

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of AT&T Communications of)	Application No. C-1385
the Midwest, Inc. of Denver, Colorado,)	
Petitioning for Arbitration Pursuant to)	
Section 252(b) of the Telecommunica-)	Clarification Order
tions Act of 1996 to establish an)	
interconnection agreement with US West)	
Communications.)	Entered: Sept. 3, 1997

BY THE COMMISSION:

AT&T Communications of the Midwest, Inc. (AT&T) filed a motion requesting clarification of the Commission's August 5, 1997 Order in this docket. US West Communications (USW) filed its opposition to the motion on August 29, 1997. AT&T requests the Commission review the sections of the interconnection agreement that pertain to combining unbundled network elements, specifically, the fifth paragraph of Section 44 of the main agreement and Section 2.1 of Attachment 5 of the agreement. AT&T alleges that since the Eighth Circuit Court of Appeals in Iowa Utilities Board v. FCC, 1997 WL 403401 (8th Cir. 1997), failed to vacate 47 C.F.R. Section 51.315(b), it is, therefore, in effect. Accordingly, AT&T states USW shall not separate requested network elements that it currently combines. USW has replied stating AT&T is asking the Commission to reverse itself and to ignore what the Eighth Circuit decided.

O P I N I O N A N D F I N D I N G S

The Telecommunications Act of 1996 provides in Section 251(c)(3) that incumbent local exchange carriers shall provide unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide telecommunications services (emphasis added). Further, the Eighth Circuit vacated 47 C.F.R. Section 51.315(c)-(f) and explained in detail that requesting carriers will combine the unbundled elements to provide finished services. "While the Act requires incumbent LECs to provide elements in a manner that enables the competing carriers to combine them, 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, 1997 WL at 25. While the court did not mention 47 C.F.R. 51.3115(b), it clearly stated that incumbents must provide network elements to requesting

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carriers on an "unbundled basis" and that it is then the duty of the requesting carriers to combine the elements. At this time, for the above reasons, we find the language proposed by AT&T in its motion must be rejected. We accept the language proposed by USW in its reply of opposition.

Lastly, we note that USW, along with other incumbent carriers, have petitioned the Eighth Circuit to clarify its decision by vacating or expressly limiting the 47 C.F.R. Section 51.315(b). If the Eighth Circuit's clarification is contrary to the decision made herein, we will reverse our ruling.

O R D E R

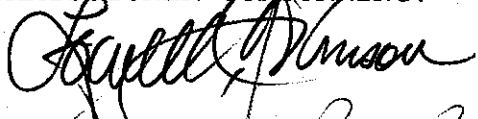
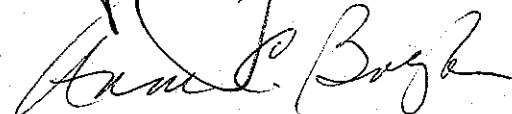
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the language submitted by AT&T Communications of the Midwest, Inc. in its motion for clarification is rejected.

IT IS FURTHER ORDERED that the language proposed by US West Communications for the fifth paragraph of Section 44 of the main agreement and Section 2.1 of Attachment 5 be incorporated into the interconnection agreement.

MADE AND ENTERED at Lincoln, Nebraska this 3rd day of September, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

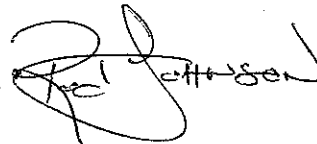
COMMISSIONER CONCURRING:

//s//Rod Johnson

//s//Frank E. Landis

Chairman



ATTEST:



Executive Director