

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

Docket No. UT-990385

AMERICAN TELEPHONE TECHNOLOGY,
INC., and
U S WEST COMMUNICATIONS, INC.

REQUEST FOR APPROVAL
OF ARBITRATED TERMS OF
INTERCONNECTION
AGREEMENT

Pursuant to 47 USC Section 252

I. 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 dated December 23, 1999, American Telephone Technology, Inc. (“ATTI”) hereby submits its Request for Approval, by the Washington Utilities and Transportation Commission (“Commission”), of the arbitrated terms of the Interconnection Agreement.

Arbitrator Berg conducted an arbitration hearing on October 28, 1999, in response to ATTI’s Petition which was filed on August 27, 1999. The Arbitrator issued his Report and Decision (Decision) on December 23, 1999. The parties were ordered to file a petition for review or request for approval of arbitrated terms on or before January 14, 2000. The parties were ordered to submit, on or before January 25, an interconnection agreement for approval or modification by the Commission.

ATTI requested to receive interconnection terms from an approved interconnection agreement between AT &T and U S WEST (AT&T Agreement),¹ except that ATTI sought

¹ In the Matter of the Petition for Arbitration of An Interconnection Agreement Between AT&T Communications of the Pacific Northwest, Inc. and U S WEST Communications, Inc., Docket No. UT-960309, Order Approving Agreement (July 11, 1997)

different terms providing for UNE combinations and requested a reciprocal compensation arrangement from another approved agreement pursuant to its rights under Section 252(i) of the Telecom Act. Those exceptions to the AT&T Agreement were among the arbitrated issues. The remaining provisions of the Agreement either are provisions from the AT&T Agreement or have been negotiated. The Arbitrated/Negotiated Agreement sets forth terms, conditions, and prices under which U S WEST agrees to provide services in each LATA in which both ATTI and U S WEST 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. Most of the terms, conditions and prices are ones that have already been approved by this Commission in previous agreements. The parties will file the entire agreement and support on or before January 25, 2000.

II. THE ARBITRATOR'S DECISION

Ultimately, only six issues were submitted to arbitration. ATTI has chosen not to petition for review of any of the six issues and therefore asks that the proposed agreement be approved as modified by the Arbitrator's Decision. The Arbitrator decided the following six issues.

1. **MFS/U S WEST Reciprocal Compensation.** ATTI requested that it be able to opt-into the reciprocal compensation language contained in an approved agreement between MFS and US WEST (MFS Agreement)² pursuant to Section 252(i). The Commission recently approved such an opt-in in an agreement between NEXTLINK and U S WEST in Docket No. UT-990340. Thus, both the reciprocal compensation terms and the opt-in of those terms into another agreement have been approved previously by the Commission. The Arbitrator ruled that the reciprocal compensation arrangement from the MFS Agreement should be made available to ATTI. He further ruled that the arrangement expires 90 days after a new agreement between US WEST and MFS becomes effective, or the arrangement expires contemporaneous with the other negotiated and arbitrated terms in the Agreement,

² In the Matter of the Petition for Arbitration of An Interconnection Agreement Between MFS Communications Company, Inc., and US WEST Communications, Inc., Docket No. UT-960323, Order Approving Negotiated and Arbitrated Interconnection Agreement (January 8, 1997)

whichever event occurs first. (Arbitrator's Report and Decision at 14.) ATTI incorporates herein and refers the Commission to its Post-Hearing Brief at pages 5-15 and its Reply Brief at pages 10-14 and incorporates those arguments here as support for the Arbitrator's Decision. The FCC's pick and choose rule provides, in relevant part, that:

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement, contained in any agreement to which it is a party that is approved by a State Commission pursuant to Section 252 of the Act, upon the same rater, terms and condition as those provided in the Agreement. 47C.F.R. 51.809 (a)

The Arbitrator's Decision should be approved and the relevant language from the MFS Agreement incorporated into this Agreement.

2. **Unbundled Network Elements.** ATTI requested that U S WEST make available

terms and conditions related to unbundled network elements (UNEs) from the AT&T Agreement, but that combinations of UNEs also be made available as an individual arrangement. The Arbitrator adopted ATTI's position. (Arbitrator's Report and Decision at 19.) As explained in the Arbitrator's Report and Decision this approach is consistent with the Telecommunications Act, the FCC's rules and recent court decisions. It is also consistent with Principle 4 of this Commission's recent Policy Statement on "Pick and Choose" which states, in part,

"Section 252(i) and the pick and choose rule entitle a requesting carrier to gain access to any individual interconnection, service, or network element arrangement on the same terms and conditions in any approved interconnection agreement, regardless of whether the agreement is arbitrated, negotiated, or both. Parties may request approval of an interconnection agreement that is a hybrid of negotiated and arbitrated terms, and of individual arrangements that result from pick and choose."

ATTI refers the Commission to its Post Hearing Brief at pages 15-31 and its Reply Brief at pages 1-9 as well as the relevant discussions in the Arbitrator's Report for further support for the Arbitrator's Decision.

3. **Adjacent Collocation.** ATTI proposed contract language that would establish collocation either on US WEST's premises or other nearby property when space has been exhausted in a U S WEST wire center. The Arbitrator adopted ATTI's language with two modifications: 1) ATTI's option is not conditioned upon the availability of space on U S WEST's premises; and 2) ATTI bears all expenses for adjacent collocation at other than an "On Grounds Location". ATTI accepts the Arbitrator's modifications and urges approval of the Arbitrator's Decision. His Decision is consistent with the FCC's Advanced Services Order and with the Act. ATTI refers the Commission to its Post Hearing Brief at pages 43-47 for further support for the Arbitrator's Decision.

ATTI proposes the following language to comply with the Arbitrator's Decision:

Adjacent Physical Collocation allows ATTI to obtain space for collocated facilities in a cabinet on the contiguous real property of US West (the "On Grounds Location"). U S WEST will offer this option at ATTI's election. US WEST will extend AC power up to a maximum of 200 feet from the U S WEST power source or as otherwise safe and technically feasible. U S WEST will extend facilities sufficient to establish connectivity to U S WEST's network and distribution frame to ATTI's Collocation space where ATTI is in an On Grounds Location. Adjacent physical collocation may be ordered using the Collocation order form through the BFP process. Adjacent physical collocation on property not owned by U S WEST, but nearby, U S WEST's wire center, may be ordered, where technically feasible, through the BFR process, at ATTI's expense.

4. **Dispute Resolution – Collocation.** The Arbitrator rejected ATTI's proposal for a separate dispute resolution clause for collocation disputes. ATTI reluctantly accepts the Arbitrator's Decision in this case.
5. **Final Payment – Collocation.** ATTI argued that it should not be required to make a final payment to U S WEST for collocation space if the space provided does not meet ATTI's reasonable satisfaction. The Arbitrator rejected ATTI's language and

determined that "...if ATTI takes possession and makes use of the collocation space or facilities, it must make final payment while the dispute resolution is pending.

Final payment by ATTI shall not constitute a waiver of any objections to U S WEST's performance." ATTI reluctantly accepts the Arbitrator's Decision in this case.

6. **Quote Preparation Fee.** ATTI proposed that a request for CLEC-to-CLEC cross-connection be included on the original collocation application form without the incurrance of separate or additional Quote Preparation Fee (QPF) or other charge, and without extending the applicable collocation time intervals. The Arbitrator decided that U S WEST is entitled to recover costs caused by carrier requests, even if they are relatively small and that any disagreement regarding the assessment of a QPF should be addressed through the dispute resolution process. ATTI reluctantly accepts the Arbitrator's Decision in this case.

The Arbitrated/Negotiated 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 January 25, 2000.

I. REASONS FOR APPROVAL

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:

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

ATTI respectfully submits that the Arbitrator's Decision provides no basis for either of these findings and thus request that the Commission approve the Arbitrator's Decision.

First, the Decision does not discriminate against any other telecommunications carrier. There is no indication that the Decision would result in an agreement with terms more favorable than terms provided to other carriers. Second, the Decision 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. It will enable ATTI to interconnect with U S WEST's network under terms and conditions that are consistent with the Act. In addition, because the Decision does not discriminate against any other telecommunications carrier, state law policies prohibiting unreasonable discrimination are preserved by approval of the terms of the Decision.

I. CONCLUSION

For the foregoing reasons, ATTI respectfully requests approval of the Arbitrator's Report and Decision in this case.

Respectfully submitted this _____ day of _____, 2000.

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