

ARB 175



GTE Service Corporation

17933 NW Evergreen Pkwy
P.O. Box 1100
Beaverton, OR 97075-1100

November 10, 1999

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Public Utility Commission of Oregon
Administrative Hearings Division



Ms. Diane Davis
Administrative Hearings Division
Oregon Public Utility Commission
550 Capitol Street, N.E.
Suite 215
Salem, Oregon 97301-2551

Re: Adoption of Electric Lightwave, Inc./GTE Interconnection Agreement by
GST Telecom Oregon, Incorporated

Dear Ms. Davis:

Enclosed for filing with the Commission under Section 252(i) of the Telecommunications Act of 1996 are the original and five copies of GST Telecom Oregon, Incorporated's adoption of the arbitrated Interconnection Agreement between GTE ("GTE") and Electric Lightwave, Inc. ("Terms"). The enclosure includes an adoption letter signed by both GTE and GST Telecom Oregon, Incorporated, which is self-explanatory, and which sets forth the manner in which the Terms will be applied in GST Telecom Oregon, Incorporated's case.

As the enclosed letter explains, GTE is not voluntarily entering the Terms with GST Telecom Oregon, Incorporated 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 GST Telecom Oregon, Incorporated. GTE is preserving its legal positions in every respect as to the Terms in the hands of GST Telecom Oregon, Incorporated, as well as in the hands of Electric Lightwave, Inc.

Ms Diane Davis
November 10, 1999
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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,

A handwritten signature in black ink, appearing to read "Shelly K. Logan". The signature is fluid and cursive, with a large initial "S" and a long horizontal stroke at the end.

for Fred Logan
Director-Regulatory & Governmental Affairs

c: Brian Thomas – GST Telecom Oregon, Incorporated
Dina Dye - GTE

MAILING ADDRESS
4001 MAIN STREET
VANCOUVER WA 98663

November 5, 1999

(VIA FACSIMILE AND US MAIL)

Ms. Connie Nicholas
AVP Wholesale Markets - Interconnection
GTE Network Services
600 Hidden Ridge, HQEO3B28
P.O. Box 152092
Irving, TX 75015-2092

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NOV 12 1999

Public Utility Commission of Oregon
Administrative Hearings Division

Dear Ms. Nicholas:

I am in receipt of your letter dated November 3, 1999, regarding GST's request pursuant to 47 U.S.C. § 252(i) to adopt the terms of the Interconnection Agreement between Electric Lightwave, Inc. ("ELI") and GTE that was approved by the Commission as an effective agreement in the State of Oregon.

While GST is in agreement with GTE with respect to Points "A," "B," and "C", GST disagrees with some of the other assertions in your letter. It is not a condition of 47 U.S.C. § 252(i) that GST sign a letter of the type you have sent. GST therefore considers its adoption of the ELI Agreement to be effective in Oregon as of October 31, 1999. I understand that GTE will be making a filing with the Public Utility Commission of Oregon to apprise it of GST's adoption of the ELI Agreement.¹ If that is not correct, please advise me and I will undertake to make such filing myself.

Sincerely,

Brian D. Thomas
Vice President, External Affairs

cc: Eric Branfman, Esq.
Michael Moore - GST Interconnection Counsel
Sam Jones - GTE

¹ You have my authorization to submit this letter in connection with such filing.

Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection



GTE Network
Services

HQE03B28
600 Hidden Ridge
P.O. Box 152092
Irving, TX 75038
972/718-4586
FAX 972/719-1523

November 5, 1999

Mr. Brian D. Thomas
GST Telecom Oregon, Inc.
Vice President – External Affairs
4001 Main Street
Vancouver, WA 98663

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Public Utility Commission of Oregon
Administrative Hearings Division

Dear Mr. Thomas:

GTE has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996, GST Telecom Oregon, Inc. (GST) wishes to adopt the terms of the arbitrated Interconnection Agreement between Electric Lightwave, Inc. ("ELI") and GTE that was approved by the Commission as an effective agreement in the State of Oregon in Docket No. ARB 91(Terms)¹. I understand you have a copy of the Terms.

Please be advised that GTE's position regarding the adoption of the Terms is as follows.

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 vacated Rule 51.319 of the FCC's First Report and Order, FCC 96-325, 61 Fed. Reg. 45476 (1996) and 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).

Three aspects of the Court's decision are worth noting. First, the Court upheld on statutory grounds the FCC's jurisdiction to establish rules implementing the pricing provisions of the Act. The Court, though, did not address the substantive validity of the FCC's pricing rules. This issue will be decided by the Eighth Circuit on remand. GTE contends that 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.

¹ *These "agreements" are not agreements in the generally accepted understanding of that term. GTE was required to accept these agreements, which were required to reflect the then-effective FCC rules.

Second, the Court held that the FCC, in requiring ILECs to make available all UNEs, had failed to implement section 251(d)(2) of the Act, which requires the FCC to apply a "necessary" or "impair" standard in determining the network elements ILECs must unbundle. The Court ruled that the FCC had improperly failed to consider the availability of alternatives outside the ILEC's network and had improperly assumed that a mere increase in cost or decrease in quality would suffice to require that the ILEC provide the UNE. The Court therefore vacated in its entirety the FCC rule setting forth the UNEs that the ILEC is to provide. The FCC must now promulgate new UNE rules that comply with the Act. As a result, any provisions in the Terms requiring GTE to provide UNEs are nullified.

Third, the Court upheld the FCC rule forbidding ILECs from separating elements that are already combined (Rule 315(b)), but explained that its remand of Rule 319 "may render the incumbents' concern on [sham unbundling] academic." In other words, the Court recognized that ILEC concerns over UNE platforms could be mooted if ILECs are not required to provide all network elements: "If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network."

The Terms which GST seeks to adopt do *not* reflect the Court's decision, and any provision in the Terms that is inconsistent with the decision is nullified.

GTE anticipates that after the FCC issues new final rules on UNEs, this matter may be resolved. In the interim, GTE would prefer not to engage in the arduous task of reforming agreements to properly reflect the current status of the law and then to repeat the same process later after the new FCC rules are in place. Without waiving any rights, GTE proposes that the parties agree to hold off amending (or incorporating the impact of the decision into) the Terms and let the section 252(i) adoption proceed by maintaining the status quo until final new FCC rules are implemented (the "New Rules"), subject to the following package of interdependent terms:

1. GTE will continue to provide all UNEs called for under the Terms until the FCC issues the New Rules even though it is not legally obligated to do so.
2. Likewise, GST agrees not to seek UNE "platforms," or "already bundled" combinations of UNEs.
3. If the FCC does not issue New Rules prior to the expiration of the initial term of the Terms, GTE will agree to extend any new interconnection arrangement between the parties to the terms of this proposal until the FCC issues its New Rules.

4. By making this proposal (and by agreeing to any settlement or contract modifications that reflect this proposal), GTE does not waive any of its rights, including its rights to seek recovery of its actual costs and a sufficient, explicit universal service fund. Nor does GTE waive its position that, under the Court's decision, it is not required to provide UNEs unconditionally. Moreover, GTE does not agree that the UNE rates set forth in any agreement are just and reasonable and in accordance with the requirements of sections 251 and 252 of Title 47 of the United States Code.

In sum, GTE's proposal as described above would maintain the status quo until the legal landscape is settled.

GST's adoption of the ELI arbitrated Terms shall become effective October 31, 1999, subject to approval of the Oregon Public Utilities Commission and remain in effect no longer than the date the ELI arbitrated Terms are terminated. The ELI arbitrated agreement is currently scheduled to expire on June 22, 2001.

As these 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 its position as to the illegality or unreasonableness of 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 petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant to arbitration in Docket No. ARB 91, or to seek review in any way of any provisions included in these Terms as a result of GST's 252(i) election.

Nothing herein shall be construed as or is intended to be a concession or admission by either GTE or GST that any contractual provision required by the Commission in Docket No. ARB 91, ELI arbitration) or any provision in the Terms complies with the rights and duties imposed by the Telecommunications Act of 1996, the decision of the FCC and the Commissions, the decisions of the courts, or other law, and both GTE and GST expressly reserve their full right to assert and pursue claims arising from or related to the Terms. In particular, GTE does not waive, and hereby expressly reserves, its rights to challenge the Commission's determination to require reciprocal compensation or payment as local traffic from GTE to the telecommunications carrier for the delivery of traffic to the Internet.

Should GST attempt to apply such conflicting provisions, GTE reserves its rights to seek appropriate legal and/or equitable relief. Should any provision of the Terms be modified, such modification would likewise automatically apply to this 252(i) adoption.

Mr. Brian D. Thomas
November 5, 1999
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Please indicate by your countersignature on this letter your understanding of and commitment to the following three points:


- (A) GST adopts the Terms of the ELI arbitrated agreement for interconnection with GTE and in applying the Terms, agrees that GST be substituted in place of ELI in the Terms wherever appropriate.
- (B) GST requests that notice to GST as may be required under the Terms shall be provided as follows:

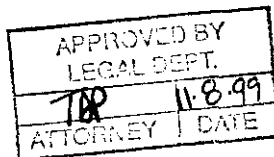
To :Mr. Brian D. Thomas
GST Telecom Oregon, Inc.
Vice President – External Affairs
4001 Main Street
Vancouver, WA 98663
Telephone number: 360/356-7100
Facsimile number: 360/356-7165

- (C) GST represents and warrants that it is a certified provider of local dialtone service in the Oregon, and that its adoption of the Terms will cover services in the State of Oregon only.

Sincerely,

GTE Northwest Incorporated


Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection



Reviewed and countersigned as to points A, B, and C only:

GST Telecom Oregon, Incorporated

Brian D. Thomas
Vice President – External Affairs



MAILING ADDRESS:
4001 MAIN STREET
VANCOUVER, WA 98663

October 29, 1999

(VIA FACSIMILE AND US MAIL)

Ms. Connie Nicholas
AVP Wholesale Markets – Interconnection
GTE Network Services
600 Hidden Ridge, HQEO3B28
P.O. Box 152092
Irving, TX 75015-2092



Re: Interconnection Agreement Between GST Telecom Oregon, Inc. and GTE Northwest Incorporated

Dear Ms. Nicholas:

This letter is to advise you that GST Telecom Oregon, Inc., pursuant to 47 U.S.C. § 252(i), intends to adopt the terms and conditions of the previously approved interconnection agreement for the State of Oregon between GTE Northwest Incorporated and Electric Lightwave, Inc., effective October 30, 1999. That date is the Parties' recognized date of termination as set forth in Steve Pitterle's letter to me dated July 28, 1999.

If you like, we would be happy to prepare a short agreement for signature by the parties incorporating the terms of the Electric Lightwave agreement by reference, and submit it to the Public Utilities Commission of Oregon for approval pursuant to 47 U.S.C. § 252(e). In the alternative, please prepare the appropriate Section 252(i) agreement and forward it to me as soon as possible.

Very truly yours,

Brian D. Thomas
Vice President, External Affairs

BDT:jav

cc: Eric J. Branfman, Esq.
Michael Moore – GST Interconnection Counsel
Steve Pitterle – GTE
Sam Jones – GTE
Oregon Public Utilities Commission

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Public Utility Commission of Oregon
Administrative Hearings Division

www.gstcorp.com
GST Telecommunications, Inc. trades on the Nasdaq National Market under the symbol GSTX.



MAILING ADDRESS
4001 MAIN STREET
VANCOUVER, WA 98001

October 29, 1999

(VIA FACSIMILE AND US MAIL)

Ms. Connie Nicholas
AVP Wholesale Markets – Interconnection
GTE Network Services
600 Hidden Ridge, HQEO3B28
P O. Box 152092
Irving, TX 75015-2092

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GTE Northwest Incorporated

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Very truly yours,

Brian D. Thomas
Vice President, External Affairs

BDT:jav

cc: Eric J. Branfman, Esq.
Michael Moore – GST Interconnection Counsel
Steve Pitterle – GTE
Sam Jones – GTE
Oregon Public Utilities Commission

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OCT 29 1999
Public Utility Commission of Ore.
Administrative Hearings Division

www.gstcorp.com

GST Telecommunications, Inc. trades on the Nasdaq National Market under the symbol GSTX



4001 Main Street
Vancouver, WA 98663

FAX

Date: 10/29/99

TO: Ms. Diane Davis
Administrative Hearings
Oregon Public Utilities Commission
FAX: 503-378-6163

FROM: Brian Thomas
External Affairs
PHONE: 360-356-2833
FAX: 360-356-6476

COMMENTS:

Please deliver to Ms. Diane Davis upon arrival. Thank you.

Please contact Joan Vaughan at 360-356-5527 if difficulty in transmission is experienced

Number of pages including cover sheet: 2