTI itself acknowledged that U S WEST should be required to provide adjacent collocation only "when space has been exhausted in a U S WEST wire center . . . ." ATTI Post-Hearing Brief at 38. ATTI did not request the right to have adjacent collocation when space is available inside a U S WEST central office, and there is, accordingly, no evidence in the record to support the Arbitrator's imposition of this requirement.

Rulemaking, FCC 99-48 (rel. March 31, 1999) (referred to herein as "Advanced Services Order" or "706 Order"). The FCC's ruling in the Advanced Services Order relating to adjacent collocation is codified at 47 C.F.R. § 51.323(k)(3).

Second, while the Advanced Services Order requires adjacent collocation, the Arbitrator's Order requires U S WEST to provide "nearby" collocation on off-premises property that U S WEST does not own. Id. ¶¶ 63, 64. The Arbitrator attempted to support this ruling by stating that in the Advanced Services Order, "the FCC envisioned off-premises adjacent collocation." Id. ¶ 64. However, nowhere in its order does the FCC state that it is requiring ILECs to provide off-premises collocation. The absence of any intent to impose this requirement is strongly suggested by the FCC's recognition that ILECs should have "some measure of control over design or construction parameters" for adjacent collocation. An ILEC obviously cannot exert that type of control over off-premises property that it does not own.

In support of his ruling, the Arbitrator cited Webster's Dictionary as establishing that "adjacent" means "not distant: NEARBY." Id. ¶ 63. However, Webster's also defines "adjacent" as "next to: Adjoining." Webster's II, New Riverside University Dictionary at 78. The "adjoining" definition of adjacent conflicts with the Arbitrator's ruling, as it indicates that collocation should be permitted only in areas that adjoin or are next to the ILEC's central office. Ascribing this meaning to "adjacent" instead of the meaning given by the Arbitrator is supported by the FCC's recognition that ILECs should be able to exercise some control over construction and design parameters. An ILEC will be able to exercise that control over areas that adjoin its central offices but not over areas off its premises at undefined distances from a central office.

Third, the Arbitrator's Report and the ATTI language the Arbitrator adopted do not address U S WEST's right to exercise "some" control over the construction or design parameters for the structures that are used for adjacent collocation. Consistent with the

FCC's Advanced Service Order and the implementing rule, U S WEST's right to exercise this control should be expressly recognized.

For these reasons, the Commission should reverse the Arbitrator's ruling relating to adjacent collocation and should adopt the contract language that U S WEST proposed for this issue.

D. The Commission should approve the remaining sections of the agreement.

In accordance with the Arbitrator's Report, U S WEST and ATTI will submit a proposed interconnection agreement to the Commission on or before January 25, 2000. The agreement will be based upon the existing Washington interconnection agreement between AT&T and U S WEST that the Commission has previously approved. The agreement also will include language implementing the Arbitrator's rulings, along with alternate language that U S WEST is advocating in place of: (1) the MFS reciprocal compensation provision that the Arbitrator ordered; (2) the language relating to combinations of unbundled network elements that flows from the Arbitrator's rulings; and (3) the language the Arbitrator ordered relating to adjacent collocation.

With the exception of the sections of the proposed agreement relating to these three issues, the Commission should approve the agreement. As noted, in the AT&T/U S WEST arbitration, the Commission approved the majority of the provisions that are in the agreement that U S WEST and ATTI will be submitting. In view of that previous approval by the Commission, approval of the same provisions in this case is warranted. For the reasons stated above, the Commission should not approve the sections of the agreement that incorporate the provision of the U S WEST/MFS agreement relating to reciprocal compensation and the provisions relating to combinations of unbundled network elements.

Instead, the Commission should retain the language in the U S WEST/AT&T agreement that establishes a bill and keep method of compensation instead of reciprocal compensation and the provisions in that agreement relating to unbundled network elements.

The agreement that U S WEST and ATTI will submit includes a new section relating to collocation that is not in the AT&T/U S WEST agreement. The parties negotiated the majority of the provisions in that section based on rulings and rules issued by the FCC. A small number of provisions in that section -- in particular, the provisions relating to adjacent collocation and cross-connects between ATTI and another collocated CLEC -- were arbitrated, and the language in those provisions reflects the Arbitrator's rulings. With the exception of the provision relating to collocation, the Commission should approve the collocation provisions in the agreement. The provisions are consistent with the FCC's rulings and rules relating to collocation, including the rulings in its Advanced Services Order. For the reasons stated above, the Commission should not approve the provision relating to adjacent collocation and, instead, should adopt the alternate language that U S WEST will include in the proposed agreement.

III.CONCLUSION

For the reasons stated, the Commission should modify the Arbitrator's Report as requested and approve an interconnection agreement consistent with the arguments herein.

DATED this 14th day of January, 2000.

Respectfully submitted,

____

Lisa A. Anderl
U S WEST COMMUNICATIONS, INC.
1600 7th Avenue, Suite 3206
Seattle, WA 98191

John M. Devaney
PERKINS COIE LLP
607 Fourteenth Street, N.W.
Suite 800
Washington, D.C. 20005-2011

Attorneys for U S WEST Communications, Inc.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between **AMERICAN TELEPHONE TECHNOLOGY, INC., and U S WEST COMMUNICATIONS, INC.** **Pursuant to 47 U.S.C. section 252**	**DOCKET NO. UT-990385**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing U S WEST Communications, Inc.'s Brief in Support of Petition for Review and Request for Approval of Interconnection Agreement with American Telephone Technologies, Inc. upon the following person by overnight delivery and facsimile:

Dennis D. Ahlers
Senior Attorney
Advanced Telecommunications, Inc.
730 Second Avenue South
Suite 1200
Minneapolis, MN 55402

Dated this 14th day of January, 2000.

____
John M. Devaney