

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
LEGAL
WORKING FILE

FROM: CAROLEE HALL

DATE: NOVEMBER 24, 2004

RE: ADOPTION OF, AND AMENDMENT TO, THE AGREEMENT
BETWEEN VERIZON NORTHWEST INC. (VERIZON) AND AMERICAN
FIBER NETWORK, INC. (AFN) IN CASE NO. VZN-T-04-11

BACKGROUND

On October 28, 2004, Verizon Northwest Inc. (Verizon) and American Fiber Network, Inc. (AFN) filed an Amendment 1 to an existing agreement between Verizon and AFN. The original agreement was set forth in a letter dated June 23, 2000, wherein AFN adopted the interconnection agreement between New Edge Network Inc. and Verizon (the Adoption Letter is attached to this memo).

Staff discovered that the Adoption Letter and agreement had never been assigned a case number, nor had a final order been issued. Staff contacted the Company and requested copies to complete a record and this housekeeping matter. The Company provided the documents and Staff has attached the companies' facsimile to this decision memo.

DISCUSSION

The current filing of October 28, 2004, is an amendment to make changes to the interconnection agreement based on the Triennial Review Order (TRO) issued by the Federal Communications Commission. Some of the TRO elements that are being amended with this filing include, but are not limited to: Dedicated Transport; Enterprise Switching; Entrance Facilities; Local Switching; Line Sharing; Mass Market and other Federally mandated TRO elements.

STAFF ANALYSIS

Staff has reviewed the original filing and the amendment and finds them compatible with Federal and State guidelines. Moreover, Staff believes that both filings are consistent with the pro-competitive policies of this Commission, the Idaho Legislature, and the federal Telecommunications Act of 1996. Accordingly, Staff recommends that the Commission approve the interconnection agreement as amended.

COMMISSION DECISION

Does the Commission wish to approve the Agreements between Verizon and AFN?


Carolee Hall

U/CHALL/DECISION MEMO/VZN-T-04-11 VERIZON AND AMERICAN FIBER

**GTE Service Corporation**17933 NW Evergreen Parkway
P.O. Box 1100
Beaverton, OR 97075

July 20, 2000

Ms. Myrna Walters
Idaho Public Utilities Commission
472 W. Washington
Boise, Idaho 83720

Re: Adoption of New Edge Network, Inc. d/b/a New Edge Networks /GTE Interconnection Agreement by American Fiber Network, Inc.

Dear Ms. Walters:

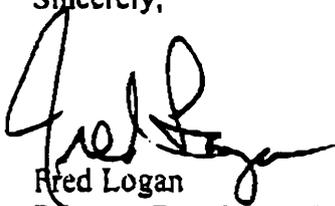
Enclosed for filing with the Commission under Section 252(i) of the Telecommunications Act of 1996 are the original and seven copies of American Fiber Network, Inc.'s adoption of the arbitrated Interconnection Agreement between GTE Northwest, Inc. ("GTE") and New Edge Network, Inc. d/b/a New Edge Networks ("Terms"). The enclosure includes an adoption letter signed by both GTE and American Fiber Network, Inc. which is self-explanatory, and which sets forth the manner in which the Terms will be applied in American Fiber Network, Inc.'s case.

As the enclosed letter explains, GTE is not voluntarily entering the Terms with American Fiber Network, Inc. and does not waive any rights and remedies it has concerning its position as to the illegality or unreasonableness of the Terms. GTE contends that certain provisions of the Terms may be void or unenforceable as a result of the United States Eighth Circuit court of Appeals July and October, 1997 decisions, the Supreme Court of the United States' decision of January 25, 1999 and the remand of the pricing rules to the United States Eighth Circuit Court of Appeals. Any modification to the underlying Terms shall automatically apply to American Fiber Network, Inc. GTE is preserving its legal positions in every respect as to the Terms in the hands of American Fiber Network, Inc. as well as in the hands of New Edge Network, Inc. d/b/a New Edge Networks.

Ms. Walters
July 20, 2000
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All parties to Cause are being served with a copy of this letter. If they would like a copy of the adoption agreement, they should contact Renee Willer at 503/645-7909.

Sincerely,



Fred Logan
Director-Regulatory & Governmental Affairs

c: Robert E. Heath - American Fiber Network, Inc.
Scott Miles - GTE



Steven J. Pitterle
Director-Negotiations
Wholesale Markets

GTE Network
Services

HQE03867
800 Hidden Ridge
P.O. Box 152092
Irving, TX 75038
972/718-1333
FAX 972/719-1279

June 23, 2000

Mr. Robert E. Heath
Executive Vice President
American Fiber Network, Inc.
9401 Indian Creek Parkway, Suite 140
Overland Park, KS 66210

Dear Mr. Heath:

GTE has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), American Fiber Network, Inc. ("AFN") wishes to adopt the terms of the Interconnection Agreement between New Edge Network, Inc. d/b/a New Edge Networks ("New Edge") and GTE that was approved by the Commission as an effective agreement in the State of Idaho in Docket No. 28332 (the "Terms"). I understand you have a copy of the Terms. Please note the following with respect to your adoption of the Terms.

- I. By your countersignature on this letter, you hereby represent and commit to the following three points:
 - (A) AFN adopts the Terms of the New Edge agreement for interconnection with GTE and in applying the Terms, agrees that AFN shall be substituted in place of New Edge in the Terms wherever appropriate.
 - (B) AFN requests that notice to AFN as may be required under the Terms shall be provided as follows:

To : American Fiber Network, Inc.
Attention: Mr. Robert E. Heath
9401 Indian Creek Parkway, Suite 140
Overland Park, KS 66210
Telephone number: 913/338-2658
FAX number: 913/661-0538
 - (C) AFN represents and warrants that it is a certified provider of local telecommunications service in the State of Idaho, and that its adoption of the Terms will cover services in the State of Idaho only.

Mr. Robert E. Heath
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2. AFN's adoption of the New Edge Terms shall become effective upon GTE's filing of this letter with the Idaho Public Utilities Commission and remain in effect no longer than the date the New Edge Terms are terminated. The New Edge agreement is currently scheduled to expire on December 31, 2002.
3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), GTE does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by GTE of the Terms does not in any way constitute a waiver by GTE of any position as to the Terms or a portion thereof, nor does it constitute a waiver by GTE of all rights and remedies it may have to seek review of the Terms, or to seek review in any way of any provisions included in these Terms as a result of AFN's 252(i) election.
4. On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, No. 97-826, 1999 U.S. LEXIS 903 (1999). Certain provisions of the Terms may be void or unenforceable as a result of the Court's decision of January 25, 1999 and the remand of the pricing rules to the United States Eighth Circuit Court of Appeals. Moreover, nothing herein shall be construed as or is intended to be a concession or admission by either GTE or AFN that any provision in the Terms complies with the rights and duties imposed by the Act, the decision of the FCC and the Commissions, the decisions of the courts, or other law, and both GTE and AFN expressly reserve their full right to assert and pursue claims arising from or related to the Terms.
5. GTE reserves the right to deny AFN's adoption and/or application of the Terms, in whole or in part, at any time:
 - (a) when the costs of providing the Terms to AFN are greater than the costs of providing it to New Edge;
 - (b) if the provision of the Terms to AFN is not technically feasible; and/or
 - (c) to the extent AFN already has an existing interconnection agreement (or existing 252(i) adoption) with GTE and the Terms were approved before the date of approval of the existing interconnection agreement (or the effective date of the existing 252(i) adoption).

Mr. Robert E. Heath
 June 23, 2000
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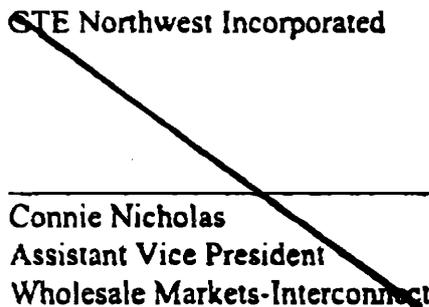
6. As noted above, pursuant to Rule 809, the FCC gave ILECs the ability to deny 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to serve the initial carrier or there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within this exception. GTE never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and subject to the corresponding obligation of reciprocal compensation. Despite the foregoing, some forums have required reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based. With this in mind, GTE opposes, and reserves the right to deny, the adoption and/or the application of the provisions of the Terms that might be interpreted to characterize traffic destined for Internet as local traffic or requiring the payment of reciprocal compensation.
7. Should AFN attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, GTE reserves its rights to seek appropriate legal and/or equitable relief.

Please sign this letter on the space provided below and return it to the undersigned.

Sincerely,

GTE Northwest Incorporated

GTE Northwest Incorporated



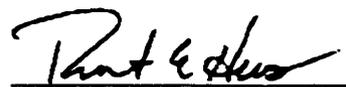
 Connie Nicholas
 Assistant Vice President
 Wholesale Markets-Interconnection



 Steven J. Pittarle
 Director-Negotiations
 Wholesale Markets

Reviewed and countersigned as to points A, B, and C of paragraph 1:

American Fiber Network, Inc.



 (SIGNATURE)

ROBERT E. HEATH

 (PRINT NAME)

c: R. Ragsdale - GTE