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AZ CORP COMMISSION
COMMUNICATIONS CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN

Arizona Corporation Commission

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JIM IRVIN
COMMISSIONER

NOV 25 2002

MARC SPITZER
COMMISSIONER

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In the Matter of Investigation into
US West Communications, Inc.'s
Compliance with Certain Wholesale
Pricing Requirements for Unbundled
Network Elements and Resale
Discounts

Docket No: T-00000A-00-0194
Phase II A

**WORLDCOM INC.'S EXCEPTIONS TO PROPOSED
ORDER IN PHASE II A**

WorldCom, Inc., on behalf of its operating affiliates ("WorldCom") respectfully takes exception to the remote collocation and custom routing portions of the Hearing Division's November 8, 2002 Recommended Opinion and Order ("ROO"). Specifically, the ROO does not address three of WorldCom's remote collocation concerns and rejects two of WorldCom's customer routing concerns. WorldCom also supports the exceptions filed by AT&T Communications and XO Arizona.

1 **A. WorldCom's Remote Collocation Exceptions**

2 The ROO did not address three concerns raised by WorldCom. First, Qwest should
3 offer line card collocation and provide cost studies to support a rate for line card
4 collocation. Second, Qwest should price remote collocation on a monthly recurring basis.
5 Third, Qwest's proposed remote collocation prices are based in part on unreasonably
6 higher vendor pricing.
7

8 **1. The Importance of Remote Collocation**

9 Remote terminal ("RT") collocation is critical if consumers are to have a choice of
10 advanced communication services. RT collocation will allow for the maximum
11 penetration of advanced services to all consumers in Arizona.
12

13 RT collocation offers space in remote cabinets thereby eliminating the central
14 office to customer premises distance constraints on Digital Subscriber Line ("DSL")
15 providers.¹ Field electronics are located in the RTs for use by collocators to access DSL
16 customers. RT collocation provides access to a layer of customers that is not accessible
17 from the central office. These DSL customers are typically beyond the restrictive 18Kft.
18 "boundary" of the central office. By having access to customers at RT locations, the
19 CLEC has access to the same universe of customers available to Qwest.
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24 ¹ DSL technologies are transmission technologies used on circuits that run between the
25 central office and a customer's premises. Historically xDSL technologies have been
26 provided on loops that are exclusively copper. New DSL network technology can be
utilized on hybrid loops that are fiber optic from the central office to a field location
utilizing remote terminal technology and then copper cable pairs to the customer premise.

1 Early indications are that collocating at a Qwest RT, or adjacent to a Qwest RT,
2 will be nearly as expensive (if not more) than collocating in a Qwest central office. The
3 reason for this is that fewer customers are available from the RT as compared to the
4 central office so that there are reduced economies of scale. Also high-density equipment
5 is available for use in central office environments that is more cost-effective. Central
6 office collocated equipment has the advantage of access to a greater universe of outside
7 plant facilities and customers making it more efficient in delivering service. Additional
8 support in the form of AC/DC power, HVAC and security for collocation are more
9 efficiently available in the central office environment. Rebuttal Testimony of Sidney
10 Morrison (“Morrison Rebuttal”), pp. 6 - 7.

13 The greatest disadvantage with RT collocation, however, is the potential lack of
14 space at the RT. When space is not available in the RT cabinet, or even adjacent to it,
15 Qwest refuses the CLEC access to the RT for collocation. The additional expenses and
16 time associated with gaining new space (or expanding an existing structure) further
17 reduces the likelihood that this type of network will provide an immediate, or sustainable,
18 competitive advanced service alternative for the majority of residential or small business
19 customers. Morrison Rebuttal, pp. 7-8.

22 Refusing to allow a CLEC to collocate at the RT (or making such collocation
23 unreasonably difficult or expensive) ultimately means the CLEC is denied the ability to
24 compete in the area served by the RT. The CLEC is consequently relegated to the position
25 of a second-class competitor being denied access to customers by Qwest because of
26

1 unavailability of space at the RT with no cost-effective alternative available. At the same
2 time, Qwest and its competitive affiliates have access to the loop network without
3 competitors.
4

5 **2. Qwest Should Provide Line Card Collocation and Cost Studies**

6 Virtual line card collocation addresses both the cost and space concerns described
7 above. Qwest should provide a line card collocation because such collocation is necessary
8 and technically feasible, but the ROO fails to address this issue.
9

10 There are no technical limitations that prevent Qwest from allowing CLECs to
11 provide advanced services over digital loop carrier (“DLC”) equipment.² Much of this
12 equipment is designed to provide voice, data, and combined voice/data products over a
13 single network platform for use by Qwest data affiliates and retail customers. This same
14 platform should provide similar functionality for CLECs. Morrison Rebuttal, pp. 8-9.
15

16 It is technically feasible for Qwest to allow CLECs to virtually collocate line cards
17 within Next Generation Digital Loop Carrier (“NGDLC”) remote terminals.³ For
18 example, it is possible to collocate the Litespan 2000 ADLU⁴ card, which can provide both
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20
21 ² A digital loop carrier (“DLC”) system allows a company to replace the end-to-end
22 copper circuit that historically comprised a telephone access line (or a “loop”) with a
23 combination of high-capacity fiber optic feeder cable and copper distribution cable. The
24 DLC system itself is generally comprised of some form of electronic equipment in the
central office (generally referred to as a “central office terminal” or “COT”) that connects
the fiber optic feeder cable to an accompanying electronic device in the field wherein the
fiber optic feeder cable and copper distribution cable meet (generally referred to as a
“remote digital terminal” or an “RDT”).

25 ³ The use of NGDLC devices allows Qwest to push fiber optic facilities closer to its
26 customer’s homes or businesses which should allow more customers to avail themselves
of high-speed, packet switched digital services and enhance the speed and quality that
customers can expect from those services.

1 voice and data services over a shared copper loop extending from the remote terminal to a
2 customer's premises. The inherent DSL capabilities of the ADLU card in this respect
3 negate the need to collocate a bulky and expensive DSLAM within the RT enclosure (or in
4 an adjacent structure). Further, the ADLU card (or similar types of cards with unique
5 service features) is in many ways the intelligence focal point of the service being provided.
6
7 By programming the card and the RT to accommodate new, innovative services, CLECs
8 can differentiate their products from those produced by Qwest. Further, the cost savings
9 associated with using the inherent functionality of the ADLU card in this respect are
10 substantial. Accessing such functionality is technically feasible as evidenced by the fact
11 that both the Illinois and Texas commissions have required SBC to make such access
12 available.⁵ Morrison Rebuttal, pp. 9-10.

13
14 Qwest maintains that use of line cards is almost impossible. To the contrary,
15 manufacturers of DLC equipment have, over the last five years since the federal
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21 ⁴ "ADLU" stands for "ADSL Digital Line Unit." These units can perform both the line
22 splitting and DSLAM functionalities.

23 ⁵ See (1) Arbitration Award, Docket Nos. 22168 & 22469, *Petition of IP*
24 *Communications Corporation to Establish Expedited Public Utility Commission of Texas*
25 *Oversight Concerning Line Sharing Issues, Petition of Covad Communications Company*
26 *and Rhythms Links, Inc. against Southwestern Bell Telephone Company for Post-*
Interconnection Dispute Resolution and Arbitration under the Telecommunications Act of
1996 Regarding Rates, Terms, Conditions and Related Arrangements for Line Sharing
(hereinafter "Texas Line Sharing Order"), (2) Order, Docket No. 00-0393, Proposed
Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service (Tarrifs
filed April 21, 2000), released March 14, 2001.

1 Telecommunications Act, actively designed their equipment to accommodate a multi-
2 carrier environment and the provisioning of unbundled loops. Reporter's Transcript of
3 Proceedings ("Transcript"), p. 387:14 – 22. On the other hand, WorldCom is concerned
4 that Qwest, being a very large purchaser of DSLAM equipment, can influence vendors to
5 help competition or to hurt competition. Transcript, pp. 389:24 – 390:8.

7 It is technically feasible for Qwest to permit WorldCom or any other CLEC to
8 specify, at each individual remote terminal, the line card(s) to be placed in the DLC
9 equipment for use in providing service to the CLEC's customers. The following line card
10 options are all technically feasible:
11

- 12 1. CLEC specifies the type and quantity of the line card(s) that ILEC will
13 obtain, own, and install in the DLC system located in an ILEC remote
14 terminal;
- 15 2. CLEC obtains the desired line card(s) and transfers ownership of the card(s)
16 to the ILEC (for a nominal fee). ILEC then installs the card(s) in the DLC
17 system located in a remote terminal. Upon request of CLEC, ILEC removes
18 the card(s), returns the card(s) to CLEC, and transfers ownership of the
19 card(s) to CLEC for the nominal fee; or
- 20 3. CLEC obtains, owns and installs the line card(s) in the DLC system located
21 in an ILEC's remote terminal.

22 It is also technically feasible, and advisable, for Qwest to promptly provide to
23 CLECs copies, both paper and electronic, of all technical specifications and network
24 architecture data relevant to the development by any potential vendor of plug-in DLC line
25 cards that will support the CLEC's high bandwidth services. In general, this Commission
26 should encourage an open development platform wherein Qwest and CLECs alike are able

1 to design, engineer and provision multiple services using the enormous capabilities of the
2 NGDLC architecture. This type of open platform will speed advanced services
3 competition to Arizona customers and will provide a wide array of advanced services
4 innovation. Morrison Rebuttal, pp. 10-11.
5

6 Finally, it is technically feasible and advisable for Qwest to provide the CLECs
7 with six months' advance notification of software upgrades of, at a minimum, Qwest's
8 COTs, remote terminals, ATM switch/OCD, DLC equipment, and CPE. In addition, if
9 Qwest chooses to upgrade any of the above software, then it is technically feasible and
10 advisable, indeed practical, for Qwest to ensure with its vendor, backward compatibility
11 for at least 12 months after the upgrade is installed. Again, these are all fundamental
12 building blocks of an open NGDLC architecture capable of providing the largest benefits
13 possible to customers and the marketplace alike. Morrison Rebuttal, p. 11.
14
15

16 Allowing CLECs to collocate their own line cards will not only favorably impact
17 the economic viability of competition for advanced services by reducing the barriers to
18 entry erected by enormous stand-alone collocation costs, it will also spark innovation in
19 the provision of high-capacity services. Allowing carriers to collocate line cards with
20 different capabilities than that perhaps chosen by Qwest will provide customers with real
21 choices for new and different types of service.
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3. Remote Collocation Should be Priced on a Monthly Recurring Basis

Another WorldCom concern that is not addressed in the ROO is the pricing structure of RT Collocation. In its cost study for RT Collocation, Qwest makes the following statement on the space cost element:

Space (per standard mounting unit; 1.75 vertical inches)

This non-recurring rate is associated with the cabinet space and includes the cost of the cabinet and all of the work and materials associated with placement of the cabinet. The recurring rate associated with the Space recovers the maintenance of the materials and equipment associated with the cabinet along with a portion of the costs required for the power pedestal.

Essentially, what Qwest is attempting to do is to recover its investment up front in a non-recurring charge rather than through reasonable monthly recurring charges.

Moreover, what Qwest seeks to recover in its monthly recurring rate – maintenance – should be recovered through the maintenance portion of an annual charge factor that is applied to the investment and then recovered on a monthly basis with the remainder of the investment.

If Qwest were to apply the same methodology to switch ports, loops, or a square foot of central office collocation floor space, then competitors would be asked to pay up front for the entire loop, port or square foot. In other words, a competitor might have to pay several hundred dollars for each loop and then pay for maintenance as they go. This methodology, whether applied to RT collocation space, loops, or ports, has one stifling effect – it is an enormous financial barrier for new competitors that indeed may be insurmountable. Yet another drawback to the rate structure proposed by Qwest pertains to

1 customer turnover. Under Qwest's proposed structure, the competitor pays a very large up
2 front non-recurring charge. If after paying this charge the competition should somehow
3 lose the customer, the competitor is stuck with RT collocation space that it may no longer
4 need, yet that competitor has paid a huge up front charge that it cannot recoup.

6 The Commission should require Qwest to offer RT collocation space on an
7 unbundled basis, and the rate for that offering should be determined on a monthly
8 recurring basis, rather than predominately on a non-recurring basis.

10 Qwest maintains that a recurring charge is inappropriate because the remote
11 collocation space cannot be reused by Qwest. However, during the hearing, Qwest
12 witness Brigham admits that Qwest could reuse this space. Transcript, p. 128:13 – 21.
13 Qwest also admits that another CLEC may reuse this space. Transcript, p. 129:4 – 9 and
14 12 – 30.

16 **4. Qwest Cost Studies Contain Unreasonably High Vendor Costs**

17 In developing the RT collocation non-recurring cost, Qwest uses costs from two
18 vendors and then weights them together. One vendor is substantially more expensive than
19 the other (even after one considers that the SMU capacities are different). For instance,
20 vendor B's cost for a 40" cabinet is more than three times higher than vendor A's cost for
21 a 23" cabinet. *See* WorldCom Hearing Exhibit 3. Section 51.505 (b)(1) of the FCC rules
22 require that the TELRIC of an element should be measured based on the use of the most
23 efficient telecommunications technology currently available and the lowest cost network
24 configuration. This principle should be applied to the Qwest RT collocation cost study.
25
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1 The unreasonably high vendor should be eliminated from the cost study and the RT
2 collocation price reduced accordingly. No such adjustment was made in the ROO.

3
4 **C. WorldCom's Custom Routing Exceptions**

5 WorldCom takes exception to two portions of the ROO's custom routing decision.
6 First, the ROO rejects WorldCom's claim that it should not be required to use dedicated
7 trunks in conjunction with custom routing. Second, the ROO rejects WorldCom's claim
8 that Qwest's proposed costs are excessive.

9
10 **1. The Importance of Custom Routing**

11 Custom routing is a software function of the Qwest switch that allows a CLEC's
12 customer's call to be switched to a trunk that will carry the call to WorldCom's directory
13 assistance ("DA") and operator services ("OS") provider. Custom routing is essential if
14 CLECs such as WorldCom are to provide DA/OS and not be dependent on Qwest for such
15 services.
16

17 Custom routing is particularly important in this case because the Commission has
18 already held that Qwest must provide OS/DA as a UNE at a TELRIC price pending the
19 custom routing decision in this Phase IIA. (*See* A.C.C. Decision No. 64922, p. 61:15-18).
20 If the Commission now accepts Qwest's custom routing proposal requiring the use of
21 dedicated trunks, CLECs will lose OS/DA as a UNE and only be offered a useless, costly
22 form of custom routing as an alternative. The Minnesota, Texas and Washington
23 Commissions have recognized this problem and required that Qwest and SWB,
24
25 respectively, continue to provide OS/DA as a UNE at a TELRIC price until they can
26

1 provide custom routing as requested by the CLEC. (See Texas PUC Arbitration Award,
2 Docket No: 24542, §§ 22 and 25; Minnesota PUC Findings of Fact, Conclusions of Law
3 and Recommendation, Docket No. 12-2500-14485-2, May 8, 2002; Washington Utilities
4 and Transportation Commission, Forty-First Supplemental Order; Part D Initial Order;
5 Establishing Nonrecurring and Recurring Rates for UNEs, Docket No. UT-003013, pp.
6 45-52, October 11, 2002). Copies of the pertinent portions of these decisions are attached.
7

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9 **2. WorldCom Should not be Forced to Purchase Dedicated Trunks as a
Condition for Purchasing Custom Routing**

10 On page 23 of his August 31, 2001 testimony, Qwest witness Mr. Brigham states
11 that Custom Routing combines End Office (“EO”) switching with dedicated trunks to
12 allow CLECs the ability to request specific traffic routing direction by class of service via
13 a unique Line Class Code (“LCC”). Mr. Brigham is mistaken in his characterization that
14 dedicated trunks must be employed in order for Qwest to provide Custom Routing.
15 Dedicated trunks are not required. WorldCom can (and does) route its operator services
16 and directory assistance traffic to existing, shared access, Feature Group D trunks between
17 the Qwest and MCI Long Distance networks. Rebuttal Testimony of Edward Caputo
18 (“Caputo Rebuttal”), p. 3. As the carrier requesting custom routing, WorldCom is entitled
19 to designate the particular outgoing trunks associated with unbundled switching provided
20 by Qwest that will carry certain classes of traffic originating from the requesting
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1 providers' customers.⁶ This will allow WorldCom to provide operator services and
2 directory assistance to its customers using its own operators. Caputo Rebuttal, p.4.

3
4 In Section B, Description Of Service on page 3 of the Cost Study (WorldCom
5 Hearing Exhibit 2), Qwest again states that Custom Routing will combine EO switching
6 with dedicated trunks to allow Co-Providers the ability to request specific traffic routing
7 direction by class of service via a unique LCC. This definition suffers from the same
8 defect described above relating to Mr. Brigham's testimony.

9
10 Using existing trunks is important because it allows WorldCom to use a cost-
11 efficient system of routing traffic rather than purchasing an individual trunk between
12 Qwest's switch and the WorldCom network just to handle operator and directory
13 assistance traffic. It allows WorldCom to route that traffic across trunks that WorldCom
14 already shares with Qwest. It is vital for competition that WorldCom be able to provide
15 operator and directory assistance services directly to its own customers using its own
16 operators. Transcript, pp. 416:10 – 417:10.

17
18 It is technically feasible to route both operator and directory assistance calls across
19 shared access Feature Group D trunk. WorldCom has been doing it on its own facilities
20 since 1997 and has provided documentation to all the RBOCs, including Qwest, describing
21 how the Lucent 5-ESS switch, the Nortel DMS-100 or 500 switch and Siemens switches
22 support that type of routing. Transcript, pp. 417:18 – 418:7. Interestingly, in Washington,
23
24

25 ⁶ Footnote 867 to paragraph 441 FCC Implementation of the Local Competition
26 Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report
and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, 1999.

1 the evidence indicated that custom routing as requested by WorldCom is technically
2 feasible but for business reasons Qwest will not provide it.⁷

3 WorldCom has actually performed that type of customized routing in its own labs
4 and had conducted technical trials with Pacific Bell that demonstrate it can be done.
5 Transcript, p. 418:8 – 15.

7 Qwest seeks to substantially increase WorldCom's expense in providing this
8 service by requiring a separate trunk for directory assistance and another separate trunk for
9 operator services. Transcript, p. 211:6 – 14.

11 Despite the testimony that WorldCom's request is technically feasible, the ROO
12 rejected WorldCom's position because "no company is currently employing this
13 technology on a commercial basis." ROO, p. 12, lines 23-24. With all due respect,
14 commercial usage is not the appropriate standard. Qwest is legally required to provide
15 custom routing over WorldCom's Feature Group D trunks. The FCC and other states have
16 recognized this obligation. Qwest's refusal to provide customized routing violates the Act
17 and FCC orders. Specifically, Qwest's conduct violates section 251(c)(3), which requires
18 ILECs to provide nondiscriminatory access to network elements.

21 The FCC specifies that requesting CLECs are entitled to designate the trunks on
22 which the ILEC must route OS/DA traffic:

23 Customized routing permits requesting carriers to designate the particular
24 outgoing trunks associated with unbundled switching provided by the

25 _____
26 ⁷ Washington Utilities and Transportation Commission, Forty-First Supplemental Order,
¶176.

1 incumbent, which will carry certain classes of traffic originating from the
2 requesting provider's customers. This feature would allow the requesting
3 carrier to specify that OS/DA traffic from its customers be routed over
4 designed trunks which terminate at the requesting carrier's OS/DA platform
or a third party's OS/DA platform.⁸

5 This definition of customized routing states that it is WorldCom, and not Qwest, that is
6 entitled to designate the trunks on which Qwest will route WorldCom's OS/DA traffic.

7 Qwest has no right to decide that WorldCom must establish separate trunks.

8
9 Moreover, the FCC recognized the ILECs' obligations to provide customized
10 routing specifically over Feature Group D trunks in its review of a BellSouth Louisiana's
11 section 271 application.⁹ The FCC concluded that, absent technical infeasibility, an
12 ILEC's failure to provide customized routing using Feature Group D signaling violates the
13 Act. The FCC stated:

14
15 MCI raises a separate challenge to BellSouth's customized routing offering.
16 MCI claims that BellSouth will not "translate" its customers' local operator
17 services and directory assistance calls to Feature Group D signaling. As a
18 result, MCI cannot offer its own operator services and directory assistance
19 services to customers it serves using unbundled local switching. MCI,
20 however, fails to demonstrate that it has requested Feature Group D
21 signaling, and BellSouth claims that it has never received such a request.
22 Thus, the record is inconclusive as to this objection. We believe, however,
that MCI may have otherwise raised a legitimate concern. If a competing
carrier requests Feature Group D signaling and it is technically feasible for
the incumbent LEC to offer it, the incumbent LEC's failure to provide it
would constitute a violation of section 251(c)(3) of the Act. Our rules

23 ⁸ In re Implementation of the Local Competition Provisions of the Telecommunications
24 Act of 1996, CC Docket No. 96-98, Third Report and Order, 15 F.C.C.R. 3696 (1999),
¶441 n.867.

25 ⁹ In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and
26 BellSouth Long Distance, Inc. for Provision of In-region, InterLATA Services in
Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, 13 F.C.C.R. 20599,
FCC No. 98-271(1998), ¶221.

1 require incumbent LECs, including BOCs, to make network modifications to
2 the extent necessary to accommodate interconnection or access to network
3 elements.¹⁰

4 More recently, the FCC required Verizon to reflect in its interconnection agreement
5 its commitment to provide customized routing for OS/DA calls over WorldCom's Feature
6 Group D trunks.¹¹

7 **3. Qwest's Direct Costs are Excessive**

8 Qwest's direct costs for custom routing are, on their face, excessive and
9 unreasonable. For instance, Qwest charges \$315.87 each time it assigns a code to a
10 particular switch. See WorldCom Hearing Exhibit 2. Qwest proposes to charge CLECs
11 for four hours of time to select a line code from a list of line codes. Transcript, p. 120:19 –
12 25. Likewise, Qwest proposes to charge for four hours of time inputting the line class
13 code, using computers, into the switch each time the code is installed in a particular
14 switch. Transcript, pp. 123:20 –124:5.

15
16
17 The ROO maintains that "it is not sufficient for WorldCom to allege that the
18 proposed direct costs are unreasonable on their face." ROO, p. 13, lines 4-5. With all due
19 respect, WorldCom disagrees. The Qwest costs identified by WorldCom are obviously
20 unreasonable and relate to significant portions of the costs for this service. WorldCom's
21 arguments clearly undercut the credibility of Qwest's cost studies and undermine the
22

23
24 ¹⁰ *Id.* ¶ 226.

25 ¹¹ In re Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications
26 Act, for Preemption of the Jurisdiction of the Virginia State Corporation Commission
Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited

1
2 ROO's conclusion that Qwest's proposed direct cost custom routing should be adopted. A
3 reasonable adjustment should be made to these costs.
4

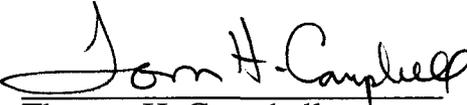
5 **CONCLUSION**

6 WorldCom respectfully requests that the Commission modify the ROO as follows:

- 7 1. Require Qwest to allow the CLECs to virtually collocate line cards in remote
8 terminals.
9
10 2. Reduce remote collocation costs by using the lower of the two vendor prices.
11
12 3. Require Qwest to redo its remote collocation cost studies to charge for
13 remote collocation on a monthly recurring basis, not a non-recurring basis, and to provide
14 cost studies for line card collocation.
15
16 4. Eliminate the requirement that dedicated trunks be used for custom routing
17 or, alternatively, require that Qwest continue to provide OS/DA as a UNE at a TELRIC
18 price.
19
20 5. Reduce custom routing direct costs by reasonable factors.

21 RESPECTFULLY SUBMITTED this 25th day of November, 2002.

22 LEWIS AND ROCA LLP

23 
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Arbitration, CC Docket No. 00-218, Memorandum Opinion and Order, DA 02-1731 (rel. July 17, 2002). A copy of the pertinent part of this decision is attached.

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PUC DOCKET NO. 24542

PETITION OF MCIMETRO ACCESS	§	PUBLIC UTILITY COMMISSION
TRANSMISSION SERVICES, LLC, SAGE	§	
TELECOM, INC., TEXAS UNE PLATFORM	§	OF TEXAS
COALITION, MCLEOD USA	§	
TELECOMMUNICATIONS SERVICES,	§	
INC., AND AT&T COMMUNICATIONS OF	§	
TEXAS, L.P. FOR ARBITRATION WITH	§	
SOUTHWESTERN BELL TELEPHONE	§	
COMPANY UNDER THE	§	
TELECOMMUNICATIONS ACT OF 1996	§	

ARBITRATION AWARD

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The Arbitrators also reject SWBT's proposed new sections 9.5.5.1 and section 16 – Compensation Option. These proposed sections appear to create an optional multi-state compensation arrangement for LIDB and CNAM queries. The Arbitrators find no compelling reason to include such provisions in this interconnection agreement at this time.

DPL ISSUE NO. 22

SWBT: Is SWBT required to provide MCIIm access to proprietary AIN features developed by SWBT?

CLECs: Should SWBT be required to provide MCIIm access to proprietary AIN features developed by SWBT?

CLECs' Position

MCIIm asserted that SWBT should be required to provide MCIIm access to proprietary advanced intelligent network (AIN) features developed by SWBT. MCIIm stated that with proprietary network elements, the FCC's standard is whether the element is necessary to CLECs, and that in this instance the answer is yes.⁸²¹ MCIIm stated that AIN functionalities are those built into SWBT's legacy voice network that allow parties to configure the network in unique ways. MCIIm offered, as an example, that some CLECs use AIN functionalities to route operator service and directory assistance (OS/DA) calls to the CLEC's own OS/DA network.⁸²² MCIIm asserted that access to these AIN functionalities is necessary to a CLEC's reasonable network development, particularly given SWBT's refusal to provide alternatives (e.g. customized routing for OS/DA) in a manner that is practical for the CLEC.⁸²³ MCIIm further stated that the ability of CLECs to use AIN features permits the CLEC to use "all other features that the switch is capable of providing," as required by the FCC's 319 rules.⁸²⁴

MCIIm argued that while SWBT noted that the FCC has already found that proprietary AIN features are not UNEs, the FCC's conclusion is not binding on the Commission.⁸²⁵ MCIIm argued that the Commission has authority under 47 C.F.R. § 51.317 to independently unbundle

⁸²¹ MCIIm Exh. No. 1, Price Direct at 60.

⁸²² MCIIm Exh. No. 1, Price Direct at 60.

⁸²³ MCIIm Exh. No. 1, Price Direct at 60.

⁸²⁴ MCIIm Exh. No. 1, Price Direct at 60-61.

proprietary AIN features.⁸²⁶ MCIIm also argued that some AIN features – such as number portability and customized routing – are not proprietary.⁸²⁷ MCIIm argued that even with SCE, MCIIm would not have the capability to duplicate customized routing, therefore SWBT should not be able to claim that that functionality is proprietary.⁸²⁸ MCIIm explained that it is proposing to adopt the language in the MCI WorldCom Agreement as is, which provides for use of SWBT's AIN, and that SWBT is the one requesting contract changes.⁸²⁹

SWBT's Position

SWBT argued that ILECs should not be required to unbundle AIN service software. SWBT asserted the FCC determined in the *UNE Remand Order* that AIN service software such as "Privacy Manager" is proprietary, and does not meet the "necessary and impair" standard of FTA § 251(d)(2)(A).⁸³⁰ SWBT contended that MCIIm's arguments fail to demonstrate that the AIN software meets the "necessary" standard required for unbundling.⁸³¹ SWBT added that MCIIm does not dispute the proprietary nature of SWBT's AIN software.⁸³²

SWBT argued MCIIm claimed it should have access to SWBT's AIN because of FCC Rule 319, which provides that CLECs may utilize features, functions, and capabilities of the switch.⁸³³ SWBT argued that MCIIm's reference to FCC Rule 319 is misleading, because MCIIm's AIN features are separate from what the switch provides. SWBT explained that AIN features are implemented as a result of AIN proprietary software providing instructions to the SWBT switch. In other words, the switch does not provide AIN capabilities; the AIN software provides the AIN capabilities.⁸³⁴ SWBT further argued that its AIN service software is

⁸²⁵ MCIIm Exh. No. 2, Price Rebuttal at 32.

⁸²⁶ MCIIm Exh. No. 2, Price Rebuttal at 32.

⁸²⁷ Tr. at 1055-1057.

⁸²⁸ Tr. at 1056.

⁸²⁹ Tr. at 1060, 1062.

⁸³⁰ SWBT Exh. No. 12, Kirksey Direct at 11, citing *UNE Remand Order* ¶ 419.

⁸³¹ SWBT Exh. No. 13, Kirksey Rebuttal at 12.

⁸³² SWBT Exh. No. 13, Kirksey Rebuttal at 12.

⁸³³ SWBT Exh. No. 13, Kirksey Rebuttal at 13.

⁸³⁴ SWBT Exh. No. 13, Kirksey Rebuttal at 13.

developed through the “intellectual effort” of SWBT employees for use by SWBT customers, and is therefore proprietary.⁸³⁵

SWBT claimed that MCI argues the unbundling of AIN is necessary because SWBT does not offer alternatives such as customized routing of OS/DA. SWBT contended that it does offer customized routing of OS/DA.⁸³⁶ SWBT added that customized routing would utilize software developed by SWBT for MCI as opposed to SWBT’s proprietary AIN software. However, SWBT stated that it offers OS/DA via AIN.⁸³⁷ SWBT argued that it gave up certain concessions as part of the T2A, and this is one of them; therefore, SWBT explained that it is negotiating a contract outside of the T2A and is proposing new language.⁸³⁸

Arbitrators’ Decision

The Arbitrators do not concur with SWBT’s assertion that all AIN-based features are excepted from unbundling by the UNE Remand Order. The specific language used by the FCC and relied upon by SWBT pertains only to databases used to provide “services similar to Privacy Manager.”⁸³⁹ SWBT offered no evidence on which the Arbitrators could rely to distinguish the types of AIN-based services that are similar to Privacy Manager. Therefore, the Arbitrators find that, on this record, it is impossible to conclude that the services in question are excused from the unbundling requirements established in the UNE Remand Order.

Even if SWBT adduces evidence showing, and the Commission concludes, that the services in question are proprietary, SWBT must continue to provide such services on an unbundled basis. The UNE Remand Order requires an ILEC to provide a requesting carrier the same access to design, create, test, and deploy AIN based services at the Service Management System (SMS), through a service creation environment (SCE) that the ILEC provides to itself, consistent with FTA § 222.⁸⁴⁰ The Arbitrators find that SWBT has failed to prove that it provides

⁸³⁵ Tr. at 1057-58.

⁸³⁶ SWBT Exh. No. 13, Kirksey Rebuttal at 12.

⁸³⁷ Tr. at 1054.

⁸³⁸ Tr. at 1060-61.

⁸³⁹ UNE Remand Order ¶ 419 (cited by SWBT Exh. No. 12, Kirksey Direct, at 11).

⁸⁴⁰ UNE Remand Order at 412.

the required access. To the contrary, SWBT implicitly conceded that it does not provide the required access, and has instead agreed that "...access will be provided."⁸⁴¹

Therefore, the Arbitrators adopt the language as proposed by MCI for sections 9.7, 9.7.3, and 9.7.4. The language shall remain in effect and SWBT shall provide the subject services on an unlimited basis until SWBT initiates a proceeding with the Commission for the purpose of showing both that subject services are proprietary, and that SWBT provides the required nondiscriminatory access to the SMS through an SCE. This process allows all interested parties to present evidence on what constitutes nondiscriminatory access to SCE and SMS that allows a CLEC to create and deploy its own AIN-based services. In addition, the Commission will be able to evaluate whether such access will degrade network integrity.

⁸⁴¹ Joint Exh. No. 2, Joint DPL at 20 (citing Kirksey Direct at 13-15; Kirksey Rebuttal at 11-13).

Therefore, the Arbitrators conclude that SWBT shall continue to provide the DALI database as a UNE. The Arbitrators accordingly adopt MCI's proposed language.

DPL ISSUE NO. 25

CLECs: Are CLECs impaired without access to OS and DA?

SWBT: Is SWBT required to provide OS and DA as UNEs, contrary to the UNE Remand Order?

CLECs' Position

a. MCI

MCI defined Operator Services (OS) as any automatic or live assistance to a customer to arrange for billing and/or completion of a telephone call.⁸⁷¹ MCI stated that ILECs are required to allow customers to connect with their chosen local service provider by dialing "0" plus the desired telephone number.⁸⁷² MCI defined Directory Assistance (DA) as a service in which users are provided with the numbers and sometimes addresses of telephone exchange service subscribers who have not elected to have unpublished numbers.⁸⁷³ MCI argued that to provide OS/DA to its customers, it could either purchase OS/DA from SWBT or provide its own OS/DA.⁸⁷⁴ MCI asserted that it is dependent upon SWBT to route MCI's UNE-P customers' OS/DA calls to MCI's OS/DA facilities.⁸⁷⁵

MCI stated that the FCC's *UNE Remand Order* requires an ILEC to continue to offer OS/DA as a UNE when the ILEC does not provide customized routing.⁸⁷⁶ MCI contended that SWBT has not shown that it will be able to provide customized routing to MCI for MCI's OS/DA calls. MCI stated that it requested SWBT to route MCI's OS/DA traffic to existing shared-access Feature Group D trunks between SWBT's local network and WCOM's (MCI's

⁸⁷¹ MCI Exh.No. 7, Caputo Direct at 3.

⁸⁷² MCI Exh.No. 7, Caputo Direct at 3.

⁸⁷³ MCI Exh.No. 7, Caputo Direct at 4.

⁸⁷⁴ MCI Exh.No. 7, Caputo Direct at 4.

⁸⁷⁵ MCI Exh.No. 7, Caputo Direct at 4.

⁸⁷⁶ MCI Exh.No. 7, Caputo Direct at 6.

parent company) long distance network.⁸⁷⁷ MCIIm defined "Feature Group D" trunks as industry-standard trunks put into place after divestiture to allow competitive long distance to provide service.⁸⁷⁸ MCIIm asserted that it is technically feasible for a CLEC to use Feature Group D functionalities to route OS/DA traffic to its facilities-based OS/DA platform.⁸⁷⁹

MCIIm asserted that it proposed a customized routing solution to SWBT that uses line class codes and standard switch table routing features and functions to meet MCIIm's business needs.⁸⁸⁰ MCIIm claimed that its proposal to use Feature Group D allows MCIIm to designate the outgoing trunks provided by SWBT and meets the requirements set out in the *UNE Remand Order*.⁸⁸¹ MCIIm contended that until SWBT actually provides customized routing to MCIIm in a manner consistent with the FCC's rules, paragraph 462 of the *UNE Remand Order* requires SWBT to continue to offer OS/DA as UNEs.⁸⁸²

MCIIm stated that although SWBT's proposed language indicates that customized routing will be made available to MCIIm through Advance Intelligent Network (AIN) capabilities, MCIIm has not received any indications that SWBT can provide the type of customized routing MCIIm requested.⁸⁸³ MCIIm stated SWBT has advised MCIIm that SWBT would provide customized routing only to the extent that MCIIm establishes Feature Group C trunks to each end office from which MCIIm seeks origination of OS/DA traffic. MCIIm argued that SWBT's proposal is inconsistent with the FTA and with the *UNE Remand Order*, because MCIIm would not have the ability to designate the particular outgoing trunks for routing its outbound traffic.⁸⁸⁴

MCIIm contended that the FCC's approval of SWBT's 271 applications does not prove that SWBT provides customized routing to MCIIm for MCIIm's OS/DA calls according to MCIIm's needs and the FCC rules.⁸⁸⁵ MCIIm further argued that because it is requesting shared

⁸⁷⁷ MCIIm Exh.No. 7, Caputo Direct at 6.

⁸⁷⁸ MCIIm Exh.No. 7, Caputo Direct at 6.

⁸⁷⁹ MCIIm Exh.No. 7, Caputo Direct at 6.

⁸⁸⁰ MCIIm Exh.No. 7, Caputo Direct at 6.

⁸⁸¹ MCIIm Exh.No. 7, Caputo Direct at 7.

⁸⁸² MCIIm Exh.No. 7, Caputo Direct at 8.

⁸⁸³ MCIIm Exh.No. 7, Caputo Direct at 7.

⁸⁸⁴ MCIIm Exh.No. 7, Caputo Direct at 7.

⁸⁸⁵ MCIIm Exh.No. 8, Caputo Rebuttal at 4.

access, Feature Group D routing of its calls during this proceeding, SWBT must offer OS/DA as a UNE to MCIIm at least until SWBT provides this customized routing arrangement.⁸⁸⁶

MCIIm argued that the Commission may require SWBT to continue to provide OS/DA as a UNE if the Commission concludes that CLECs are impaired without access to OS/DA.⁸⁸⁷ MCIIm contended that CLECs are impaired because they are unable to provide ubiquitous OS/DA to Texas consumers because SWBT has not shown that it can implement a workable customized routing solution.⁸⁸⁸

b. Sage Telecom

Sage argued that it does not currently have customized routing for OS/DA. Sage contended that it is not interested in pursuing this option because it would require dedicated transport through SWBT's network which would increase its costs and investments required for a small amount of traffic.⁸⁸⁹ Sage argued that it would be required to withdraw the OS/DA service from a large number of users and locations.⁸⁹⁰

c. UNE-P Coalition, AT&T, and McLeodUSA Telecommunications Services

The UNE-P Coalition argued that the FCC determined that ILECs could remove OS/DA services from the list of mandatory network elements only if the ILEC implemented customized routing to enable CLECs to direct OS and DA traffic to alternative providers.⁸⁹¹ The UNE-P Coalition stated that SWBT's offer of customized routing requires each CLEC to establish dedicated transport network at each of SWBT's five hundred central offices, and because CLEC's entering the market generally only win a small percentage of the market at any particular switch, these entrants will not have the OS/DA traffic volumes necessary to justify such a large interoffice network.⁸⁹² The UNE-P Coalition argued that SWBT's requirement that CLECs establish dedicated trunk groups before using alternative providers of OS/DA services

⁸⁸⁶ MCIIm Exh.No. 8, Caputo Rebuttal at 5;

⁸⁸⁷ MCIIm Exh.No. 7, Caputo Direct at 8.

⁸⁸⁸ MCIIm Exh.No. 7, Caputo Direct at 9.

⁸⁸⁹ Sage Telecom Exh.No. 1, Nuttall Direct at 46.

⁸⁹⁰ Sage Telecom Exh.No. 1, Nuttall Direct at 46.

⁸⁹¹ UNE-P Coalition, et al. Exh.No. 1, Gillan Direct at 45.

imposes a substantial impairment on the CLECs ability to compete.⁸⁹³ The UNE-P Coalition contended that because there is no practical alternative to the ILEC's OS/DA service, the UNE-P provider must have the ability to purchase these services as network elements.⁸⁹⁴ The UNE-P Coalition concluded, therefore, that the Commission should continue to require SWBT to offer OS/DA as network elements until SWBT can demonstrate that it has implemented an efficient aggregation scheme and entrants can custom route and transport OS/DA to alternative providers without impairment.⁸⁹⁵ The UNE-P Coalition added that the Commission has independent authority to require additional unbundling and additional flexibility to consider other factors under the FCC rules.⁸⁹⁶

SWBT's Position

SWBT defined Operator Services as the means of getting assistance during a call from either an automated program or a live operator and Directory Assistance as 'calling information' such as dialing 1411 to acquire a telephone number from DA.⁸⁹⁷ SWBT stated that in the *UNE Remand Order*, the FCC determined that where an ILEC provides customized routing of OS/DA, the ILEC is not required to provide OS/DA Service as unbundled network elements.⁸⁹⁸ SWBT stated that SWBT offers customized routing of OS/DA in order for the SWBT switch to direct the calls to MCIm or MCIm's third party provider. SWBT contended that the customized routing is provided in the same manner in which SWBT self-provisions.⁸⁹⁹

SWBT acknowledged that it committed to providing OS/DA as UNEs to CLECs for residential customers through the end of the T2A.⁹⁰⁰ SWBT stated, however, that the T2A was approved prior to the effective date of the *UNE Remand Order*.⁹⁰¹ SWBT contended that after

⁸⁹² UNE-P Coalition et al. Exh.No. 1, Gillan Direct at 47.

⁸⁹³ UNE-P Coalition et al. Exh.No. 1, Gillan Direct at 47-48.

⁸⁹⁴ UNE-P Coalition et al. Exh.No. 1, Gillan Direct at 48.

⁸⁹⁵ UNE-P Coalition et al. Exh.No. 1, Gillan Direct at 49.

⁸⁹⁶ UNE-P Coalition et al. Exh.No. 1, Gillan Direct at 49.

⁸⁹⁷ SWBT Exh.No. 12, Kirksey Direct at 16.

⁸⁹⁸ SWBT Exh.No. 12, Kirksey Direct at 16, *citing UNE Remand Order* ¶ 441.

⁸⁹⁹ SWBT Exh.No. 12, Kirksey Direct at 16.

⁹⁰⁰ SWBT Exh.No. 16, Rogers Direct at 8.

⁹⁰¹ SWBT Exh.No. 16, Rogers Direct at 8.

the *UNE Remand Order* became effective, SWBT has offered OS/DA services at market-based prices, pursuant to FTA § 251(b)(3).⁹⁰² SWBT stated that the FCC approved SWBT's 271 applications in Arkansas, Kansas, Missouri, and Oklahoma, in which SWBT offers OS and DA services at market prices rather than as UNEs.⁹⁰³ SWBT concluded that the FCC's actions confirmed that SWBT is not obligated to provide OS, DA, or DLI as UNEs.⁹⁰⁴

Arbitrators' Decision

*The UNE Remand Order requires ILECs to unbundle their OS/DA services, unless the ILEC provides customized routing to a requesting carrier to allow it to route traffic to alternative OS/DA providers.*⁹⁰⁵ Customized routing, by definition, must permit requesting carriers to designate the particular outgoing trunks associated with unbundled switching provided by the incumbent.⁹⁰⁶ The Arbitrators therefore reject SWBT's claim that, by providing customized routing through Feature Group C (FGC) trunks, it has satisfied the customized routing requirement.⁹⁰⁷ As the FCC observed, CLECs are impaired without accommodating technologies used for customized routing. Therefore, to the extent ILECs have not accommodated technologies for customized routing, they must offer OS/DA as a UNE.⁹⁰⁸

In this arbitration, MCI_m requested customized routing through Feature Group D (FGD) trunks.⁹⁰⁹ MCI_m, Sage, and the UNE-P Coalition adduced evidence that provisioning OS/DA in the manner proscribed by SWBT (via FGC) is prohibitively costly.⁹¹⁰ Sage presented un rebutted evidence that the higher cost would result in Sage being unable to provide OS/DA to its customers under FGC.⁹¹¹ The Arbitrators therefore conclude that SWBT has not met the

⁹⁰² SWBT Exh.No. 16, Rogers Direct at 8.

⁹⁰³ SWBT Exh.No. 16, Rogers Direct at 9.

⁹⁰⁴ SWBT Exh.No. 16, Rogers Direct at 9.

⁹⁰⁵ *UNE Remand Order* at p.13.

⁹⁰⁶ See *UNE Remand Order* at n. 867.

⁹⁰⁷ Tr. at 191 (Jan 28, 2002).

⁹⁰⁸ *UNE Remand Order* at ¶ 463.

⁹⁰⁹ MCI_m Exh.No. 7, Caputo Direct at 6.

⁹¹⁰ E.g., Sage Exh. No. 1, Nuttal direct at 46; Gillan Direct at 47-48.

⁹¹¹ Sage Exh. No. 1, Nuttal direct at 46.

condition precedent of providing customized routing that accommodates technologies specified by the CLEC, and therefore OS/DA should remain a UNE.

The Arbitrators' decision does not imply that, if SWBT were to offer customized routing using Feature Group D, SWBT would then be automatically authorized to discontinue offering OS/DA services as a UNE. The FCC's analysis of whether OS/DA services should be offered as a UNE included an assessment of the availability of third party vendors to offer OS/DA services.⁹¹² The FCC concluded that a CLEC would not be materially diminished without access to OS/DA from an ILEC on an unbundled basis in part because, at the time the UNE Remand Order was issued, there were a substantial number of regional and national alternative providers of OS/DA.⁹¹³ Changes have occurred in the telecommunications market since the FCC issued the UNE Remand Order, and the Arbitrators observe that these changes may include far fewer choices of third-party vendors for OS/DA.⁹¹⁴ In addition, the Arbitrators agree with the Coalition's claim that requiring a new entrant that operates in a limited area to establish customized routing to all locations potentially poses a barrier to entry by increasing the cost of entry.

The Arbitrators conclude that SWBT shall continue providing OS/DA services as an unbundled network element until SWBT initiates a proceeding before the Commission to demonstrate that it has met the customized routing requirements necessary to cease offering OS/DA as UNEs. This process will allow all interested parties to present evidence on whether SWBT has provided customized routing and if necessary, allow the Commission to consider evidence regarding whether CLECs would be impaired in Texas without access to OS/DA from SWBT on an unbundled basis.

Therefore, the Arbitrators adopt MCI's proposed interconnection agreement language for section 7 of Attachment 6 – UNE, GTC 49.1, DA Attachment 22, and OS Attachment 23. The Arbitrators also adopt SWBT's proposed section 1.4 of Attachment 6 – UNE, which appears to be primarily descriptive and accurate. The Arbitrators discuss proposed section 2.2 of Attachment 6 – UNE in DPL Issue No. 9.

⁹¹² UNE Remand Order at ¶ 464.

⁹¹³ UNE Remand Order at ¶ 464.

DPL ISSUE NO. 25A

CLECs: *Is there competitive merit, and is it in the public interest, for OS and DA to be available as network elements?*

SWBT: *Is SWBT required to provide OS and DA as UNEs, contrary to the UNE Remand Order?*

CLEC's Position

See discussions DPL Issue No. 25.

SWBT's Position

See discussions DPL Issue No. 25.

Arbitrators' Decision

The Arbitrators find that it is in the public interest and there is competitive merit for OS and DA to be made available as unbundled network elements throughout the state of Texas.⁹¹⁵ As discussed in connection with DPL Issue No. 8A, PURA § 60.021 requires an ILEC to unbundle its network to the extent the FCC orders, at a minimum. PURA § 60.022(a) allows the Commission to adopt an order relating to the issue of unbundling of local exchange company services in addition to the unbundling required by § 60.021. PURA § 60.022(b) requires the Commission to consider the public interest and competitive merits before ordering further unbundling. Additionally, Commission SUBST. R. 26.272(a) requires the Commission to ensure that all providers of telecommunications services interconnect in order that the benefits of local exchange competition are realized. In adopting this rule, the Commission determined that interconnection is necessary to achieve competition in the local exchange market and is, therefore, in the public interest. As discussed more fully in the Arbitrator's decision in DPL Issue No. 8A, the Arbitrators believe that competitive merit can be measured as the net benefit to consumers, including the ability to choose alternative providers, lower prices, higher quality, and innovative service packaging due to the presence of competitive pressure.⁹¹⁶

⁹¹⁴ Tr. at 241-46 (Telecommunications acquisitions and bankruptcies have resulted in a smaller number of competitors and reduced capitalization).

⁹¹⁵ The Arbitrators have addresses the issue as framed by SWBT in connection with DPL Issue No. 25.

⁹¹⁶ Tr. at 335-40.

The Arbitrators find that SWBT is the only viable provider of OS and DA in Texas and that all CLECs in this proceeding rely exclusively on SWBT in providing OS and DA to their customers. The Arbitrators believe that the continued availability of OS and DA as a UNE will allow CLECs to create innovative product offerings, thereby fostering competition and continuing the benefit of customer choice in service providers and service packaging to a large geographic segment of the population. Additionally, the Arbitrators recognize that the telecommunications industry has changed significantly since the UNE Remand Order was issued with telecommunication acquisitions and bankruptcies resulting in a smaller number of competitors as well as a decrease in the overall market capitalization.⁹¹⁷ Therefore, the Arbitrators find that there is competitive merit in requiring SWBT to continue offering OS and DA on an unbundled basis.

Further, the Arbitrators conclude that continued availability of OS and DA as UNEs is in the public interest due to the operational barriers and economic barriers of self-provisioning. As noted above, the Arbitrators find there is not yet any meaningful competition in providing OS and DA services in Texas. In addition, the record reflects an absence of the ability of any other CLEC to serve as a wholesale OS and DA alternative to SWBT. Finally, purchasing OS and DA in the manner proposed by SWBT is cost prohibitive, particularly for smaller CLECs. Therefore, the Arbitrators find that requiring OS and DA to be made available as a UNE in all zones of Texas, without restriction, has competitive merit and is in the public interest.

⁹¹⁷ Tr. at 241-46.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of a Commission
Investigation Into Qwest's Compliance
with Section 271(c)(2)(B) of the
Telecommunications Act of 1996;
Checklist Items 3, 7, 8, 9, 10, and 12

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came on for hearing on March 4-6, 2002, by Administrative Law Judge Steve M. Mihalchick in the Large Hearing Room of the Minnesota Public Utilities Commission, 200 Metro Square Building, 121 East 7th Place, St. Paul, Minnesota. The record was closed March 29, 2002, upon receipt of post-hearing briefs. Administrative Law Judge Kathleen A. Sheehy assisted in preparation of this report.

Robert E. Cattanach and Shannon Heim, Dorsey & Whitney, 50 S. Sixth St., Minneapolis, Minnesota 55402; Mary Rose Hughes and Kelly Cameron, Perkins Coie, 607 14th Street NW, Washington, D.C. 20005; and Jason Topp, Qwest Corporation, 200 S. Fifth Street, Room 395, Minneapolis, Minnesota 55402, appeared on behalf of Qwest Corporation (Qwest).

Rebecca DeCook, 1875 Lawrence St., 15th Floor, Denver, Colorado 80202, appeared on behalf of AT&T Communications of the Midwest, Inc., AT&T Local Services on behalf of TCG Minnesota, and AT&T Broadband Phone Company of Minnesota, Inc. (collectively AT&T).

Gregory R. Merz, Gray, Plant, Mooty, Mooty & Bennett, 3400 City Center, 33 S. Sixth St., Minneapolis, Minnesota 55402, and Lesley Lehr, 638 Summit Avenue, St. Paul, Minnesota 55105, appeared for WorldCom, Inc. (WorldCom).

Ginny Zeller and Priti Patel, Assistant Attorneys General, Minnesota Attorney General's Office, 525 Park Street, Suite 200, St. Paul, Minnesota 55103, appeared for the Department of Commerce (the Department or DOC).

Jeanne M. Cochran and Mary Crowson, Assistant Attorneys General, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101, appeared for the Residential Utility and Small Business Division (OAG/RUD).

Cecilia Ray, Moss & Barnett, 90 S. Seventh St., Suite 4800, Minneapolis, Minnesota 55402, appeared for Ace Telephone Association; BEVCOMM, Inc.;

Encore Communications; HomeTown Solutions, LLC; Hutchinson Telecommunications, Inc.; Mainstreet Communications, Inc.; NorthStar Access, LLC; Otter Tail TelCom, LLC; Paul Bunyan Rural Telephone Cooperative; Tekstar Communications, Inc.; Unitel Communications; U.S. Link, Inc.; and VAL-Ed Joint Venture, LLP, d/b/a 702 Communications (collectively the CLEC Coalition).

Lillian Brion appeared on behalf of the staff of the Minnesota Public Utilities Commission.

NOTICE

Notice is hereby given that pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission and the Office of Administrative Hearings, exceptions to this report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof or such other date as established by the Commission's Executive Secretary.

Questions regarding the filing of exceptions should be directed to Dr. Burl Haar, Executive Secretary, Minnesota Public Utilities Commission, Suite 350 Metro Square, 121 Seventh Place East, St. Paul, MN 55101. Exceptions must be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and 14 copies of each document should be filed with the Commission.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's Recommendation and that said Recommendation has no legal effect unless expressly adopted by the Commission as its final order.

STATEMENT OF ISSUES

The issues in this matter are whether Qwest has demonstrated by a preponderance of the evidence that it meets the competitive checklist requirements of 47 U.S.C. § 271(c)(2)(B) in the following areas:

Checklist Item 3: Does Qwest provide nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates in accordance with the requirements of § 224?

79. **Joint Provisioning of Facilities.** The CLEC Coalition filed testimony maintaining that Qwest requires CLECs to obtain 911 interconnection trunks from Qwest, whereas it will allow incumbent LECs to jointly provide facilities.¹⁰⁰ Qwest maintains that the Arizona Dial Tone agreement allows CLECs to use facilities provided by the CLEC, Qwest, or a third party carrier. The language provides that "[e]ach party will be responsible for its portion of the build to the Mid-Span meet POI."¹⁰¹ Nonetheless, Qwest has agreed to amend its SGAT, as requested by the CLEC coalition, to expressly state that "facilities needed for 911 trunks can be provided by the CLEC, Qwest, or a third party carrier. Qwest will jointly provide such facilities on a meet point basis, upon request, as described in Section 7.1.2.3."¹⁰²

80. **Disconnection of AT&T 911 trunks.** In September 2001, AT&T converted its primary 911 route from Centralized Automatic Message Accounting (CAMA) to Signaling System 7 (SS7). Testing at cutover indicated that the conversion was successful.¹⁰³ In October AT&T technicians discovered that one of two 911 trunks had been disconnected in the Qwest office. After contacting Qwest, the service was restored within four hours. The next day, the same trunk was disconnected again, and service was again restored within four hours. It is not clear whether any 911 calls from AT&T end users were blocked during the time the trunk was disconnected, or how long the trunk was disconnected.¹⁰⁴ Qwest maintains that these circuits were appropriately marked as high-priority circuits. It contends the error occurred because AT&T made multiple changes in the service orders converting the trunks to SS7 and that Qwest's technician inadvertently failed to check for the most current version of the design work orders, two days in a row. A supervisor has reviewed the procedures for working on 911 circuits with the technician. This appears to have been an isolated incident that Qwest responded to appropriately, and it does not indicate that Qwest treats CLEC 911 circuits differently than its own.

Checklist Items 7(II) and (III): OS/DA

81. Section 271(c)(2)(B)(vii)(II) and (III) require Qwest to provide nondiscriminatory access to directory assistance services to allow other carriers' customers to obtain telephone numbers and operator call completion services. Section 251(b)(3) of the Act imposes on each LEC the duty to permit all competing providers to have nondiscriminatory access to operator services, directory assistance, and directory listings, with no unreasonable dialing delays.

82. The FCC has concluded that "nondiscriminatory access" to operator services is the ability of a telephone service customer, regardless of the identity of his or her local service provider, to connect to a local operator by

¹⁰⁰ Ex. 135 at 10.

¹⁰¹ Ex. 148, LAS-7.2, § 7.1.2.3

¹⁰² Ex. 133 at 24.

¹⁰³ Ex. 143 at 19-20.

¹⁰⁴ Ex. 133 at 22.

dialing "0" or "0" plus the desired telephone number.¹⁰⁵ In addition, "nondiscriminatory access to directory assistance and directory listings" means that customers of all telecommunications service providers should be able to access each LEC's directory assistance services and obtain a directory listing on a nondiscriminatory basis, notwithstanding the identity of a requesting customer's local telephone service provider, or the identity of the telephone service provider for a customer whose directory listing is requested.¹⁰⁶

83. Competing carriers may provide operator services and directory assistance (OS/DA) by either reselling the BOC's services or by using their own personnel and facilities to provide these services. FCC rules require BOCs to permit competitive LECs wishing to resell the BOC's operator services and directory assistance to request the BOC to brand their calls.¹⁰⁷ Competing carriers wishing to provide operator services or directory assistance using their own facilities and personnel must be able to obtain directory listings either by obtaining directory information on a "read only" or "per dip" basis from the BOC's directory assistance database, or by creating their own directory assistance database by obtaining the subscriber listing information in the BOC's database.¹⁰⁸

84. The FCC originally concluded that BOCs must provide OS/DA on an unbundled basis pursuant to sections 251 and 252. In the *UNE Remand Order*, the FCC concluded that OS/DA must be provided on an unbundled basis only where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol.¹⁰⁹ Checklist item obligations that do not fall within a BOC's obligations to provide unbundled network elements are not subject to the requirements of sections 251 and 252, including the requirement that rates be based on forward-looking economic costs. Checklist item obligations that do not fall within a BOC's UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory.¹¹⁰

85. Qwest provides OS/DA services to 36 reseller CLECs and 11 UNE-P CLECs in Minnesota. It provides directory assistance trunks to seven facilities-based CLECs and operator service trunks to 17 facilities-based CLECs in Minnesota. One CLEC has purchased the directory assistance database.¹¹¹

¹⁰⁵ Bell Atlantic New York Order ¶ 352.

¹⁰⁶ *Id.*, citing 47 C.F.R. § 51.217(c)(3).

¹⁰⁷ *Id.* ¶ 353, citing 47 C.F.R. § 51.217(d); Local Competition Second Report and Order, 11 FCC Rcd at 19463 ¶ 148.

¹⁰⁸ *Id.*, citing 47 C.F.R. § 51.217 (C)(3)(ii); Local Competition Second Report and Order, 11 FCC Rcd at 19460 ¶¶ 141-44.

¹⁰⁹ Local Competition Third Report and Order ¶¶ 441, 462 (UNE Remand Order).

¹¹⁰ *Id.* ¶ 470-73.

¹¹¹ Tr. 2:82..

86. Reseller CLECs and CLECs that use UNE-P elements or unbundled switching obtain access to Qwest's OS/DA services using the same facilities and the same configurations that Qwest uses to provide OS/DA to its own end users. The OS/DA traffic of these CLECs is automatically routed to Qwest's OS/DA platforms as part of the underlying functionality of Qwest's switching facilities.¹¹² In addition, OS/DA calls originated by end users of these CLECs are commingled with calls originated by Qwest end user customers and are delivered to Qwest's OS/DA platforms over the same shared trunks that Qwest uses for its end user traffic. CLEC end user customers dial the same numbers as Qwest customers for access to OS/DA--0 or 0 plus for OS, and 411, 1-411, or 555-1212 for DA.¹¹³ The Arizona Dial Tone agreement requires Qwest to permit CLEC end users to dial the same numbers for these services as Qwest end users.¹¹⁴

87. CLECs that use their own switching facilities may access Qwest's OS/DA services by establishing dedicated transport from their end office switches to Qwest's OS/DA platforms. The CLEC may self-provision the transport, obtain it from a third party, or purchase unbundled transport from Qwest. These CLECs have the option of allowing their end user customers to dial the same numbers to access OS/DA services that Qwest end users dial, or selecting different numbers by which their end users may access Qwest's OS/DA services.¹¹⁵ In addition, these CLECs may provide OS/DA services using their own or a third party's platform by routing their OS/DA traffic from their end office switching facilities to their alternate platforms. This configuration would not involve Qwest unless the CLEC chooses to purchase unbundled dedicated transport from Qwest.¹¹⁶

88. Qwest maintains that it offers customized routing that would allow reseller CLECs and CLECs that purchase UNE-P combinations or stand-alone unbundled switching to provide access to their own, or to a third party's OS/DA services. Customized routing would involve programming Qwest's switches and the lines of CLEC end users to route OS/DA calls to the platforms of the alternate OS/DA provider over the CLEC's dedicated transport facilities.¹¹⁷ The Arizona Dial Tone agreement makes customized routing available either by using the same line class codes used by Qwest or by establishing new line class codes. The agreement provides that all custom routing involving the development of new

¹¹² Ex. 148 at 8.

¹¹³ *Id.* at 9.

¹¹⁴ Ex. 148, LAS-7.2 at § §10.5.2.8 and 10.7.2.13. During the hearing, Qwest agreed to modify § 10.6.2.5 of the Arizona Dial Tone Agreement, concerning use of the directory assistance database, as requested by WorldCom. See Tr. 2:190; Ex. 50.

¹¹⁵ Ex. 148 at 9.

¹¹⁶ *Id.* at 10.

¹¹⁷ Ex. 148 at 10.

line class codes, or any other type of custom routing, is to be priced on an "ICB," or individual case basis.¹¹⁸

89. The operator services provided by Qwest to CLEC end users are identical to the services provided to Qwest retail customers. The services include local assistance, intraLATA toll assistance, emergency assistance, busy line verification, and busy line interrupt. The directory services are also identical for both CLEC and Qwest end users. Directory assistance services include the provision of local end user names, addresses, and telephone numbers to requesting callers; where available, the provision of access to Qwest national directory assistance services; and, where available, the completion of local or intraLATA calls to requested numbers.¹¹⁹ In addition, Qwest handles OS/DA calls on a first-come, first served basis, without regard to whether calls are originated by CLEC or Qwest end users. Incoming calls are placed in a queue based on the order in which they reach the platforms and are fed automatically to open operators, who have no ability to influence the type of calls that are fed to them from the queue. This handling process applies to calls delivered over shared Qwest trunks and to calls delivered over dedicated CLEC trunks.¹²⁰

90. Qwest has offered two performance measures as evidence that it provides nondiscriminatory access to OS/DA services. These PIDs, developed in the ROC workshops, are OS-1 and DA-1, "Speed of Answer," which measure the average time required for OS/DA personnel to answer calls. In July 2001, calls to Qwest's operator services were answered in an average of 9.07 seconds and calls to Qwest's directory assistance services were answered in an average of 9.0 seconds.¹²¹ These performance measures passed the audit by Liberty Consulting Group in September 2001.

91. Finally, Qwest maintains that it offers branding of OS/DA calls for CLECs, although no CLEC has made such a request, and that it offers access to the DA database on either a "per dip" basis (which Qwest calls Directory Assistance Database Service) or on a bulk electronic download basis (called Directory Assistance List Service).¹²² The Arizona Dial Tone Agreement requires the provision of these services in accordance with 47 C.F.R. §51.217(d) and § 51.217(c)(3)(ii).¹²³

92. Qwest provides OS/DA services to facilities-based CLECs at "market-based" rates and to reseller CLECs at the wholesale discounted rates required by the PUC. The wholesale discount rate in Minnesota is 17.66%.¹²⁴

¹¹⁸ Ex. 148, LAS-7.2 at § 9.12.2, LAS-7.2A (Minnesota prices).

¹¹⁹ Ex. 148 at 11-12.

¹²⁰ *Id.* at 13-14.

¹²¹ *Id.* at 15, LAS-7.4

¹²² *Id.* at 16-22.

¹²³ Ex. 148, LAS-7.2 at §§ 10.5, 10.7.

¹²⁴ Ex. 148 at 23, LAS-7.2A.

93. The Department and OAG/RUD maintain that Qwest fails to prove compliance with Checklist Item 7(I) because the performance measures offered are based on pooled data that do not differentiate between retail vs. wholesale performance and accordingly do not prove nondiscriminatory provisioning of service.

94. The ROC accepted that these performance measures provide "parity by design" because Qwest commingles its own OS/DA calls with those of any CLECs using its platforms. Although these performance indicators do not prove beyond doubt that Qwest is providing nondiscriminatory access, they do provide evidence that Qwest does not treat competitors differently. The process used by Qwest provides sufficient "parity by design" to conclude that disaggregation of the data is not necessary in order for Qwest to make a prima facie showing of compliance with this checklist item.

95. Because Qwest has made a prima facie showing of compliance, it is up to the other parties to show that it does not comply. They have advanced the following arguments.

96. **Customized Routing.** The Department, Worldcom, and the OAG/RUD maintain that Qwest does not provide customized routing that would enable a CLEC to provision directory assistance or operator services and that therefore those services must remain available as unbundled network elements and be priced at TELRIC rates, as opposed to market rates. Qwest maintains that it provides custom routing and that its market-based rates are reasonable. Qwest and the Department stipulated, with the concurrence of the other parties, that the issue of what pricing standard would apply to these services would be considered in this docket. If the ALJ rules that costs are necessary to evaluate or establish prices for the services, those costs will be determined in the pricing docket (No. 1375).¹²⁵

97. Customized routing permits requesting carriers to designate the particular outgoing trunks associated with unbundled switching provided by the incumbent, which will carry certain classes of traffic originating from the requesting provider's customers. This feature would allow the requesting carrier to specify that OS/DA traffic from its customers be routed over designated trunks which terminate at the requesting carrier's OS/DA platform or a third party's OS/DA platform.¹²⁶ To the extent that incumbent LECs do not accommodate technologies used for customized routing, such as Feature Group D signaling, they must offer OS/DA as an unbundled network element.¹²⁷

98. Qwest acknowledges that it is not currently providing customized routing by any method to any CLEC in Minnesota, nor is it providing customized

¹²⁵ Eleventh Prehearing Order ¶¶ 1-3 (Feb. 21, 2002).

¹²⁶ UNE Remand Order ¶441 n. 867.

¹²⁷ See UNE Remand Order ¶ 463.

routing to any CLEC in its 14-state territory.¹²⁸ As noted above, the agreement with Arizona Dialtone reflects what Qwest calls "standard" custom routing through development of new line class codes to route OS/DA calls to dedicated trunks that the requesting provider must order from Qwest, and the agreement prices the service on an "ICB" basis. Qwest does not commit to providing the service in any standard interval, maintaining that all requests for customized routing should be treated on an ICB basis.¹²⁹ Qwest has developed what it calls a "standard" customized routing nonrecurring charge that it has filed in the UNE Pricing Docket, No. 1375. The project plan for "standard" customized routing calls for establishment of a due date within 20 days of the effective date of service request, and for implementation of one new line class code at one wire center in 60 days.¹³⁰

99. Worldcom maintains that the most efficient way to provide OS/DA from its own platform is to route OS/DA traffic to its existing Feature Group D trunks, as opposed to local interconnection trunks that it would have to purchase.¹³¹ In Colorado, Worldcom negotiated an amendment to its interconnection agreement with Qwest that requires Qwest to provide customized routing over Feature Group D trunks.¹³² During the hearing, Qwest's witness made clear that Qwest would not provide customized routing to Feature Group D trunks unless an interconnection agreement required it.¹³³ Qwest would not take a position on whether it was technically feasible or not to route calls in this manner "because we have never received from WorldCom a service inquiry, which is the method for ordering that service."¹³⁴

100. The FCC addressed customized routing in the BellSouth Louisiana II case.¹³⁵ There, BellSouth proffered two methods of customized routing: AIN and line class codes. Because BellSouth did not offer customized routing through AIN at the time of its application, the FCC concluded BellSouth could not rely on it to show compliance with requirement of customized routing. The FCC concluded that BellSouth's use of line class codes would be an acceptable interim method of providing customized routing, but that BellSouth did not demonstrate that it could provide it in a nondiscriminatory manner because of the inability of CLECs to order it efficiently and without manual processing by BellSouth.¹³⁶ The FCC specifically addressed the argument that BellSouth would not provide customized routing using Feature Group D signaling. Because MCI could not demonstrate that it had actually requested this method of customized

¹²⁸ Tr. 3:54-55.

¹²⁹ Ex. 114 at 19-20; Tr. II:198-99.

¹³⁰ Tr. III:47, 50.

¹³¹ Tr. II:198-99.

¹³² Ex. 154, Ex. B.

¹³³ Tr. 2:200-01, 203-04.

¹³⁴ Tr. 2:201.

¹³⁵ BellSouth Louisiana II Order, 13 FCC Rcd at ¶ 221.

¹³⁶ *Id.* at ¶¶ 222-25.

routing, the FCC found the record inconclusive. Nonetheless, the FCC concluded that:

. . . MCI may have otherwise raised a legitimate concern. If a competing carrier requests Feature Group D signaling and it is technically feasible for the incumbent LEC to offer it, the incumbent LEC's failure to provide it would constitute a violation of section 251(c)(3) of the Act. Our rules require incumbent LECs, including BOCs, to make network modifications to the extent necessary to accommodate interconnection or access to network elements.¹³⁷

101. The Michigan Public Service Commission has rejected an argument similar to the one advanced by Qwest in this proceeding. There, it found that:

Ameritech Michigan has interpreted the customized routing conditions of the UNE Remand Order as requiring less of it than the FCC intended. The justification that the FCC provided for changing its approach was that competitive OS/DA had become widely available on a national basis and could be readily accessed if the ILEC provided appropriate customized routing arrangements. However, the FCC did not suggest that an ILEC could arbitrarily implement any form of customized routing it desired, without regard to whether that arrangement provided meaningful access to competitive OS/DA alternatives. The FCC emphasized instead that "customized routing is necessary to access alternative sources of OS/DA for competitors not deploying their own switches," and that "[l]ack of a customized routing solution that enables competitors to route traffic to alternative OS/DA providers would therefore effectively preclude competitive LECs from using such alternative providers."

This concern is also apparent in the FCC's discussion of the substantial cost of reconciling WorldCom's Feature Group D signaling with other systems used by ILECs, a difficulty that WorldCom raises in this case. SBC had taken the position in the UNE Remand case that customized routing of Feature Group D was not technically feasible for all end-office switches. The FCC concluded that it would "require incumbent LECs, to the extent they have not accommodated technologies used for customized routing, to offer OS/DA as an unbundled network element." The significance of the point, in this Commission's view, is that the FCC did not regard technical issues as problems for the CLECs alone to address entirely at their own expense. Instead, the FCC directed

¹³⁷ *Id.* at ¶ 226.

both parties to attempt to devise technical solutions and, failing that, it required the ILEC to make OS/DA available as a UNE:

The Commission finds that Ameritech Michigan must continue to offer OS/DA as a UNE at TSLRIC-based rates. The obligation to provide unbundled OS/DA will continue in effect until Ameritech Michigan provides reasonable accommodations for the problems presented by dedicated end-office trunking and other technological issues that inflate the CLECs' cost of obtaining access to competitive OS/DA services. When Ameritech Michigan believes that it meets the requirements relating to providing access to competitive OS/DA services, it may file an application for authorization to remove OS/DA from its list of UNEs. However, it may not remove OS/DA from UNE status without prior Commission authorization.¹³⁸

102. Although Qwest made a prima facie case showing that it provides OS/DA service on a nondiscriminatory basis, its opponents have demonstrated that Qwest fails to provide customized routing as contemplated by the FCC. First, there is no real evidence that a competitive wholesale market for OS/DA exists in Minnesota, because Qwest is not providing customized routing to any CLEC in Minnesota. Qwest's "offer" to provide this service appears to be no more than a paper promise, as opposed to a demonstration of present compliance.

103. Second, Qwest's opponents have demonstrated that Qwest has not accommodated technologies used for customized routing as required by the FCC, and therefore OS/DA must be offered as unbundled network elements.¹³⁹ Even without evidence of a specific request for customized routing, the record is clear that Qwest is not capable of furnishing it in quantities that competitors may reasonably demand and at an acceptable level of quality. For customized routing through line class codes, which the FCC has indicated would be acceptable on an interim basis, Qwest has no standard pricing and no standard service interval. No CLEC is likely to order the service on this basis, particularly when Qwest will not even engage in testing without "clear evidence" that the CLEC is going to order the service.¹⁴⁰ Although it has committed to provide routing over Feature Group D trunks in Colorado, it will not commit to providing it in Minnesota, and it will not even take a position as to whether it is technically feasible to do so unless a CLEC first orders it, again without knowing the cost or how long it would take. Qwest's position puts the cart before the horse, and is self-serving and anti-competitive. No CLEC can be expected to order a service without some assurance and likelihood that it will work. There may be some method of

¹³⁸ *In the Matter of the Application of Ameritech Michigan for Approval of a Shared Transport Cost Study and Resolution*, Case No. U-12622, Opinion and Order at 10-11 (March 19, 2001) (citations omitted).

¹³⁹ See UNE Remand Order ¶ 463.

¹⁴⁰ Tr. 2:203.

ensuring that the CLEC participates in the cost of testing new services, even if it does not order the service, but Qwest's position is too extreme.

104. Because Qwest does not provide customized routing, it cannot charge market-based rates for OS/DA services. Because Qwest charges market-based rates in Minnesota for OS/DA services, it is not in compliance with checklist items 7(II) and (III). This deficiency can be remedied by pricing OS/DA as unbundled network elements. Until Qwest begins providing more reasonable accommodations to the technological problems presented by customized routing, OS/DA should remain unbundled network elements and should be priced as such in the UNE pricing docket.

Checklist Item 8: White Pages Directory Listings

105. Section 271(c)(2)(B)(viii) of the 1996 Act requires Qwest to provide white pages directory listings for customers of other carriers' telephone exchange service. Section 251(b)(3) obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listings.¹⁴¹

106. A BOC satisfies the requirements of checklist item 8 by demonstrating that it (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provided white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers.¹⁴² The term "white pages" refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider. The term "directory listing" includes, at a minimum, the subscriber's name, address, telephone number, or any combination thereof.¹⁴³

107. Qwest maintains that it provides nondiscriminatory access to white pages listings as demonstrated by its agreement with Arizona Dial Tone. That agreement, at section 10.4.2.24, states that any arrangement for the publication of white pages directory listings with an affiliate, including QwestDex, Qwest's official directory publisher, requires the affiliate to publish a CLEC's directory listings such that the CLEC's directory listings are nondiscriminatory in appearance and integration, and have the same accuracy and reliability as Qwest's end user listings.¹⁴⁴ White pages directory listings for Qwest and CLEC end users appear in the same font, size, and typeface, with no separate classification or distinguishing characteristics.¹⁴⁵ Listings for Qwest and CLEC

¹⁴¹ See 47 U.S.C. § 271(c)(2)(B)(viii); 47 U.S.C. § 251(b)(3).

¹⁴² See BellSouth Louisiana II Order, 13 FCC Rcd at 20748 ¶ 255.

¹⁴³ Bell Atlantic New York Order ¶ 358.

¹⁴⁴ Ex. 113 at 6-7.

¹⁴⁵ *Id.*, citing Arizona Dial Tone Agreement, Ex. 148, LAS-7.2, § 10.4.2.8-.10.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the)
) DOCKET NO. UT-003013
))
Continued Costing and Pricing of) FORTY-FIRST SUPPLEMENTAL
Unbundled Network Elements,) ORDER; PART D INITIAL ORDER;
Transport, and Termination) ESTABLISHING NONRECURRING
) AND RECURRING RATES FOR UNES
))
))
))
.....)

I. SYNOPSIS

1 This Initial Order proposes resolutions for issues relating to the nonrecurring and recurring costing and pricing of numerous unbundled network elements for Qwest and Verizon.

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Preset, and Conference Calling - Station Dial. Qwest proposes nonrecurring charges for the first port and each additional port. *Qwest Brief, at page 32.* Staff believes that Qwest's proposed rates for these network elements are appropriate. *Staff Brief, at page 10.*

161 **Decision:** Qwest fails to provide the necessary support for its proposal. Qwest must reduce the work time estimates for this element by 30 percent for the reasons stated above in paragraphs 62 through 65.

s. Digital Trunk Port

162 In Part D, Qwest proposes rates for the following types of digital trunk ports: DS1 Local Message Trunk Port, Unbundled DS1 PRI ISDN Trunk Port Supporting Direct Inward Dial/Direct Outward Dial/Private Branch Exchange ("DID/DOD/PBX"), and DS3 and OCN Trunk Ports. Qwest states that these elements may be ordered via the Special Request Process. Qwest's proposal calls for a nonrecurring charge for the digital trunk port, as well as nonrecurring charges for the establishment of the first and each additional message trunk group member associated with the digital trunk port. *Qwest Brief, at page 32-33.* Staff believes that Qwest's proposed rates for these network elements are appropriate. *Staff Brief, at page 10.*

163 **Decision:** Qwest fails to provide the necessary support for its proposal. Qwest must reduce the work time estimates for this element by 30 percent for the reasons stated above in paragraphs 62 through 65.

t. DS0 Analog Trunk Port

164 Qwest states that its proposed nonrecurring charges are supported by Exhibit 2023. *Qwest Brief, at page 33.* Staff believes that Qwest's proposed rates for these network elements are appropriate. *Staff Brief, at page 10.*

165 **Decision:** Qwest fails to provide the necessary support for its proposal. Qwest must reduce the work time estimates for this element by 30 percent for the reasons stated above in paragraphs 62 through 65.

u. Customized Routing

166 **Discussion:** Qwest states that customized routing is a software function of a switch that enables CLECs to direct particular classes of calls to specific outgoing trunks. Qwest claims that while customized routing applications are unique to each CLEC Qwest has developed a "standardized" offering for which it proposes to assess nonrecurring charges based on the development and installation of customized line class codes. For Operator Services ("OS") or Directory Assistance ("DA") routing only, Qwest proposes a nonrecurring charge for the development of a customized line

class code, and a second nonrecurring charge per installation per switch. Qwest states that all other forms of customized routing are designed to meet the specific requirements of an individual CLEC and, therefore, will be charged on an individual case basis ("ICB"). *Qwest Brief, at page 33.*

167 Qwest maintains that the FCC determined in the UNE Remand Order that OS and DA do not have to be provided on an unbundled basis when an ILEC offers customized routing. Qwest believes that its customized routing proposal meets the FCC's requirement and, therefore, Qwest is no longer required to provide OS and DA as UNEs. *Qwest Brief, at page 34.*

168 WorldCom disputes whether Qwest's customized routing proposal meets the FCC's requirement. WorldCom contends that it submitted a completed customized routing form to Qwest, including attachments demonstrating how its request to route OS/DA calls to existing Feature Group D ("FGD") trunks can be implemented, but Qwest refuses to comply. According to WorldCom, Qwest acknowledges that WorldCom's request is technically feasible but that Qwest has made a business decision not to translate a "411" call to a toll call and provide common transport.¹¹³ WorldCom argues that Qwest's refusal to implement FGD customized routing violates the parties' interconnection agreement, the Telecom Act, and FCC orders. *WorldCom Brief, at page 43-46.*

169 WorldCom also argues that Qwest's ICB pricing proposal for customized routing is so vague that it is impossible to determine if the proposed rates are reasonable and nondiscriminatory. WorldCom recommends that Qwest be required to submit a verifiable cost study based on WorldCom's FGD customized routing needs so that the Commission and the parties can evaluate the proposal based on concrete information. *WorldCom Brief, at page 53.*

170 Commission Staff notes that Qwest did not provide cost support for its customized routing rates.¹¹⁴ Staff believes that if WorldCom wants customized routing using FGD trunks it should be required to seek it through the Bona Fide Request ("BFR") procedure. *Staff Brief, at page 11.* Citing the FCC's UNE Remand Order,¹¹⁵ Commission Staff maintains that the issue to be addressed is whether Qwest has "accommodated" WorldCom's request for FGD customized routing. However, Staff contends that regardless of how this issue is resolved, Qwest should be required to present cost studies for OS/DA to enable the Commission to determine if Qwest's proposed price exceeds its costs so that cross subsidization is not a concern. *Staff Reply Brief, at page 8.*

¹¹³ TR at 4756-57.

¹¹⁴ TR at 4184.

¹¹⁵ "..... Thus, we require incumbent LECs, to the extent they have not accommodated technologies used for customized routing, to offer OS/DA as an unbundled network element." (Emphasis added). UNE Remand Order, at para. 463.

- 171 WorldCom claims that it has already completed the steps that comprise the BFR process without success.¹¹⁶ Thus, requiring WorldCom to start over through another “official” BFR process would simply require WorldCom to repeat steps already taken, adding expense and delay. *WorldCom Reply Brief, at pages 28-29.*
- 172 Qwest claims that WorldCom’s assertion that Qwest has violated the parties’ interconnection agreement by refusing to implement FGD customized routing is disingenuous because the record shows that WorldCom requested customized routing only weeks before the hearings in this docket. According to Qwest, the parties were still in the process of conducting implementation meetings when hearings were conducted. Furthermore, Qwest maintains that under the terms of the interconnection agreement WorldCom is permitted to designate only “unique” trunks for customized routing. Qwest interprets this language such that it is only required to route traffic to WorldCom’s FGD trunks that are not shared with other carriers. Qwest claims that it has agreed to route WorldCom’s traffic to its “unique” FGD trunks, as interpreted. *Qwest Reply Brief, at pages 11-12.*
- 173 WorldCom challenges Qwest’s interpretation of the parties’ interconnection agreement. WorldCom claims that Qwest’s interpretation is unreasonable and ignores the fact that the interconnection agreement explicitly states that WorldCom may route calls to existing FGD trunks. Moreover, WorldCom argues that it would be uneconomical and wasteful for the Commission to interpret the agreement as advocated by Qwest, as such a ruling would result in the underutilization of trunk groups and significant unnecessary expense to WorldCom. *WorldCom Reply Brief, at pages 23-24.*
- 174 Qwest maintains that WorldCom’s proposed solution for customized routing was shown at the hearings to require significant additional investment per switch, and ultimately would only work on Lucent switches.¹¹⁷ Qwest states that less than half of its central offices in Washington contain the Lucent 5E switch that WorldCom’s solution addresses. Moreover, Qwest maintains that implementation of FGD customized routing faces additional obstacles that would need to be addressed by Qwest and the requesting CLEC because FGD trunks uses industry standard Equal Access SS7 signaling protocols while Qwest’s customized routing, on the other hand, routes CLEC OS/DA calls using industry standard traditional signaling. Qwest claims that these differences in signaling create inconsistencies when gathering data

¹¹⁶ WorldCom represents that 1) it submitted its written request and technical specifications on Qwest-supplied forms and pursuant to Qwest’s directions, 2) technical experts have met on several occasions to discuss the issues, 3) letters have been exchanged between company executives consistent with the agreed upon escalation process, 4) the escalation process is complete, and 6) Qwest has refused to provide WorldCom with customized routing over its existing Feature Group D trunks. *WorldCom Reply Brief, at pages 28-29.*

¹¹⁷ Exhibit No. 2194 and TR at 4741-44.

for accurate ordering, provisioning, billing, and maintenance of these facilities. Qwest also notes that FGD trunks generally terminate at an access tandem switch, and not at the end office. Therefore, WorldCom would have to extend its FGD trunks beyond the access tandem to the end office at substantial expense.¹¹⁸ Finally, Qwest states that it remains willing to discuss these and other issues with WorldCom in order to attempt to implement WorldCom's request for customized routing across FGD trunks. *Qwest Brief, at pages 35-36.*

175 WorldCom argues that the "significant investment" referred to by Qwest relates to right to use fees that Qwest claims it will need to pay vendors for the software to implement FGD customized routing. WorldCom contends that such fees are normally recovered as part of Qwest's local switching network element rates, and thus, WorldCom should pay Qwest for any right-to-use fee investment necessary for customized routing in the same way that it pays Qwest for all other right-to-use fee investments – through the recurring local switching rate. WorldCom claims that the FCC specifically addressed this issue and held that right-to-use fees should be included in the UNE rate, and should not be separately recovered.¹¹⁹ *WorldCom Reply Brief, at pages 27-28.*

176 WorldCom argues that there is no evidence to support Qwest's claim that there are signaling obstacles to overcome before FGD customized routing can be provisioned. On the contrary, WorldCom argues that the record indicates that its request is technically feasible and that Qwest refuses to provide FGD customized routing because it has made a business decision to deny WorldCom's request. WorldCom maintains that its proposal will not require it to extend FGD trunks to the end office as suggested by Qwest. According to WorldCom, it is simply requesting that Qwest route WorldCom's local customers' OS/DA traffic in the same way that Qwest currently routes WorldCom's long distance customers' OS/DA traffic. WorldCom argues that its customized routing proposal takes its UNE-P customers' local OS/DA calls and makes them "look like" long distance calls that would naturally flow to WorldCom's existing network. WorldCom also argues that Qwest is disingenuous when it implies that the parties are continuing to work together to resolve these issues. According to WorldCom the parties are at an impasse. *WorldCom Reply Brief, at pages 25-26.*

¹¹⁸ Qwest argues that its customized routing functions occur at the end office and, at present, these calls cannot be "tandemed." That is, Qwest is unaware of any signaling technology that would allow for the routing of these types of calls to any type of tandem switch. *Qwest Brief, at page 36.*

¹¹⁹ *In the Matter of Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right to Use Agreements Before Purchasing Unbundled Elements*, CC Docket No. 96-98, FCC 00-139 (Rel. April 27, 2000), at para 9-11.

177 Qwest argues that WorldCom's request is tantamount to 411 presubscription.¹²⁰
 Qwest states that while the FCC is currently considering this issue on its own the
 record in this proceeding lacks sufficient evidence for the Commission to reach an
 informed decision regarding 411 presubscription or even the merit of WorldCom's
 arguments. *Qwest Reply Brief, at pages 11-12.*

178 WorldCom disagrees with Qwest's assertion that it is actually asking for 411
 presubscription. WorldCom claims that 411 presubscription refers to the ability of
 end-user customers to choose their OS/DA carrier, regardless of which local carrier
 the customers choose. However, WorldCom claims it merely wants to be able to
 designate where its end users' OS/DA traffic is routed so that it can self-provision
 OS/DA services. *WorldCom Reply Brief, at page 23.*

179 **Decision:** This generic cost proceeding is not an appropriate forum to resolve
 WorldCom's claim that Qwest's refusal to implement FGD customized routing
 violates the parties' interconnection agreement. If WorldCom believes that Qwest
 has breached the parties' contractual agreement, then WorldCom must initiate other
 more appropriate process to address its grievances.¹²¹

180 WorldCom also claims that Qwest's refusal to implement FGD customized routing
 violates the Telecom Act and FCC orders. In support of this claim WorldCom cites
 paragraph 463 of the UNE Remand Order, which states:

... SBC responds that the customized routing of Feature Group D
 is not technically feasible in all end-office switches. Bell South,
 however, offers a technical solution to MCI WorldCom's
 concern in some of its offices and states its willingness to deploy
 these solutions throughout its network. In instances where the
 requesting carrier obtains the unbundled switching element from
 the incumbent, the lack of customized routing effectively
 precludes requesting carriers from using alternative OS/DA
 providers and, consequently, would materially diminish the
 requesting carrier's ability to provide the services it seeks to
 offer. *Thus, we require incumbent LECs, to the extent they have
 not accommodated technologies used for customized routing, to
 offer OS/DA as an unbundled network element.*

(Emphasis added).

181 WorldCom notes that other state commissions have reached similar conclusions and
 ordered the ILECs to provide WorldCom OS and DA as UNEs until its FGD solution

¹²⁰ "Presubscription" refers to the process by which a customer preselects a carrier, to which all of a
 particular category or categories of calls on the customer's line will be routed automatically.

¹²¹ For instance, WorldCom can file a petition for enforcement of interconnection agreement under
 WAC 480-09-530 of the Commission's rules.

was implemented. For example, the California Public Utility Commission ("CPUC") concluded that:

We agree with the FAR's conclusion that paragraph 463 refers to the same type of customized routing that MCI is requesting in this arbitration. It is significant that while the FCC acknowledges that there may be technical difficulties in accomplishing the customized routing requested, it does not indicate that technical infeasibility would excuse the ILEC from the requirement to offer OS and DA as UNEs.... Therefore, there was no need for the arbitrator to determine whether particular functions are technically feasible in particular switch types.¹²²

182 The CPUC's reasoning of FCC's UNE Remand Order is sound and applies to the very facts before the Commission in this proceeding. Paragraph 463 of the FCC's UNE Remand Order provides that the existence of technical uncertainty does not release an ILEC from its responsibility to provide OS and DA at cost based rates until such time as it has accommodated the CLECs customized routing request.¹²³ Qwest must submit a cost study, consistent with this decision, for OS and DA so that these network elements are available at cost based rates to CLEC's whose customized routing needs have not been accommodated by Qwest.

183 The FCC's Second Louisiana Order¹²⁴ also supports this decision. Paragraph 226 of that Order states:

MCI raises a separate challenge to BellSouth's customized routing offering. MCI claims that BellSouth will not "translate" its customers' local operator services and directory assistance calls to Feature Group D signaling. As a result, MCI cannot offer its own operator services and directory assistance services to customers it serves using unbundled local switching. MCI, however, fails to demonstrate that it has requested Feature Group D signaling, and BellSouth claims that it has never received such a request. Thus, the record is inconclusive as to this objection. *We believe, however, that MCI may have otherwise raised a legitimate concern. If a competing carrier requests Feature Group D signaling and it is technically feasible for the incumbent LEC to offer it, the incumbent LEC's failure to*

¹²² CA-PUC Decision 01-09-054 (Rel. September 20, 2001), at page 12.

¹²³ The record in this proceeding also indicates that WorldCom's proposal is technically feasible, but has been rejected by Qwest for business considerations TR at 4752-57.

¹²⁴ *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121 (Rel. October 13, 1998) ("Second Louisiana Order").

provide it would constitute a violation of section 251(c)(3) of the Act. Our rules require incumbent LECs, including BOCs, to make network modifications to the extent necessary to accommodate interconnection or access to network elements.
(Emphasis added).

184

Qwest recommends that the Commission reject WorldCom's proposal because it was shown at the hearings to require significant additional investment per switch, and ultimately would only work on Lucent switches. Qwest suggests that if it does accommodate WorldCom's request that WorldCom, the cost causer, should be solely responsible to pay for necessary software upgrades. However, I believe that the Commission must reject Qwest's argument because, as cited by WorldCom, it is contrary to the FCC's opinion on this matter. While contemplating the issue raised by Qwest the FCC stated:

We conclude that the "nondiscriminatory access" obligation in section 251(c)(3) requires incumbent LECs to use their best efforts to provide all features and functionalities of each unbundled network element they provide, including any associated intellectual property rights that are necessary for the requesting carrier to use the network element in the same manner as the incumbent LEC. In particular, incumbent LECs must exercise their best efforts to obtain co-extensive rights for competing carriers purchasing unbundled network elements. *We further find that the nondiscriminatory access obligation requires incumbent LECs to allocate any costs associated with acquiring the necessary intellectual property rights among all requesting carriers, including themselves....*¹²⁵

(Emphasis added, footnotes omitted).

185

The software upgrade identified by Qwest, and the attendant right to use fees, fall within the scope of the FCC's discussion. Therefore, at such time as Qwest implements the FGD customized routing requested by WorldCom, Qwest must seek recovery of these costs in the nondiscriminatory manner described by the FCC above. Qwest may subsequently request that the Commission address anew whether the company's proposal to offer OS and DA at market based rates should be approved.

186

Finally, Qwest proposes to assess nonrecurring charges based on the development and installation of customized line class codes. WorldCom represents that where customized routing is provided over FGD trunks, WorldCom further implements

¹²⁵ *In the Matter of Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right to Use Agreements Before Purchasing Unbundled Elements.* CC Docket No. 96-98, FCC 00-139 (rel. April 27, 2000) at para 9. See generally discussion at paras. 9-11.

OS/DA via line class codes in its own network. *WorldCom Brief, at page 45.* Thus, it appears that WorldCom would not be subject to Qwest's proposed nonrecurring line class code charges where customized routing is accomplished via FGD trunks, and no party otherwise challenges Qwest's proposed rates to develop and install line class codes. Qwest's proposal is approved, subject to the 30% work time adjustment.

v. **Common Channel Signaling / SS7**

- 187 **Discussion:** Common Channel Signaling/Signaling System 7 ("SS7") provides multiple pieces of signaling information via the SS7 network. This signaling information includes, but is not limited to, specific information regarding calls made on associated Feature Group D trunks and/or LIS trunks, Line Information Database ("LIDB") data, Local Number Portability, Custom Local Area Signaling Services ("CLASS"), 8XX set up information, call set up information and transient messages. Qwest proposes nonrecurring charges for CCS/SS7 that include: 1) Common Channel Signaling Access Service ("CCSAC") Options Activation charge for basic translations; and 2) CCSAC Options Activation charge for database translation. *Qwest Brief, at page 37.*
- 188 Advanced Intelligent Network ("AIN") is a call-related database platform that enables telecommunications companies to provide customized incoming and out-going call management services. Qwest offers AIN Customized Services, AIN Platform Access and AIN Query Processing.¹²⁶ Qwest proposes that the nonrecurring rates for AIN Customized Services and AIN Platform Access will be determined on an individual case basis because the feature functionality of the service is defined by the CLEC. *Qwest Brief, at page 37.*
- 189 WorldCom argues that it is uncertain what Qwest is proposing with regard to SS7 charges. WorldCom states that Qwest's testimony on these rate elements is vague and that neither a review of Qwest's SGAT nor Qwest's discovery responses allow WorldCom to determine with particularity the circumstances under which Qwest proposes to assess its rates on CLECs. WorldCom believes that Qwest failed to meet its burden of proof and recommends that the proposed SS7 charges be rejected. *WorldCom Brief, at page 53.*
- 190 **Decision:** Qwest fails to provide the necessary support for its proposal. Qwest must reduce the work time estimates for this element by 30 percent for the reasons stated above in paragraphs 62 through 65.

¹²⁶ Exhibit No. T-2130, at pages 13-15 (Malone).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
In the Matter of Petition of WorldCom, Inc.)	
Pursuant to Section 252(e)(5) of the)	
Communications Act for Preemption of the)	CC Docket No. 00-218
Jurisdiction of the Virginia State Corporation)	
Commission Regarding Interconnection)	
Disputes with Verizon Virginia Inc., and for)	
Expedited Arbitration)	
)	
In the Matter of Petition of Cox Virginia)	
Telcom, Inc. Pursuant to Section 252(e)(5) of)	
the Communications Act for Preemption of the)	CC Docket No. 00-249
Jurisdiction of the Virginia State Corporation)	
Commission Regarding Interconnection)	
Disputes with Verizon-Virginia, Inc. and for)	
Arbitration)	
)	
In the Matter of Petition of AT&T)	
Communications of Virginia Inc., Pursuant to)	
Section 252(e)(5) of the Communications Act)	CC Docket No. 00-251
for Preemption of the Jurisdiction of the)	
Virginia Corporation Commission Regarding)	
Interconnection Disputes With Verizon)	
Virginia Inc.)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 17, 2002

Released: July 17, 2002

By the Chief, Wireline Competition Bureau:

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I. INTRODUCTION

1. In this order, we issue the first of two decisions that resolve questions presented by three petitions for arbitration of the terms and conditions of interconnection agreements with Verizon Virginia, Inc. (Verizon). Following the enactment of the Telecommunications Act of 1996 (1996 Act),¹ the Commission adopted various rules to implement the legislatively mandated, market-opening measures that Congress put in place.² Under the 1996 Act's design, it has been largely the job of the state commissions to interpret and apply those rules through arbitration proceedings. In this proceeding, the Wireline Competition Bureau, acting through authority expressly delegated from the Commission, stands in the stead of the Virginia State Corporation Commission. We expect that this order, and the second order to follow, will provide a workable framework to guide the commercial relationships between the interconnecting carriers before us in Virginia.

2. The three requesting carriers in this proceeding, AT&T Communications of Virginia, Inc. (AT&T), WorldCom, Inc. (WorldCom) and Cox Virginia Telcom, Inc. (Cox) (collectively "petitioners"), have presented a wide range of issues for decision. They include issues involving network architecture, the availability of unbundled network elements (UNEs), and inter-carrier compensation, as well as issues regarding the more general terms and conditions that will govern the interconnecting carriers' rights and responsibilities. As we discuss more fully below, after the filing of the initial pleadings in this matter, the parties conducted extensive

¹ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). We refer to the Communications Act of 1934, as amended by the 1996 Act and other statutes, as the Communications Act, or the Act. See 47 U.S.C. §§ 151 *et seq.*

² See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); *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, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

applicable law in the event the Commission's collocation rules are modified without resorting to a drawn-out contract amendment process.¹⁷⁶²

c. Discussion

531. We reject WorldCom's proposal and direct the parties to include Verizon's proposed Collocation Attachment, section 1.¹⁷⁶³ We will not create a "safe harbor" list of equipment that Verizon is required to permit WorldCom to collocate.¹⁷⁶⁴ The Commission declined to establish such a list and, as we have stated earlier, we will not go beyond Commission precedent in resolving the parties' disputes.¹⁷⁶⁵ Moreover, we note that there is no disagreement between the parties about what is the applicable law or how it applies to the specific equipment WorldCom seeks to collocate. Also, we find that Verizon's proposal contractually binds it to comply with "applicable law." Unless and until the incumbents' obligations pursuant to the *Collocation Remand Order* are modified by the Commission or a court decision,¹⁷⁶⁶ Verizon is required to comply with those rules as they are the "applicable law" on the subject of collocation of advanced services equipment. WorldCom can avail itself of the agreement's dispute resolution process if it believes that Verizon is not adhering to those rules.

18. Issues IV-80/IV-81 (Customized Routing for Directory Assistance and Operator Services)

a. Introduction

532. Verizon and WorldCom agree regarding how Verizon should route WorldCom's operator services and directory assistance traffic, but they disagree regarding certain related issues that, WorldCom believes, will affect its ability to obtain nondiscriminatory access to operator services and directory assistance in accordance with the Commission's rules. Specifically, these parties agree that Verizon should provide customized routing for that traffic, that this routing should be to WorldCom's Feature Group D trunks, and that Verizon's advanced

¹⁷⁶² *Id.* at 6-7.

¹⁷⁶³ See Verizon's November Proposed Agreement to WorldCom, Part C, Collocation Attach., § 1. We note that the substance of this proposal is identical to that contained in the November DPL, which Verizon labels its proposed section 13.0 to the Collocation Attachment. We further note that section 13 of the AT&T-Verizon Interconnection Agreement relates to collocation. The WorldCom proposal that we reject is found in section 4.2.3.1 of its Part C, Attachment III.

¹⁷⁶⁴ We note that WorldCom's proposal would expressly permit it to collocate DSLAMs and splitters in Verizon's premises. While we anticipate no dispute with regard to the collocation of this equipment, for reasons described below, we nonetheless determine that that Verizon's language is preferable.

¹⁷⁶⁵ See *Collocation Remand Order*, 16 FCC Rcd at 15459-60, para. 44.

¹⁷⁶⁶ We note that the Commission's order and rules were recently upheld by the D.C. Circuit in *Verizon*.

intelligent network (AIN) should provide this routing.¹⁷⁶⁷ They disagree, however, regarding whether the interconnection agreement should address this area and, if so, whether the agreement should contain contingency provisions in the event AIN routing does not work.¹⁷⁶⁸ We address these areas of disagreement in turn. For the reasons set forth below, we rule for WorldCom on these issues.

533. We note that Feature Group D is an access arrangement that allows end users reach their presubscribed interexchange carrier (IXC) through 1+ dialing. Feature Group D trunks, in turn, connect an incumbent LEC's and an IXC's offices with each other.¹⁷⁶⁹ Customized routing permits a requesting carrier to specify that the incumbent LEC route, over designated trunks that terminate in the requesting carrier's operator services and directory assistance platform, operator services and directory assistance calls that the requesting carrier's customers originate.¹⁷⁷⁰ AIN refers to a telecommunications network in which call processing, call routing, and network management are provided by means of centralized databases, rather than from comparable databases located at every switching system.¹⁷⁷¹

b. Routing Using AIN Architecture

(i) Positions of the Parties

534. WorldCom considers it critical that the interconnection agreement include terms setting forth Verizon's obligation to provide customized routing of WorldCom's operator services and directory assistance traffic. WorldCom states that otherwise it would have no means to enforce Verizon's commitment to provide that routing.¹⁷⁷² Verizon maintains that the interconnection agreement need only require that, in the event either party requests nondiscriminatory access to the other party's directory assistance service, intraLATA operator call completion services, or directory assistance database, the parties shall enter into a mutually acceptable agreement for such access.¹⁷⁷³ Verizon maintains that this approach would address

¹⁷⁶⁷ E.g., Verizon UNE Brief at 108; WorldCom Brief at 149.

¹⁷⁶⁸ Compare, e.g., Verizon UNE Brief at 108-11 with, e.g., WorldCom Brief at 149-50.

¹⁷⁶⁹ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1596, n.439 (1998) (subsequent history omitted).

¹⁷⁷⁰ See *UNE Remand Order*, 15 FCC Rcd at 3891, n.867.

¹⁷⁷¹ *Access Charge Reform*, CC Docket No. 96-262, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354, 21418, n.204 (1996) (subsequent history omitted).

¹⁷⁷² WorldCom Brief at 149; WorldCom Reply at 132.

¹⁷⁷³ Verizon UNE Brief at 111.

Verizon's provision of operator services and directory assistance satisfactorily, in full compliance with current law.¹⁷⁷⁴

(ii) Discussion

535. We agree with WorldCom that its interconnection agreement with Verizon should reflect Verizon's agreement to use its AIN architecture to provide customized routing for operator services and directory assistance calls to WorldCom's Feature Group D trunks. We thus accept WorldCom's contract language on this issue, which memorializes Verizon's commitment to deploy its AIN capability to provide that routing.¹⁷⁷⁵ As an initial matter, we conclude that a competitive LEC's request for customized routing for operator services and directory assistance traffic is an appropriate subject matter for an interconnection agreement pursuant to sections 251 and 252. Specifically, section 251(c)(1) imposes upon Verizon "[t]he duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill," among other statutory duties, Verizon's duties under section 251(c)(3).¹⁷⁷⁶ The Commission's rules implementing section 251(c)(3) require that Verizon must provide nondiscriminatory access to operator services and directory assistance as a UNE except where it provides requesting carriers with customized routing or a compatible signaling protocol for their customers' operator services and directory assistance traffic.¹⁷⁷⁷ Because Verizon proposes to comply with this rule by providing WorldCom with customized routing, we conclude that WorldCom can invoke the section 252 arbitration process to resolve its dispute with Verizon over the terms and conditions of this customized routing arrangement.¹⁷⁷⁸

536. We find WorldCom's proposal that the interconnection agreement memorialize the agreement the parties have reached regarding customized routing to be consistent with section 251 and the Commission's rules.¹⁷⁷⁹ Instead of having the interconnection agreement reflect this substantive agreement, Verizon proposes that the interconnection agreement require

¹⁷⁷⁴ *Id.*

¹⁷⁷⁵ See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, §§ 6.1.3 (first sentence to the extent it discusses routing using AIN capability), 6.1.4 (first sentence to the extent it discusses routing using AIN capability).

¹⁷⁷⁶ 47 U.S.C. § 251(c)(1). We note that section 251(c)(1) also provides that the "requesting carrier has the duty to negotiate in good faith the terms and conditions of such agreements." 47 U.S.C. § 251(c)(1).

¹⁷⁷⁷ 47 C.F.R. § 51.319(f) (requiring that an incumbent LEC must provide nondiscriminatory access to operator services and directory assistance as a UNE "only where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol" for operator services and directory assistance traffic).

¹⁷⁷⁸ See 47 C.F.R. § 51.807(c)(1) (requiring that we resolve any open issues in this proceeding in accordance with "the requirements of section 251, including the rules prescribed by the Commission pursuant to that section").

¹⁷⁷⁹ See 47 U.S.C. § 252(c)(1).

that WorldCom “arrange, at its own expense, the trunking and other facilities required to transport traffic to and from the designated [directory assistance] and [operator services] locations.”¹⁷⁸⁰ Because this proposal would require that WorldCom arrange for the customized routing of its operator services and directory assistance traffic, it does not meet Verizon’s obligation to negotiate the actual terms and conditions of that routing in good faith.¹⁷⁸¹ We therefore reject Verizon’s proposed contract language on this issue.

c. Contingency Provisions

(i) Positions of the Parties

537. WorldCom proposes that the interconnection agreement should define Verizon’s operator services and directory assistance obligations in the event Verizon’s AIN architecture fails to provide customized routing to WorldCom’s Feature Group D trunks.¹⁷⁸² WorldCom maintains that contingency provisions are particularly appropriate given Verizon’s admission that it has not yet tested AIN routing to Feature Group D trunks.¹⁷⁸³ WorldCom also points out that Verizon has not explained how it proposes to provide WorldCom with nondiscriminatory access to operator services and directory assistance in the event AIN routing is unsuccessful.¹⁷⁸⁴ WorldCom argues that its proposed contractual language is reasonable and appropriate.¹⁷⁸⁵

538. Verizon argues that contingency provisions are unnecessary even if the interconnection agreement addresses customized routing using AIN architecture. Verizon states that it has deployed AIN architecture throughout its Virginia service territory, that it has offered to prove to WorldCom through testing that its AIN network can provide customized routing to

¹⁷⁸⁰ Verizon’s November Proposed Agreement to WorldCom, Part C, Additional Services Attach., § 3.2.

¹⁷⁸¹ See 47 U.S.C. §§ 251(b)(4), 251(c)(1).

¹⁷⁸² WorldCom Brief at 149-50; WorldCom Reply at 132-33.

¹⁷⁸³ WorldCom Brief at 150; WorldCom Reply at 133; see Tr. at 615-20, 651-53 (testimony of Verizon witness Woodbury).

¹⁷⁸⁴ WorldCom Brief at 150; see Tr. at 652-53 (testimony of Verizon witness Woodbury).

¹⁷⁸⁵ WorldCom Brief at 149-50. That language would specify that Verizon will use “existing switch features and functions” to route operator services and directory services calls to WorldCom’s Feature Group D trunks in the event Verizon’s AIN network is unable to provide that routing. WorldCom November Proposed Agreement with Verizon, Part C, Attach. VIII, §§ 6.1.3 & 6.1.4. WorldCom also would have the interconnection agreement state that where Verizon’s AIN architecture and existing switches do not allow routing of operator services and directory assistance calls to Feature Group D trunks, the parties, at WorldCom’s request, “shall negotiate the terms, conditions, and cost-based rates for providing [operator services and directory assistance] services as unbundled network elements.” WorldCom November Proposed Agreement with Verizon, Part C, Attach. VIII, § 6.1.3 & 6.1.4. WorldCom proposes, in addition, specific requirements that would apply to Verizon’s provision of operator services and directory assistance to WorldCom as UNEs. WorldCom November Proposed Agreement with Verizon, Part C, Attach. VIII, §§ 6.1.3.1 to 6.1.3.3.7.5 & 6.1.4.1 to 6.1.4.10.

WorldCom's Feature Group D trunks, and that WorldCom has not responded to Verizon's offer. Verizon asserts that only WorldCom's continued refusal to help test AIN routing prevents WorldCom from timely receiving that routing.¹⁷⁸⁶ Verizon states that WorldCom's proposed contract language is outdated and overly detailed. Verizon also states that inclusion of that language in the interconnection agreement "could hinder the progress of collaboratives and industry changes in [operator services and directory assistance] access."¹⁷⁸⁷

(ii) Discussion

539. We agree with WorldCom that the interconnection agreement should contain provisions defining Verizon's operator services and directory assistance obligations in the event Verizon's AIN architecture does not work as the parties anticipate. We thus accept the contract language WorldCom proposes in this area, subject to the modifications discussed below.¹⁷⁸⁸ While Verizon has tested customized routing using AIN technology in the laboratory, Verizon makes no claim that it has tested whether its AIN architecture will successfully route operator services and directory assistance traffic to Feature Group D trunks.¹⁷⁸⁹ In these circumstances, we find that Verizon has not shown that it is presently able to provide customized routing to those trunks using AIN. Moreover, we find that there is at least a reasonable possibility that AIN routing will fail. Accordingly, consistent with our conclusion above that disputes regarding customized routing provide an appropriate subject matter for an interconnection agreement pursuant to section 251, we also conclude that the agreement should address what happens in the event AIN routing fails.¹⁷⁹⁰

540. Despite its overall objection to the contingency provisions WorldCom proposes to include in the interconnection agreement, Verizon does not assert that any specific provision is inconsistent with section 251 of the Act or the Commission's rules implementing that provision. We find no such inconsistency. We therefore require that the parties use WorldCom's proposed language as a starting point for their final contract language.¹⁷⁹¹ We anticipate that the parties'

¹⁷⁸⁶ Verizon UNE Brief at 108-09; Verizon UNE Reply at 55-56.

¹⁷⁸⁷ Verizon UNE Brief at 110.

¹⁷⁸⁸ See WorldCom's November Proposed Agreement to Verizon, Part C, Attach. VIII, §§ 6.1.3 (first sentence to the extent it discusses routing using existing switch features and functions), 6.1.3 (second sentence) through 6.1.3.3.7.5, 6.1.4 (first sentence to the extent it discusses routing using existing switch features and functions), 6.1.4 (remaining sentences) through 6.1.4.10.

¹⁷⁸⁹ Tr. at 652-53 (testimony of Verizon witness Woodbury).

¹⁷⁹⁰ Cf. *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, 4137-38, para. 366 (1999) (*Bell Atlantic New York Order*), *aff'd sub nom.*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

¹⁷⁹¹ See 47 U.S.C. § 252(c)(1).

final language in this area will retain the substance of WorldCom's proposals while eliminating any cumbersome detail.

19. Issues V-3/V-4-A (UNE-Platform Traffic with Other LECs)

a. Introduction

541. AT&T can offer service to its customers by purchasing from Verizon a combination of unbundled loop, switching and transport elements known as a UNE-platform.¹⁷⁹² When a third-party LEC terminates a call from, or originates a call to, an AT&T UNE-platform customer, however, the UNE-platform appears to the third-party LEC to be part of Verizon's network. This presents billing problems. When the third-party LEC terminates AT&T's UNE-platform traffic, it does not know that it should bill AT&T instead of Verizon. Conversely, when the third-party LEC originates a call to AT&T's UNE-platform, it does not know that it should pay AT&T instead of Verizon. With respect to calls that originate on AT&T's UNE-platforms, both parties agree to the status quo in Virginia: Verizon bills AT&T for unbundled switching and common transport, plus a termination charge to recover the third-party LEC's charges for termination.¹⁷⁹³ The parties differ, however, on the appropriate compensation mechanism for calls that originate on the network of a third-party LEC and terminate to an AT&T customer served over the UNE-platform.¹⁷⁹⁴ AT&T proposes that Verizon treat all such calls as Verizon's own traffic.¹⁷⁹⁵ Verizon argues that AT&T instead must establish interconnection agreements with third-party LECs for traffic that transits Verizon's network and terminates to AT&T UNE-platform customers. We rule for Verizon and reject AT&T's proposed language.

b. Positions of the Parties

542. Under AT&T's proposal, Verizon, rather than AT&T, would collect reciprocal compensation from the third-party LEC and Verizon would then forfeit its UNE charges.¹⁷⁹⁶ AT&T argues that its proposal would minimize the burden of negotiating interconnection agreements among LECs in Virginia, while also relieving Verizon of the responsibility to create

¹⁷⁹² See, e.g., *Local Competition Third Report and Order*, 15 FCC Rcd at 3702-03, para. 12.

¹⁷⁹³ AT&T Brief at 143-44; Tr. at 552; AT&T Reply at 82; Verizon Unbundled Network Elements (UNE) Reply at 57; cf. Case 01-C-0095, *AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon*, Order Resolving Arbitration Issues, at 47-49 (issued July 30, 2001) (*New York Commission AT&T Arbitration Order*).

¹⁷⁹⁴ We note that the intercarrier compensation for calls between AT&T's UNE-platform customers and Verizon customers is not a point of disagreement in this arbitration.

¹⁷⁹⁵ AT&T Brief at 142.

¹⁷⁹⁶ *Id.* at 143; AT&T Reply at 82. AT&T's theory is that the reciprocal compensation payment Verizon receives for transport and termination of the third-party LEC's traffic would offset Verizon's UNE transport and switching charges.