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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
RENZ D. JENNINGS
COMMISSIONER

IN THE MATTER OF THE PETITION OF MCIMETRO ACCESS TRANSMISSION SERVICES, INC. FOR ARBITRATION OF INTERCONNECTION RATES, TERMS AND CONDITIONS PURSUANT TO 47 U.S.C. § 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996.	DOCKET NO. U-3175-96-479 DOCKET NO. E-1051-96-479
IN THE MATTER OF THE PETITION OF AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. FOR ARBITRATION OF INTERCONNECTION RATES, TERMS, AND CONDITIONS WITH U S WEST COMMUNICATIONS, INC., PURSUANT TO 47 U.S.C. § 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996.	DOCKET NO. U-2428-96-417 DOCKET NO. E-1051-96-417 **PROCEDURAL ORDER**

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Arizona Corporation Commission
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BY THE COMMISSION:

PROCEDURAL HISTORY

On July 29, 1996, AT&T Communications of the Mountain States, Inc. ("AT&T") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration of Interconnection Rates, Terms and Conditions ("Petition") pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 ("Act"), to establish an interconnection agreement with U S WEST Communications, Inc. ("U S WEST"). An arbitration was held on October 1 through 4, 1996. On October 21, 1996, the parties submitted a joint matrix of issues remaining to be decided through arbitration. On October 23, 1996, each party submitted a closing memorandum, which summarized the issues still unresolved and presented each party's proposed resolution of the issues. On December 10, 1996, the Commission issued Decision No. 59915 to resolve the remaining issues.

On September 4, 1996, MCImetro Access Transmission Services, Inc. ("MCI" or "MCIm") filed a Petition to establish an interconnection agreement with U S WEST. An arbitration was held on October 22, 23 and 24, 1996. On November 14, 1996, each party submitted a closing memorandum which summarized the issues still unresolved and presented each party's proposed resolution of the issues. On December 18, 1996, the Commission issued Decision No. 59931 to resolve the remaining issues.

Decision Nos. 59915 and 59931 instructed the parties to prepare and sign interconnection agreements incorporating the terms of the Commission's resolutions within thirty days of the date of the Decisions. AT&T, MCI and U S WEST attempted to prepare interconnection agreements in accordance with Commission directives. Several times, the parties filed requests for additional time in which to submit executed interconnection agreements, stipulating that there was "good cause" for a continuance. The parties indicated that both AT&T and MCI were negotiating together with U S WEST to arrive at an agreement. Accordingly, additional time was granted to allow the parties to continue to negotiate. Pursuant to our February 4, 1997 Procedural Order as subsequently modified, AT&T, MCI and U S WEST were ordered to file their signed interconnection agreement(s) on or before February 25, 1997.

In spite of the continuances, the parties were unable to resolve many of the disputes which arose when they attempted to prepare an interconnection agreement. As a result, no signed interconnection

agreement was filed. On February 25, 1997, AT&T and MCI filed a Joint Request for Approval of Interconnection Agreement ("Joint Request") which contained issues that had been resolved through arbitration or negotiation, and AT&T and MCI's proposed resolution of unresolved issues. AT&T and MCI requested that the unsigned Joint Request be approved as an interconnection agreement.

Also on February 25, 1997, U S WEST filed a Statement Pursuant to R14-2-1506, in which it requested the Commission to reject all language which had not been arbitrated or negotiated. U S WEST also requested the Commission reject the arbitrated issues on which it had requested a rehearing. Alternatively, U S WEST urged the Commission to adopt language proposed by U S WEST for the unresolved issues.

By Procedural Order dated March 10, 1997, the Commission determined that the Petitions of AT&T and MCI should continue through the arbitration process to resolve the unresolved issues, and consolidated the matters for arbitration commencing on March 19, 1997. The arbitration was held as scheduled, and recessed periodically to allow the parties additional time to resolve issues and narrow the remaining disputes. The arbitration concluded on May 29, 1997, at which time the arbitrators ruled on many of the disputed issues and requested additional briefing on the remaining issues.

On June 23, 1997, AT&T and MCI filed a Statement of Issues Remaining for Decision ("Statement"), U S WEST filed a Brief in Support of its Proposed Interconnection Agreement Language ("Brief"), and the parties submitted an Agreement for Local Wireline Network Interconnection and Service Resale between MCIm/AT&T and U S WEST ("Agreement"), which included alternative proposed language regarding the remaining disputed issues. On July 8, 1997, the parties filed Reply Briefs.

The following are the remaining issues unresolved between the parties with each party's proposed language, as appropriate.

REMAINING UNRESOLVED ISSUES

Branding **Part A, Section 8.1 to 8.3**

AT&T's proposed language:

8.1 At MCIm/AT&T's request, U S WEST shall be obligated to provide branding and unbranding of services provided to MCIm/AT&T Customers pursuant to this Agreement in a nondiscriminatory manner consistent with the branding of such services to U S WEST

Customers.

8.2 If MCIm/AT&T requests that a service provided under this Agreement be branded as an MCIm/AT&T service and U S WEST informs MCIm/AT&T that such branding is not available or if it is not practical to so brand the service, then U S WEST will offer MCIm/AT&T the service on an unbranded basis at MCIm/AT&T's request. If MCIm/AT&T requests unbranding of a service under such circumstances, U S WEST must unbrand their own service.

8.3 Without limitation of the provisions of Section 8.1 and 8.2, if U S WEST is offering a service on an unbranded basis, U S WEST may brand such service with the U S WEST brand only if U S WEST also offers to brand the service with the MCIm/AT&T brand.

U S WEST's proposed language:

8.1 This section describes U S WEST's obligations to offer branded and unbranded services to MCIm/AT&T.

8.2 U S WEST will offer MCIm/AT&T unbranded directory assistance and operator services. U S WEST is not required to remove the U S WEST brand from services offered by U S WEST to its Customers except as otherwise required by this Agreement.

8.3 U S WEST may brand services which are offered by U S WEST on an unbranded basis as of the Effective Date of this Agreement, only if U S WEST also offers to brand such services when provided on a resold basis with the MCIm/AT&T brand.

AT&T's position

AT&T proposed language on behalf of itself and MCI. AT&T requested that all services provided pursuant to the Agreement be subject to branding requirements, not just directory assistance and operator services. AT&T claimed that it would be discriminatory to allow U S WEST to provide unbranded service to AT&T while maintaining the U S WEST brand on services provided to its own customers or other CLECs. AT&T requested that if it is not possible or practical to rebrand a service, U S WEST should be required to unbrand the service provided to everyone, including its own customers.

U S WEST's position

U S WEST sought to limit the scope of the branding requirement to directory assistance and operator services. U S WEST also requested that if it is unable to brand a service with its competitor's brand, it be allowed to maintain the brand on its services to its customers, and provide unbranded services to MCI/AT&T's customers. U S WEST claimed that a requirement to unbrand services provided to its own customers would impact its First Amendment rights.

Commission's resolution

The Commission has previously resolved issues of branding uniforms, vehicles, repair bills and

receipts in the parties' separate arbitration Decisions, and the resolution has been incorporated as Sections 8.5 and 8.6 of the Agreement. The branding issue resolved herein does not revise the previous Commission resolutions. Other than as previously resolved, the Commission adopts AT&T's proposed language regarding branding, to be modified as follows: (1) 8.1 should begin with the clause "Except as provided in this Agreement,"; and (2) the last sentence of 8.2 should be stricken.

Intellectual Property - Indemnification **Part A, Section 18**

(Agreed to language in italics, U S WEST proposed language in bold text)

18.1 Notwithstanding any limitations in remedies contained in this Agreement, each Party (the "Indemnifying Party") will indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage and expense, including reasonable attorney's fees, to third parties, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, actual or alleged infringement or other violation or breach of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property presently existing or later created, negligence or willful misconduct by the Indemnifying Party, its employees, agents or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In addition, the Indemnifying Party will, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a third party against the Indemnified Party. **The Party providing access under this Agreement shall have no indemnification obligation hereunder for any loss, cost, claim, liability, damage or expense arising on account of Third Party Intellectual Property after having given written notice to the other Party of the Third Party Intellectual Property pursuant to Section 5.1 above.**

5.1 Obligations of Party Requesting Access. As a condition to the access or use of patents, copyright, trade secrets, and other intellectual property (including software) owned or controlled by a third party to the extent necessary to implement this Agreement or specifically required by the then applicable federal and state rules and regulations relating to Interconnection and access to telecommunications facilities and services ("Third Party Intellectual Property"), the Party providing access may require the other, upon written notice from time to time, to obtain a license or permission for such access or use of Third Party Intellectual Property, make all payments, if any, in connection with obtaining such license, and provide evidence of such license.

MCI/AT&T's position

The parties agreed on most of the language of Section 18.1. MCI/AT&T opposed the inclusion of the final sentence proposed by U S WEST, which provides that either party may, by written notice to the other party, avoid indemnification obligations relating to third party intellectual property rights. The parties agreed to language in Section 5.1 of the agreement which allows a party that is providing access to the intellectual property of a third party to notify the other party of that access, and require the second party to obtain a license or permission for access or use of the third party's intellectual property.

MCI/AT&T argued that, for Section 5.1 to be meaningful and to impart obligations and rights on

the parties, each party must be willing to indemnify the other for losses or claims arising from Third Party Intellectual Property to the full extent of the indemnifying party's responsibility for Third Party Intellectual Property as set forth in Section 5.1. MCI/AT&T would not have agreed to the language of Section 5.1 if U S WEST had proposed the subject sentence at the time of negotiations.

U S WEST's position

U S WEST claimed that the failure to include the additional proposed sentence in Section 18.1 nullifies Section 5.1's requirement to obtain the required intellectual property rights from a third party, and would require U S WEST to take full responsibility for any infringement resulting from MCI/AT&T's failure to comply with Section 5.1.

Commission's resolution

The omission of U S WEST's final proposed sentence in Section 18.1 negates the intent of Section 5.1 with respect to obtaining necessary intellectual property rights from third parties. However, U S WEST's proposed language is broader than necessary to alleviate its concerns. Therefore, U S WEST's proposed additional sentence should be replaced with the following language:

> If, after the party providing access under this Agreement gives written notice to the other party pursuant to Section 5.1, the other party fails to obtain a license or permission for access or use of Third Party Intellectual Property, the party providing access shall have no indemnification obligation hereunder for any loss, cost, claim, liability, damage and expense, including reasonable attorney's fees, to third parties, relating to or arising out of the failure of the other party to obtain such license or permission.

Limitation of Liability **Part A, Section 19.3**

(Agreed to language in italics, AT&T proposed language in bold text)

19.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including, but not limited to, loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation to indemnify, defend and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third party. Nothing contained in this section shall limit either Party's liability to the other for (I) willful or intentional misconduct (including gross negligence); (ii) bodily injury, death or damage to tangible real or tangible personal property proximately caused by such party's negligent act or omission or that of their respective agents, subcontractors or employees, **or (iii) under the circumstances presented to the arbitrator, the Commission or other decision maker, as the case may be pursuant to the dispute resolution process in Section 27, a pattern of conduct is found to exist by such arbitrator, the Commission or other decision maker in violation of a party's obligations under the Agreement that justifies an award of Consequential**

Damages, *nor shall anything contained in this section limit the Parties' indemnification obligations, as specified above.*

AT&T's position

AT&T requested inclusion of the highlighted language to provide for recovery in excess of the charge for a service in a situation where U S WEST has repeatedly breached an obligation under the Agreement, although AT&T may not be able to establish that U S WEST acted willfully or intentionally in each breach. AT&T claimed that the harm to its ability to serve its customers and its reputation for service may be damaged by U S WEST's repeated breach of a contract obligation.

U S WEST's position

U S WEST claimed that the limitation of liability clause excluding AT&T's proposed language is a traditional commercial limitation. U S WEST asserted that unlimited liability should result only when a party satisfies the higher burden of proof required for a finding of gross or intentional negligence. U S WEST stated that any deterrence from repeatedly breaching material obligations under the Agreement should be pursued as a remedy in the service quality docket.

Commission's resolution

While the service quality docket may provide remedies for breaches of material obligations, the remedy authorized herein is not inconsistent with the remedies to be authorized in that docket. Unlike in traditional commercial relationships, AT&T has a very limited ability to obtain alternative suppliers for its local exchange business, and U S WEST has limited incentive to help the contractual partnership succeed. Under these circumstances, it is appropriate to allow contractual recovery for a pattern of conduct of breaching a contractual obligation as though intentional conduct or gross negligence had occurred. We therefore adopt AT&T's proposed language regarding limitation of liability.

Directory Issues - Advertising, Names on Cover, Non-discriminatory Treatment

Part A, Sections 44.1.12, 44.1.15, and 44.1.17

MCI/AT&T's proposed language

44.1.12 For white pages and yellow pages advertising, U S WEST shall ensure that (a) U S WEST's directory publisher will use its advertising sales force and processes as MCIm/AT&T's agent to sell such advertising on a nondiscriminatory basis to MCIm/AT&T Customers, (b) charges for such advertising will be billed by U S WEST's directory publisher, and (c) MCIm/AT&T shall receive commissions from U S WEST's directory publisher on all compensation generated by such advertising at the same rate

paid to U S WEST or any of its Affiliates.

44.1.15 At no charge, U S WEST shall ensure that each directory cover indicates inclusion of MCIm/AT&T customer listings.

44.1.17 MCIm/AT&T shall receive the same treatment as U S WEST receives with respect to white and yellow page matters.

U S WEST's proposed language

U S WEST opposed the inclusion of Sections 44.1.12, 44.1.15 and 44.1.17.

MCI/AT&T's position

MCI/AT&T proposed that U S WEST's directory publisher be required to sell advertising to MCI/AT&T's customers on a non-discriminatory basis, that the directory publisher bill MCI/AT&T customers directly for the advertising they purchase, and that MCI/AT&T receive the same commissions on the sale of directory advertising to their customers as U S WEST receives on the sale of advertising to its customers. MCI/AT&T contended that all of the above are required by the Act's mandate that CLECs be treated in a non-discriminatory fashion. MCI/AT&T stated that U S WEST's directory publishing affiliate, U S WEST DEX ("DEX") is again becoming a part of U S WEST, so U S WEST's argument that it can avoid obligations regarding equal treatment in directory matters is moot.

During the hearings, the Arbitrators ruled that U S WEST should ensure that directory covers indicate that the listings include MCI/AT&T customers, and that MCI/AT&T receive nondiscriminatory treatment in directory matters. Therefore, MCI/AT&T proposed the language of Sections 44.1.15 and 44.1.17.

U S WEST's position

U S WEST argued that the inclusion of Section 44.1.12 would, in effect, give MCI/AT&T substantial control over DEX, a separate corporate entity which publishes directories on behalf of U S WEST. U S WEST objected to requirements that DEX employees act as agents of MCI/AT&T, that DEX bill for its services in a particular way, or that DEX pay commissions to MCI/AT&T. U S WEST believes that such requirements intrude into fundamental aspects of DEX's business.

U S WEST indicated that DEX has already offered MCI/AT&T a commission for yellow page revenues from new connecting customers, but U S WEST argued that MCI/AT&T add nothing to justify a commission with respect to existing U S WEST customers who have already purchased ads in DEX

books, but switch their telephone service to MCI/AT&T. U S WEST claimed that it does not receive revenue from the sale of Yellow Pages advertising to its customers.

U S WEST proposed that, if the Commission remains concerned about directory advertising, U S WEST would not oppose language in the Commission's Order approving the Agreement which reserved jurisdiction over the issue of nondiscriminatory access of MCI/AT&T customers to Yellow Page directory advertising in the DEX directories. Then, if MCI/AT&T can come forward with facts supporting unfair treatment, the Commission can address whether a problem exists and whether it has jurisdiction to address such a problem.

U S WEST opposed any obligation to include on directory covers names of all CLECs. U S WEST instead proposed that the directory covers indicate that all CLECs' customers are included, and specifically indicate the names of only those CLECs with more than 20 percent of the customers. U S WEST argued that requiring its directory affiliate to list all of the CLECs on the directory covers would make the directory more difficult to use, and would infringe on its First Amendment rights.

U S WEST objected to MCI/AT&T's interpretation of Section 44.1.17, which the Arbitrators have previously ordered be included in the agreement, to mean that MCI/AT&T's names must be included on the cover of directories. U S WEST believes that this requirement would interfere with DEX's editorial rights as publisher of the directories.

Commission's resolution

The Act requires that MCI/AT&T receive nondiscriminatory treatment with respect to directory matters. The Agreement should therefore require that U S WEST ensure that its directory publisher sell advertising on a non-discriminatory basis to MCI/AT&T customers. The Agreement should not require that DEX function as an agent of MCI/AT&T. U S WEST should ensure that its directory publisher bill MCI/AT&T customers for advertising in the same manner as U S WEST customers are billed. U S WEST should also ensure that MCI/AT&T receive commissions on at least as favorable terms as U S WEST receives for directory advertising sold to its customers. The Agreement should include the following language as Section 44.1.12:

> For white pages and yellow pages advertising, U S WEST shall ensure that (a) U S WEST's directory publisher sell such advertising on a nondiscriminatory basis to MCIm/AT&T Customers, (b) charges for such advertising will be billed by U S WEST's directory publisher in

the same manner as it bills for U S WEST's customers' advertisements, and (c) MCIm/AT&T shall receive commissions or other compensation from U S WEST's directory publisher on all compensation generated by such advertising at no less than the commission or compensation rate paid to U S WEST or any of its Affiliates.

Sections 44.1.15 and 44.1.17 accurately represent the intent of the Commission's prior rulings regarding nondiscriminatory treatment and requiring U S WEST to ensure that MCI/AT&T's names are included on directory covers. Omitting the names of CLECs could confuse customers who use the directories. Further, the presence of the U S WEST's name as part of DEX's logo on the cover would present a competitive advantage to U S WEST absent the corresponding listing of CLECs whose customers are included in the directory.

Revenue from Sale of Directory Listings **Part A, Section 44.2.1©**

MCI/AT&T's proposed language

44.2.1© MCIm/AT&T shall receive its pro-rata share of any amounts paid by third parties to U S WEST for such information.

U S WEST's proposed language

44.2.1© U S WEST shall be entitled to retain all revenue associated with any sales pursuant to subparagraphs (a) and (b) above.

MCI/AT&T's position

MCI/AT&T and U S WEST have agreed that MCI/AT&T may choose whether the customer information which they provide to U S WEST for inclusion in U S WEST's directory listings can be released by U S WEST to other directory publishers freely, or whether U S WEST must obtain prior authorization from MCI/AT&T to release the information to other directory publishers or providers. MCI/AT&T have proposed that, when they permit U S WEST to sell their customer listings in conjunction with its own customer listings, MCI/AT&T receive a proportionate share of the revenue U S WEST receives for sale of the joint customer lists.

U S WEST's position

U S WEST proposed that the Agreement include language specifying that MCI/AT&T not share in the revenue U S WEST receives from the sale of joint customer lists. U S WEST argued that MCI/AT&T have no ownership right in customer listings. If MCI/AT&T desire to receive the revenue from the sale of its customers listings, it may choose to prohibit U S WEST from distributing their listing,

and MCI/AT&T are free to sell those listings themselves directly to other directory publishers or providers.

Commission's resolution

The Agreement should include U S WEST's proposed language. If MCI/AT&T desire to receive revenues from the sale of their customers' listings, they may sell those listings directly to third parties, and may refuse to grant authorization for U S WEST to release the listings.

Poles, Conduits and Rights of Way - Reciprocity **Part A, Section 47.1**

MCI/AT&T's proposed language

47.1 U S WEST shall provide MCIm/AT&T nondiscriminatory access to poles, ducts, rights-of-way and conduits it owns or controls on terms, conditions and prices comparable to those offered to any other entity.

U S WEST's proposed language

47.1 Each Party shall provide the other Party nondiscriminatory access to poles, ducts, rights-of-way and conduits it controls on terms, conditions and prices as described herein. While the language in Section 47 describes the provision of poles, ducts, rights-of-way and conduits by U S WEST to MCIm/AT&T, the language in this Section shall apply reciprocally to the provision of poles, ducts, rights-of-way and conduits by MCIm/AT&T to U S WEST.

MCI/AT&T's position

MCI/AT&T argued that, pursuant to the terms of the Act, they are required to provide access to their poles, ducts and rights-of-way to other CLECs, but not to an ILEC such as U S WEST.

U S WEST's position

U S WEST proposed that the Agreement include language consistent with the Commission's prior ruling in the AT&T arbitration that obligations to provide access to poles, conduits and rights-of-way be reciprocal. U S WEST argued that the Commission has authority to apply a fair and reciprocal standard for use of pole attachments, conduits and rights-of-way. If MCI/AT&T were to provide facilities-based service to a new subdivision, allowing MCI/AT&T to refuse U S WEST access to its poles, conduits and rights-of-way would preclude U S WEST from competing with MCI/AT&T in providing an alternative choice of telephone providers in that subdivision.

Commission's resolution

The Act imposes a duty of access to poles, conduits and rights-of-way on all LECs, not just ILECs. 47 U.S.C. § 251(b)(4). Therefore, MCI/AT&T should provide access to their poles, conduits

and rights-of-way. However, we will require the U S WEST-proposed language be modified to indicate that MCI/AT&T's obligations to provide access to their poles, conduits, ducts and rights-of-way extend only to those facilities which are not used exclusively to provide long distance services. The Agreement should include as Section 47.1 the following language:

> Each Party shall provide the other Party nondiscriminatory access to poles, ducts, rights-of-way and conduits it controls on terms, conditions and prices as described herein. While the language in Section 47 describes the provision of poles, ducts, rights-of-way and conduits by U S WEST to MCIm/AT&T, the language in this Section shall apply reciprocally to the provision by MCIm/AT&T to U S WEST of poles, ducts, rights-of-way and conduits not used by MCIm/AT&T to provide exclusively long distance services.

Operator Services - Instant Credit **Part A, Section 50.3.3.2(o)**

MCI/AT&T's proposed language

50.3.3.2(o) When requested by MCIm/AT&T, U S WEST shall provide instant credit on Operator Services calls on a non-discriminatory basis as provided to U S WEST Customers or shall inform MCIm/AT&T Customers to call a toll free number for MCIm/AT&T Customer service to request a credit. U S WEST shall provide one (1) toll free number for business Customers and another for residential Customers.

U S WEST's proposed language

50.3.3.2(o) When an MCIm/AT&T Customer requests a U S WEST operator to provide instant credit on an Operator Services call, the U S WEST operator will record the request, similar to the way U S WEST records such requests for its own Customers, and the request for credit shall be passed on to MCIm/AT&T through the AMA record.

(I) For resold Operator Services, U S WEST will credit the MCIm/AT&T account in accordance with the same credit procedures which are applied to U S WEST's own retail customers.

(ii) For Operator Services offered as an unbundled Network Element, U S WEST will not credit the MCIm/AT&T account, except as may be provided by the Commission's service quality rules and regulations.

MCI/AT&T's position

MCI/AT&T argued that it would be discriminatory for MCI/AT&T and their customers to be excluded from receiving credits which U S WEST provides to its own customers in connection with operator services. MCI/AT&T would have to credit their own customers for errors committed by U S WEST, but would receive no credit from U S WEST for the error. The cost of credits awarded by U S WEST is presumably built into the rates for operator services, so failing to grant the credits to MCI/AT&T would permit U S WEST to recover those costs, even when they are not incurred.

. . .

U S WEST's position

U S WEST offered to provide instant credit for resold operator services, on the basis that the retail price for U S WEST's operator services presumably accounts for a certain level of credits. However, U S WEST opposed providing instant credit for operator services offered as an unbundled network element. As an unbundled element, the price U S WEST charges for operator services is based on TELRIC cost. Because the cost studies submitted by U S WEST and MCI/AT&T did not adjust for an instant credit mechanism, U S WEST would not recover the full cost of the unbundled services that it provides if it were required to provide instant credits.

Commission's resolution

The parties agree that U S WEST should provide credits for resold operator services. It is fair to require U S WEST and MCI/AT&T to split the costs of credits for operator services provided as unbundled network elements, due to the administrative difficulty in determining whether errors are the fault of U S WEST or MCI/AT&T. Therefore, the Agreement should include Section 50.3.3.2(o) as follows:

> At the election of MCIm/AT&T, when an MCIm/AT&T Customer requests a U S WEST operator to provide instant credit on an Operator Services call, the U S WEST operator shall either inform the MCIm/AT&T Customer that a credit will be granted, or shall inform the MCIm/AT&T Customer to call a toll free number for MCIm/AT&T Customer service to request a credit. U S WEST shall provide one (1) toll free number for business Customers and another for residential Customers.
>
> (I) For resold Operator Services, U S WEST shall credit the MCIm/AT&T account in accordance with the same credit procedures which are applied to U S WEST's own retail customers.
>
> (ii) For Operator Services offered as an unbundled Network Element, U S WEST shall credit the MCIm/AT&T account for 50 percent of the charge, except where a greater credit is required by the Commission's service quality rules and regulations.

Dark Fiber - Reservation **Part A, Section 51.5**

51.5 U S WEST may not reserve future capacity of its Dark Fiber for its own use, with the exception of maintenance or emergency spare.

MCI/AT&T's position

MCI/AT&T have stated their agreement with U S WEST's request to reserve a maintenance or emergency spare dark fiber. Asserting a new issue in their Statement, MCI/AT&T requested the

Commission clarify that U S WEST will not use dark fiber for anything other than providing local service. MCI/AT&T have not proposed any contract language to effectuate the clarification, if made.

U S WEST's position

U S WEST opposed reservations for dark fiber, and stated its concern that MCI/AT&T may have disputed inclusion of the above language in their Statement, which was filed simultaneously with U S WEST's Brief. U S WEST requested that the Commission not allow MCI/AT&T to reserve dark fiber or have a right of first refusal over the fiber; allowing them to prevent access to their competitors. U S WEST also requested that no restrictions be placed upon its use of dark fiber.

Commission's resolution

The parties have agreed upon inclusion of the above language, so Section 51.5 will be considered a negotiated provision, with the clarification that the maintenance or emergency spare will be for the benefit of any CLEC which leased dark fiber from U S WEST's network. MCI/AT&T will not have any reservation rights not granted to U S WEST.

In clarification of MCI/AT&T's recently raised issue, dark fiber which U S WEST included as part of its local service rate base, and upon which it received a rate of return, but which was used for other than local service, will be subject to reclaim by CLECs in support of their provisioning of local service. We do not adopt MCI/AT&T's interpretation of Section 51.5.

Bill and Keep — **Attachment 1, Section 5.1.2**
Reciprocal Compensation — **Attachment 1, Section 5.3**

MCI/AT&T's proposed language:

5.1.2 In the event bill and keep is terminated and the Parties have not agreed upon a rate structure to replace bill and keep or the Commission has not ordered a replacement rate structure, MCIm/AT&T or U S WEST may invoke the dispute resolution process to determine an appropriate reciprocal compensation mechanism. Until such time as such a determination has been made, the following interim rate structure shall apply:

5.1.2.1 Prices for the unbundled network elements utilized by MCIm/AT&T in the provisioning of transport and termination of its Customers' calls shall be in accordance with the Hatfield model and as outlined in Schedule 1 hereto.

5.1.2.2 Switching shall be purchased on a per line basis with all functionality and features of such switch including, but not limited to, call routing.

5.1.2.3 All other unbundled network elements may be purchased separately or in combination on the basis outlined in Schedule 1.

U S WEST's proposed language:

5.3 For the purposes of this Section, the characterization of intraLATA traffic as "local" (local includes EAS), or "toll" shall be the same as the characterization established by the effective tariffs of U S WEST as of the Effective Date of this Agreement.

5.3.1 In the event bill and keep is terminated, the following reciprocal rate structure shall apply on an interim basis until a permanent reciprocal rate structure is established by the Commission:

5.3.1.1 Call Termination

(a) The Parties agree that call termination rates as described in Schedule 1 of this Attachment shall apply reciprocally for the termination of local/EAS traffic per minute of use.

(b) For traffic terminated at a U S WEST or MCIm/AT&T end office, the end office call termination rate as described herein shall apply, except as provided for in Section 5.2 above.

(c) For purposes of call termination, this Agreement recognized the unique status of traffic originated by and terminated to enhanced service providers. These parties have historically been subject to an access charge exemption by the FCC which permits the use of basic exchange Telecommunications Service as a substitute for switched access service. Traffic originated to and terminated by enhanced service providers shall be exempt from the reciprocal compensation arrangements of this Agreement.

5.3.1.2 Transport

(a) If the parties elect to each provision their own one-way trunks to the other Party's end office for the termination of local traffic, each Party will be responsible for its own expenses associated with the trunks and no transport charges will apply. Call termination charges shall apply as described above.

(b) If one Party desires to purchase direct trunk transport from the other Party, compensation shall be in accordance with the rates established in Schedule 1 of this Attachment.

(c) Direct-trunked transport facilities are provided as dedicated DS-3 or DS-1 facilities without the tandem switching functions, for the use of either Party between the point of interconnection and the terminating end office or tandem switch.

(d) If the Parties elect to establish two-way direct trunks, the compensation for such jointly used "shared" facilities shall be adjusted as follows. The nominal compensation shall be pursuant to the rates for direct trunk transport as established in Schedule 1 of this Attachment 1. The actual rate paid to the provider of the direct trunk facility shall be reduced to reflect the provider's use of that facility. The adjustment in the direct trunk transport rate shall be a percentage that reflects the provider's relative use (i.e., originating minutes of use) of the facility in the busy hour.

(e) Tandem-switched transport may be used as an alternative to direct-trunked transport. Compensation for tandem-switched transport includes tandem switched transport and tandem switching charges, as provided for in Schedule 1 of this

Attachment 1.

(f) Multiplexing options are available pursuant to rates established in Schedule 1 of this Attachment 1.

5.3.1.3 Rate Structure -- Toll Traffic.

Applicable Switched Access Tariff rates, terms, and conditions apply to toll traffic routed to an access tandem, or directly to an end office.

5.3.1.4 Rate Structure--Transit Traffic.

Applicable switched access, Type 2 or local interconnection transport rates apply for the use of U S WEST's network to transport transit traffic. For transiting local traffic, the applicable local transit rate applies to the originating party. For transiting toll traffic, the Parties will charge the applicable switched access rates to the responsible carrier. For terminating transiting wireless traffic, the Parties will charge their applicable rates to the wireless provider. For transiting wireless traffic, the Parties will charge each other the applicable local transit rate.

MCI/AT&T's position

MCI/AT&T contended that bill and keep has been adopted on an interim basis, and the development of an appropriate reciprocal compensation mechanism should be conducted in a subsequent proceeding with participation of all interested parties. If the Commission adopts a rate for reciprocal compensation at this time, MCI/AT&T disagreed with the method and rates proposed by U S WEST. MCI/AT&T stated that U S WEST's proposal includes a reserve deficiency, which is not consistent with TELRIC, and a profit, which is not sanctioned under the Act. MCI/AT&T claimed that while Section 252(d)(1) directs that rates for unbundled network elements and interconnection may include a reasonable profit, Section 252(d)(2) provides that prices for transport and termination shall be based upon costs, but does not require that prices include a reasonable profit.

MCI/AT&T further stated that U S WEST's proposal should be rejected because it excludes traffic originating from an enhanced service provider (also known as Internet or information service provider, hereinafter "ISP") from the determination of traffic balances. MCI/AT&T claimed that such an exclusion is self-serving, unfair, and in violation of the recent FCC Order concerning Internet services (In the Matter of Access Charge Reform, FCC Docket No. 96-262, FCC 97-158, May 7, 1997). MCI/AT&T also claimed that U S WEST's method improperly compensates the CLEC's switch as an end-office switch, rather than a tandem.

MCI/AT&T proposed that if the Commission does not implement a permanent reciprocal

compensation mechanism prior to expiration of bill and keep, the parties could use the unbundled network element prices to develop transport and termination charges. MCI/AT&T indicated that Schedule 1 proposed by U S WEST averages MCI/AT&T's and U S WEST's proposed element prices, including U S WEST's proposed depreciation reserve deficiency. MCI/AT&T requested that if Schedule 1 is adopted, the depreciation reserve deficiency be removed prior to averaging the parties' prices.

U S WEST's position

U S WEST requested that its rate structure for transport and termination be approved in the event that bill and keep expires, which should occur during the contract period. U S WEST also requested that traffic to and from ISPs be exempt from reciprocal compensation. Calls are made to an ISP on local lines, which then are converted to digital signals and aggregated onto the Internet. U S WEST claimed that it has to add trunks and associated switching and transport facilities, to handle traffic to an ISP point of presence. Local calls in quantity would not be made from an ISP to a termination on U S WEST's network.

U S WEST claimed that mutual compensation assumes that originating and terminating traffic would balance, or any difference would be settled by payment from one carrier to another. U S WEST asserted that including ISP traffic would allow terminating carriers which serve ISPs to receive a benefit of being able to receive reciprocal compensation for its terminating traffic, without associated cost for calls made from ISPs.

Commission's resolution

Reciprocal compensation should comply with the Recommended Order on Consolidated Cost and Pricing Arbitration, filed June 13, 1997, to be trued up upon approval of the Decision by the Commission.

Shared Transport **Attachment 3, Section 5**

MCI/AT&T/ Arbitrated Language:

5. Shared Transport

U S WEST will provide unbundled access to U S WEST transmission facilities between end offices, end offices and the tandem switch, and the tandem switch and end offices for completing local calls. Such transmission facilities would be shared with U S WEST and, as applicable, with other CLECs. Transport routing shall be on an identical basis as routing is performed by U S WEST, providing the same efficiencies that U S WEST employs for itself. Costs will be allocated appropriately based upon the transmission path taken by each call. Shared transport shall meet the technical specifications as itemized below for Common Transport.

U S WEST's proposed language:

5. Shared Transport

U S WEST will provide unbundled access to shared transmission facilities between end offices and the tandem switch. Further, U S WEST will provide unbundled access to dedicated transmission facilities between its Central Offices or between such offices and those of competing carriers. This includes, at a minimum, interoffice facilities between end offices, IXC POPs, end offices or tandems of U S WEST, and the end offices of U S WEST and requesting carriers. In addition, U S WEST will provide all technically feasible transmission capabilities, such as DS-1, DS-3, and Optical Carrier levels (e.g. OC-3/12/48/96) that AT&T/MCIm could use to provide Telecommunications Services.

MCI/AT&T's position

MCI/AT&T included the above language in the Agreement as their interpretation of an issue which the arbitrators resolved at the conclusion of the hearing on May 29, 1997.

U S WEST's position

U S WEST claimed that the FCC Order ¶ 440, which described the above unbundling requirement, does not include some of the shared facilities requested by MCI/AT&T. U S WEST claimed that access to shared facilities should be interpreted as access to discreet, identifiable components of the transmission network, which must be ordered with specificity by MCI/AT&T. U S WEST indicated that transport between central offices must be purchased as dedicated trunks, for the sole use of MCI/AT&T. U S WEST argued that MCI/AT&T's proposed language improperly shifted the responsibility of designing and managing a competitor's local interoffice telecommunications network on U S WEST.

Commission's resolution

Paragraph 443, *et. seq.* of the FCC Order impart a greater obligation to provide unbundled interoffice facilities than what is incorporated in U S WEST's proposal. The FCC included an obligation to provide unbundled access to transmission facilities between end offices and between U S WEST's switching offices and a CLEC's switching office, and access to aggregating equipment.[1]

We recognize, as does the FCC, that unbundled access to interoffice facilities, including those

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[1] In response to an argument propounded by MCI that its inability to obtain unbundled access to trunks between an incumbent LEC's end offices raises its cost of providing local service, the FCC specifically concludes that incumbent LECs must provide access to shared and dedicated interoffice facilities.

which carry interLATA traffic, is essential for the development of competition. We also adopt the FCC's restriction that access should be limited to U S WEST's existing interoffice facilities.

Coin phone signaling **Attachment 3, Section 10.2**

MCI/AT&T's proposed language:

10.2.2.1.2 Coin phone signaling capability;

U S WEST's proposed language:

10.2.2.1.2 Coin phone signaling as part of a public access line (PAL);

MCI/AT&T's position

MCI/AT&T claimed that coin phone signaling capability is an embedded feature, function and capability of a switch, and must be unbundled pursuant to the FCC Order, ¶¶ 410 *et. seq.* MCI/AT&T acknowledged that unbundling of payphone service beyond that provided by U S WEST to itself cannot be required by a payphone service provider, which is considered to be an end-user of payphone service and not a telecommunications carrier. MCI/AT&T asserted that as telecommunications carriers, they may need the switch feature of coin phone signaling capability to be unbundled in order to be able to provide resold services to payphone providers.

U S WEST's position

U S WEST asserted that the limitations on the provision of service to payphone providers also limits U S WEST's obligations to telecommunications carriers. U S WEST claimed that as it provides coin telephone service to itself on an integrated whole, it does not need to unbundle the service when providing it to carriers such as MCI/AT&T.

Commission's resolution

An end-user's inability to order unbundled elements would not restrict a telecommunications carrier's ability to order unbundled elements. The Act authorizes a telecommunications carrier to purchase a bundled service at resale or its unbundled elements at a forward looking cost, at the carrier's election. Paragraph 412 of the FCC Order provides that the "features, functions, and capabilities" of the local switch include "a telephone number, directory listing, dial tone, **signaling**, and access to 911...". (emphasis added) MCI/AT&T shall be authorized to receive coin phone signaling as part of the unbundled switch, limited by the FCC's refusal in ¶ 414 to unbundle the switch into a switching element

and separate vertical feature elements.

Bill Format - CRIS/CABS **Attachment 5, Section 4**

MCI's proposed language:

4.1.3 U S WEST shall format each bill for Connectivity Charges (hereinafter "Connectivity Bill") in accordance with the CABS or SECAB standard.

4.2.7 U S WEST shall issue all Connectivity Bills containing such billing data and information in accordance with the most current version of CABS/SECABS published by Bellcore, or its successor, or such later versions as are adopted by Bellcore, or its successor, as appropriate to the services being billed. To the extent that there are no CABS or SECAB standards governing the formatting of certain data, such data shall be issued in the format mutually agreed to by U S WEST and MCIm.

U S WEST's proposed language:

4.1.3 U S WEST shall format each bill for Connectivity Charges (hereinafter "Connectivity Bill") in accordance with the CRIS, CABS or SECAB standard as appropriate to the services billed.

4.2.7 U S WEST shall issue all Connectivity Bills containing such billing data and information in accordance with the most current version of CRIS or CABS/SECABS published by Bellcore, or its successor, or such later versions as are adopted by Bellcore, or its successor, as appropriate to the services being billed. To the extent that there are no CRIS, CABS, or SECAB standards governing the formatting of certain data, such data shall be issued in the format mutually agreed to by U S WEST and MCIm.

MCI's position

MCI requested that connectivity bills be provided in CABS format, which U S WEST currently uses for interexchange carriers, rather than the CRIS format, which U S WEST presently uses when billing end-users for local service. MCI stated that its interface standard for transferring information is through CABS. MCI also stated that U S WEST is obligated to provide the CABS format in three states, and it would be costly to maintain both systems.

U S WEST's position

U S WEST presently uses CRIS to bill local services.[2] U S WEST claimed that neither the Act nor the FCC Order permits a state Commission to require an ILEC to change its billing system. In addition, AT&T has agreed to accept bills from the CRIS system, formatted in a particular way. U S WEST claimed that it would cost more than $5 million to develop the format requested by MCI.

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[2] In its Brief, U S WEST stated that it uses CRIS throughout its fourteen-state territory. In its Reply Brief, U S WEST stated that it has three billing systems within its region.

Commission's resolution

We will allow U S WEST to submit bills to MCI in the format which was accepted by AT&T. MCI may request that the format be modified, but it will be required to pay for the modification, with an appropriate cost sharing from other interested parties.[3]

Performance Measurements and Reporting **Attachment 5, Section 7.3**

MCI/AT&T's proposed language

7.3.1 MCIm/AT&T shall provide information on new Customers to U S WEST within one (1) Business Day of the order completion. U S WEST shall update the database within one (1) Business Day of receiving the data from MCIm/AT&T. If U S WEST detects an error in the MCIm/AT&T provided data, the data shall be returned to MCIm/AT&T within two (2) Business Days from when it was provided to U S WEST. MCIm/AT&T shall respond to requests from U S WEST to make corrections to database record errors by uploading corrected records within two (2) Business Days. Manual entry shall be allowed only in the event that the system is not functioning properly.

7.3.2 U S WEST shall provide to MCIm/AT&T, at a minimum, performance metrics and service results regarding speed of answer, average work time, abandoned from queue measurements, and disaster recovery plans/procedures.

U S WEST's proposed language

U S WEST opposes the proposed language.

MCI/AT&T's position

MCI/AT&T proposed that the parties provide minimal information about new customers, and that U S WEST provide limited data regarding performance metrics and service results. MCI/AT&T claimed that providing new customer data is necessary to provide the parties with verification that new customers are being added to the interconnected system. Requiring U S WEST to provide the limited data regarding performance and service is one of the few methods by which MCI/AT&T can obtain data to present in the quality of service docket.

U S WEST's position

U S WEST opposed the inclusion of Section 7.3.1 as unnecessary, confusing and vague. The language implies that MCI/AT&T may place incomplete orders for service, and that U S WEST must process the incomplete orders. The language permits MCI/AT&T to delay sending customer information

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[3] If U S WEST modifies its system in other states, the cost of modifying the Arizona system may not be as high as forecast by U S WEST.

to U S WEST until just one Business Day prior to order completion, and requires U S WEST to respond by updating all of its databases within one business day thereafter.

U S WEST opposed the inclusion of Section 7.3.2 because the items addressed there are the subject of the consolidated quality of service proceeding.

Commission's resolution

U S WEST should not be required to process incomplete orders for MCI/AT&T, unless it processes similarly incomplete orders for its own customers. If U S WEST processes incomplete orders for its own customers, it should be required to update its own databases for MCI/AT&T customer information within the same time frames that it updates its databases for its own customers. U S WEST is required to provide such non-discriminatory treatment pursuant to the Act. The Agreement need not restate that obligation directly, so we will not require the inclusion of Section 7.3.1.

The information requested in MCI/AT&T's proposed Section 7.3.2 is more appropriately considered in the quality of service docket. We will therefore not require the language to be included here.

Implementation Schedule **Attachment 7, Sections 1.1 and 2.1**

AT&T's[4] proposed language:

Additionally, the Parties shall meet to negotiate the following categories of intervals in the event the Commission has not designated such intervals:

1.1.1 and 2.1.1	Local service with no dispatch;
1.1.2 and 2.1.2	Local service with dispatch;
1.1.3 and 2.1.3	Feature changes with no dispatch;
1.1.4 and 2.1.4	Disconnect with no dispatch; and
1.1.5 and 2.1.5	Disconnect with dispatch.

U S WEST's proposed language:

U S WEST opposed the inclusion of the above language.

. . .

[4] The Agreement and U S WEST's Brief indicate that AT&T is requesting the inclusion of the language at Attachment 7. MCI/AT&T's Brief indicates that the language is proposed by MCI/AT&T. In their Reply Brief, MCI/AT&T indicated that MCI did not join in the implementation schedule because it intended to order elements and services as soon as the Agreement was approved, and believed that the schedule was too generous to U S WEST.

AT&T's position

AT&T stated that the above language, and the sections below, are necessary as part of an implementation schedule for the terms of the Agreement. AT&T claimed that an implementation schedule is mandatory pursuant to Section 252(c)(3) of the Act, which states that:

> in resolving by arbitration ... any open issues and imposing conditions upon the parties to the agreement, a State commission shall-
>
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

AT&T stated that the adoption of an implementation schedule is critical to local market entry, and U S WEST has not submitted a schedule or commented on AT&T's proposed schedule.

U S WEST's position

U S WEST claimed that the above clauses are an attempt by AT&T to include service quality standards in the Agreement by establishing specific intervals for installation of services. U S WEST argued that such schedules should appear in the service quality Order, if anywhere.

Commission's resolution

The above sections do not set standards or intervals, but require the parties to meet to negotiate service intervals. The Act, § 251(c)(2), mandates that service quality be provided:

> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
>
> (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory...

We do not adopt AT&T's language, but instead remind the parties that the service intervals must be at least equal in quality to the service provided by U S WEST to itself or any other party, and must be nondiscriminatory. If the intervals used by U S WEST do not satisfy AT&T, then AT&T may request improved service at an additional, forward-looking cost, or may request in the service quality docket a revised interval and establish why the proposed interval, rather than the equal and nondiscriminatory standard, should be used.

Implementation schedule - interoffice trunking **Attachment 7, Section 3**

AT&T's proposed language:

3.1 Within thirty (30) days of the Effective Date of this Agreement or such other time period as the

Parties may mutually agree, U S WEST shall provide interconnection trunk groups necessary for the mutual exchange of traffic or combined trunk groups as necessary or required for efficiency and interconnection billing to locations specified by AT&T. Subsequent to this thirty (30) days, interconnection trunk orders shall be processed as specified in this Agreement and/or adopted by the Commission.

U S WEST's proposed language:

3.1 Within thirty (30) days of the Effective Date of this Agreement or such other time period as the Parties may mutually agree, the AT&T shall provide U S WEST with the initial forecast of the quantity of interconnection trunks it requires, by location and type. The forecast shall address AT&T's requirements for each of the eight quarters immediately after the Effective Date of this Agreement. U S WEST shall cooperate with AT&T in the development of the forecast, as required.

3.2 Upon completion of the forecast, U S WEST and AT&T shall meet to review the forecast, and to determine the availability of trunks and interoffice facilities necessary to accommodate AT&T's forecast. Based upon the AT&T forecast, and the availability of trunking and facilities, the Parties shall jointly develop an interconnection trunking implementation plan.

AT&T's position

AT&T included the above as part of its implementation schedule.

U S WEST's position

U S WEST stated that without a forecast of the quantity or location of AT&T's required trunks, U S WEST cannot agree to provide trunking within thirty days. U S WEST proposed a process which includes AT&T forecasts, a review of available facilities, and negotiation of a mutually agreed upon implementation schedule.

Commission's resolution

In accordance with our ruling on the issue of Shared Transport, we adopt AT&T's language, modified so that the thirty day period should begin to run upon AT&T specifying locations, and should be applicable to the provision of access to existing transmission facilities. New facilities may require additional time.

Operational Support System **Attachment 7, Section 9.1**

AT&T's proposed language:

9.1 Operational Support Systems shall be available for preordering, ordering, provisioning, maintenance, repair and billing under the following target schedule:

9.1.1 Service Resale for POTS and Multiline Hunt Group up to 12 times by 11/1/97;
9.1.2 Complex Business services by 2/1/98;
9.1.3 Interim Number Portability by 12/1/97;
9.1.4 Unbundled Network Platform by 12/1/97;

9.1.6 Other elements within the Agreement by 5/1/98 or as agreed to by the Parties.

U S WEST's proposed language:

U S WEST opposed the inclusion of the above language.

AT&T's position

AT&T requested that the above target schedule be included as part of its implementation schedule.

U S WEST's position

U S WEST contended that the implementation schedule is not necessary, as the Commission set a target deadline during the hearing.

Commission's resolution

The Commission set a target deadline of November 1, 1997 for implementation of electronic interfaces. While the parties may negotiate a later deadline, they are not obligated to do so. As AT&T's proposed language is more generous than the Commission's ruling, the proposed language would be considered to be negotiated, rather than arbitrated.

Schedule 1 - Pricing Schedule

MCI/AT&T's position

MCI/AT&T did not address this issue in their Statement or Reply Brief.

U S WEST's position

U S WEST requested that specific rates for cage enclosures not be included in the pricing schedule attached to the Agreement. U S WEST claimed that the parties had agreed that as buildout costs may vary significantly at each location, the price for the buildout will be provided on an individual basis.

Commission's resolution

It may be difficult to predict buildout costs initially, and estimates may be appropriate. However, as U S WEST performs buildouts for CLECs, it should be able to predict its expenses and have uniformly set prices. We will not require that buildout costs be set in advance at this time, but expect the parties to be able to negotiate a pricing schedule for buildouts within ninety days of the date of the Commission's approval of the executed Agreement.

. . .

Annotating Deleted Language

MCI/AT&T's position

MCI/AT&T proposed that the Agreement include references to language which the parties originally proposed but which has been deleted pursuant to the Arbitrators' rulings. MCI/AT&T indicated that including such references would preserve the integrity of the Agreement and the record.

U S WEST's position

MCI/AT&T made the proposal for the first time only two days prior to the filing of the Agreement. None of the parties have been tracking all of the language that has been deleted throughout the arbitration process. U S WEST opposed any requirement to include references to language which the Arbitrators ruled should not be included in the Agreement, because it would be incomplete, and because there is no need for the Agreement to reference phantom contract provisions which would only be useful as a reference to the parties as they continue their discussions in other states.

Commission's resolution

The Agreement need not include references to language which was deleted. Including such language in the Agreement, while perhaps helpful for purposes of any appeal, could be incomplete. We do not wish to create further delay while the parties attempt to agree on what language has been deleted. Reference to deleted terms could also prejudice proceedings between the parties in other states. In addition, including references to unapproved terms would create confusion when other CLECs desire to adopt the terms of the Agreement for their own interconnection with U S WEST. References to deleted language can be gleaned from the record for appeal purposes, but the final Agreement should only contain terms which we approve.

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Order

IT IS THEREFORE ORDERED that pursuant to the Act, State Law, and the Commission's Arbitration and Mediation Rules, the remaining unresolved arbitration issues are resolved pursuant to the Discussion herein.

IT IS FURTHER ORDERED that the parties shall prepare and execute an Interconnection Agreement which incorporates the resolutions of the remaining disputed issues consistent with the above discussion into the Interconnection Agreement submitted on June 23, 1997, and submit it to the Commission on or before 4:00 p.m. on July 18, 1997, for the Commission's review at the July 30, 1997 Open Meeting.

DATED this 14th day of July, 1997.

JERRY L. RUDIBAUGH
CHIEF ARBITRATOR

Copies of the foregoing mailed/delivered this 14th day of July, 1997 to:

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