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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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Petition for GST Net (AZ), Inc. for )  
Arbitration Against U S WEST ) Docket No. T-03155A-99-0480  
Communications, Inc. )  
Under 47 U.S.C. § 252(b) )

U S WEST COMMUNICATIONS, INC.'S RESPONSE TO PETITION  
FOR ARBITRATION OF GST NET (AZ), INC. UNDER 47 U.S.C. § 252(b)

U S WEST Communications, Inc. ("U S WEST"), through undersigned counsel and pursuant to the Telecommunications Act of 1996 (the "Act") and Arizona Administrative Code, Section R14-2-1505, hereby responds to GST Net (AZ), Inc.'s ("GST") Petition for Arbitration.

**I. INTRODUCTION**

U S WEST concurs that the parties have reached agreement through negotiation on many issues governing interconnection, unbundled network elements, and resale of telecommunications services. U S WEST rejects categorically the contention that it has refused to agree to any provision that is mandated by the Act. Rather, with respect to the issues still in dispute, U S WEST has maintained a position which protects its legitimate interests, including the interests of its customers, while adhering to the requirements of the Act. Therefore, following arbitration, U S WEST requests that its position regarding each of the disputed issues set forth herein be adopted.

1 U S WEST concurs with items one through seven set forth  
2 in the Introduction to GST's Petition. The remainder of this  
3 Response is organized in a format which tracks the form of GST's  
4 Petition to provide U S WEST's position regarding each of the  
5 issues unresolved through negotiation and thus requiring  
6 arbitration.

7 **II. BRIEF STATEMENT ADDRESSING THE DISPUTED ISSUES BETWEEN THE**  
8 **PARTIES**

9 **A. Part A of the Agreement**

10 Issue No. 1

11 Part (A) 1.2 of the Agreement deals with potential  
12 changes in governing law that may occur in the future and affect  
13 the rights of the Parties. U S WEST's proposed language is  
14 superior to GST's proposal to add language to that which the  
15 parties have agreed. The GST proposal is redundant of the  
16 remainder of the paragraph which explicitly provides a mechanism  
17 for amending the Agreement in the event there is a material  
18 change in the law. Additionally, GST's proposed addition, which  
19 provides that GST "may elect to amend this Agreement" to reflect  
20 changes in law provides an unfair advantage to GST by allowing  
21 GST to amend unilaterally the Agreement or possibly even to  
22 ignore changes in the law, such as Commission orders, in its sole  
23 discretion. U S WEST's language more succinctly and fairly  
24 captures the intent of the parties in including a change in law  
25 provision and places both parties on equal footing in dealing  
26 with an evolving legal landscape.

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Issue No. 2

U S WEST opposes the addition to Part (A) 1.8 as proposed by GST. The first addition proposed by GST requires U S WEST to, in effect, obtain GST's approval prior to reconfiguring its network. Such an unreasonable requirement would hamper U S WEST's ability to manage and operate its own network. GST's right under the Act to interconnect with U S WEST's network does not come with the right to manage, or interfere with the management of, U S WEST's network. Adequate safeguards regarding network standards and notice requirements are in place elsewhere in the Agreement. The language proposed by GST is a violation of U S WEST's right to control its own network and subjects its management decisions to oversight and possible veto by GST. This harms U S WEST, its customers and other CLECs and should not be required.

Next, GST proposes language which states that (apparently all of) U S WEST's obligations under the agreement are material and that, with respect to performance of each, time is of the essence. Such language is superfluous at best, unreasonably burdensome at worst and contravenes fundamental contract law which makes clear that not every contract breach is material and not every contract obligation is time essential. Both parties have rights and obligations under the Agreement, including remedies for breach. It should be left to the trier of fact, in the event of a dispute, to determine whether a breach has occurred and, if so, the appropriate remedy for same. It is

1 overreaching to declare at the outset that each and every  
2 obligation under the Agreement is material and to further declare  
3 that, in the performance of each, time is of the essence. Such  
4 premature declarations burden rather than simplify administration  
5 of the Agreement including resolution of any disputes. The final  
6 flaw in GST's proposal is that the unreasonable obligations it  
7 proposes apply only to U S WEST. The Commission should reject  
8 GST's proposed amendment to Part (A)1.8 entirely.

9 Issue No.3

10 Part (A) 2.14 defines the term "Co-provider."  
11 U S WEST's definition is consistent with the Act which quite  
12 clearly describes separate roles and obligations as between  
13 incumbent local exchange carriers and competitive local exchange  
14 carriers. See 47 U.S.C. §§ 251(b) and (c). Contrary to GST's  
15 position, incumbent carriers and competitive carriers are not  
16 identical under the Act and it is inappropriate to define them as  
17 such. GST's concerns about discrimination are unfounded. The  
18 entire body of law governing the relationship between U S WEST  
19 and GST, beginning with the Act and including federal and state  
20 regulations and the Agreement itself make it clear that  
21 discrimination is unlawful. The definitions section of the  
22 Agreement will not change that. Therefore, it is important that  
23 the definitions accurately describe the roles of the parties and  
24 accurately reflect the law. U S WEST's definition of Co-provider  
25 accomplishes that purpose and should be adopted.

26 . . .

1                   Issue No. 4

2                   Part (A) 2.49 defines the term "Switched Access  
3 Service". U S WEST's proposal better captures the intent of the  
4 Act and the intent of the FCC in stating generally the preference  
5 for symmetrical access rates.

6                   Issue No. 5

7                   Part (A) 3.6.6 addresses waiver of subrogation.  
8 U S WEST's proposes the following language:

9                   GST and USW each waive any and all rights of  
10 recovery against the other, or against the  
11 officers, employees, agents, representatives or  
12 the other, or other tenants for loss or damage to  
13 such waiving Party arising from any cause covered  
14 by any property insurance required to be carried  
15 by such Party. Each Party shall give notice to  
16 insurance carrier(s) that the mutual waiver of  
17 subrogation is contained in this Agreement.

18                   This language protects U S WEST and all other carriers  
19 collocating in a central office from protracted and expensive  
20 litigation in the event a carrier causes property damage. All  
21 collocating carriers agree to this waiver which places the  
22 responsibility for risk management on each carrier (including  
23 through the purchase of adequate insurance) and reduces costly  
24 litigation which would otherwise result. U S WEST, by far,  
25 maintains the most property value at any given central office.  
26 It is critically important from both a cost management and a risk  
management perspective that U S WEST, as the owner of the  
majority of the property at any given central office, not be  
subjected to excessive litigation of the type that could well  
occur absent the waiver sought by U S WEST. U S WEST's proposal

1 balances the interests and rights of the parties and favors  
2 prudent risk management practices over protracted tort litigation  
3 and should be approved.

4 Issue No. 6

5 Part (A) 3.8.1 proposed by U S WEST strikes a  
6 reasonable balance between the need to protect the parties'  
7 financial interests by allowing for recovery of certain direct  
8 damages while shielding the parties from overly broad liability  
9 which only encourages litigation and increases the cost of doing  
10 business for all involved. It has long been established as a  
11 matter of public policy that relieving utilities, including  
12 telecommunications carriers, from exposure to broad liability  
13 serves the public interest by encouraging the provision of  
14 utility service while reducing costs and, therefore, prices. In  
15 short, utilities are not insurers of their customers. The same  
16 public policy rationale underlying the traditional limitation on  
17 liability doctrine applies equally in the era of competition and,  
18 therefore, the U S WEST proposal should be adopted.

19 Issue No. 7

20 Part (A) 3.8.3 proposed by U S WEST and which GST  
21 proposes to delete must be read in conjunction with proposed Part  
22 (A) 3.8.1 (Issue No. 6). GST misreads U S WEST's proposed  
23 language. Contrary to GST's assertion, this provision does not  
24 eliminate liability all together. Rather, it is consistent with  
25 the limitation of liability set forth in Part (A) 3.8.1 and  
26 provides for a reasonable limitation on liability in the event of

1 an actionable breach related to the services or functions at  
2 issue. In its Petition, GST poses the hypothetical of a U S WEST  
3 employee causing damage while painting. The language proposed by  
4 U S WEST would permit GST, in that instance, to recover damages  
5 for its damaged equipment. It would preclude additional  
6 liability, however. Further, GST is reading ambiguity into the  
7 U S WEST proposed provision where none exists. U S WEST intends  
8 for its proposed language to be applied to both parties in a  
9 reciprocal fashion and believes the plain language of U S WEST's  
10 proposal accomplishes that result. For the reasons described in  
11 the preceding section, such a limitation on liability -  
12 applicable to both parties - is in the public interest and should  
13 be adopted.

14 Issue No. 8

15 Part (A) 3.8.6 deals with year 2000 systems compliance.  
16 U S WEST proposes language which provides narrow protection for  
17 both parties from liability with respect to claims arising from  
18 unforeseen year 2000 systems compliance issues. On this issue,  
19 U S WEST's proposal more closely reflects evolving public policy  
20 which clearly emphasizes cooperation and the expenditure of  
21 resources to achieve technical compliance in favor of costly and  
22 unproductive finger-pointing and litigation. The appropriate  
23 response to the unknowns of year 2000 system issues is to  
24 encourage parties to focus resources on cooperation and  
25 compliance, not litigation or preparation for litigation, and  
26 U S WEST's language serves that purpose. It should be adopted.

1           Issue No. 9

2           Part (A) 3.16 sets forth provisions to govern the  
3 treatment and handling of proprietary information exchanged by  
4 the parties. U S WEST believes that GST's proposed addition to  
5 the agreed upon language is unnecessary under applicable federal  
6 regulations and creates an unworkable requirement that  
7 unnecessarily burdens the parties in their handling of  
8 confidential information. GST's proposed language sets up both  
9 parties for inadvertent breach of the Agreement involving  
10 disputes about which employees, as a matter of fact, had a need to  
11 access the information. As can be seen from the remainder of the  
12 agreed upon language in Part (A) 3.16, there is ample protection  
13 for both parties against improper disclosure or use of  
14 confidential information, including as related to the unfounded  
15 fear that such information would be used for marketing or network  
16 development purposes. Telephone companies have a long history of  
17 adequately safeguarding confidential information and the agreed  
18 upon language, without modification, is sufficient to protect the  
19 parties. GST's proposed addition should be rejected.

20           Issue No. 10

21           GST's proposed addition to Part (A) 3.34 is nothing  
22 more than an attempt to impose an unnecessary penalty provision  
23 above and beyond the other remedies otherwise available under the  
24 Agreement. U S WEST agrees that the intentional failure of a  
25 carrier to switch a customer to a competing carrier upon request  
26 is a serious matter contrary to public policy. However, unlike

1 slamming which has some element of intent or at least requires an  
2 affirmative action, the requirement to complete a switch in a  
3 "timely manner" is a more subjective proposition. The process  
4 simply does not lend itself to measurement and the imposition of  
5 penalties for "delay." In the unlikely event either party  
6 intentionally refuses to switch customers as requested, there are  
7 adequate remedies under the Agreement for such obviously unlawful  
8 and anticompetitive behavior. The penalty proposal by GST is  
9 unwarranted and should be rejected.

10 Issue No.11

11 Part (A) 3.36 addresses pick-and-choose rights under 47  
12 U.S.C. § 2.52(i). Even under the most expansive interpretation  
13 of pick-and-choose rights, it cannot be seriously suggested that  
14 pick-and-choose rights are unlimited. For obvious reasons,  
15 including fundamental fairness, there must be some boundaries to  
16 define the pick-and-choose process. In a manner consistent with  
17 federal law including the plain language of the Act, U S WEST has  
18 developed a pick-and-choose policy which satisfies its  
19 requirement to adopt such a policy, while preserving U S WEST's  
20 ability to negotiate, enter, and administer meaningful  
21 interconnection agreements on an individual company-by-company  
22 basis. U S WEST's proposal strikes an appropriate balance  
23 between the competing interests raised by the pick-and-choose  
24 rights of competing carriers and the pick-and-choose obligations  
25 of incumbent carriers and should be adopted.

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1           **B.    Part B of the Agreement**

2                   Issue No. 12

3                   Part (B) 5.4 relates to disconnection for nonpayment by  
4 U S WEST of resold service it provides to GST. U S WEST must  
5 retain the ability to police payment by resellers. U S WEST's  
6 proposal allows ample time, 60 calendar days, after the due date  
7 for any reseller, including GST to pay its bill or, where  
8 appropriate, to investigate administrative errors and, if  
9 necessary, to dispute payment. The detailed dispute resolution  
10 process, agreed to by the parties in Part (A) 3.18, adequately  
11 establishes a mechanism by which disputes, including billing  
12 disputes, should be resolved. If GST does not avail itself of  
13 the dispute resolution process prior to the 60-day deadline set  
14 forth in U S WEST's proposal, U S WEST must have the ability, in  
15 order to protect its financial interests, to disconnect service.  
16 U S WEST's proposal also has the advantage of uniformity. That  
17 is, all disputes under the Agreement, including billing disputes,  
18 are handled in an identical fashion known to the parties at the  
19 outset. The Arizona authority cited by GST regarding abandonment  
20 or discontinuance of service is inapposite. The issue at hand is  
21 nonpayment for service provided to a reseller by U S WEST. GST  
22 has committed to paying U S WEST all monies lawfully owed and  
23 U S WEST has no reason to doubt that commitment. If a dispute  
24 arises, however, the parties should address the issue according  
25 to the terms of the dispute resolution provision and, ultimately,  
26 U S WEST must have the ability to disconnect for nonpayment.

1 U S WEST's language should be adopted.

2 **C. Part C of the Agreement**

3 Issue Nos. 13 & 26

4 U S WEST's proposed Parts (C) 2.1.1 and (C) 2.3.6 would  
5 require each party to set its rates for terminating intraLATA  
6 traffic of the other based upon U S WEST's tariffed intraLATA  
7 switched access rates. U S WEST's proposal is appropriate  
8 because it better captures the intent of the Act and the intent  
9 of the FCC in stating generally the preference for symmetrical  
10 access rates. Symmetrical rates are preferable in administering  
11 the Agreement and in providing the parties a known rate structure  
12 from the outset. Moreover, no carrier's rates receive more  
13 scrutiny and challenge at the time of filing than those of an  
14 RBOC such as U S WEST. Undoubtedly, U S WEST's approved access  
15 rates will have been reviewed, analyzed and challenged to ensure  
16 that they are just and reasonable and in compliance with the law.  
17 Thus, adopting U S WEST's rates for symmetrical application is a  
18 fair and reasonable approach which protects both parties from the  
19 imposition of access rates that are unfairly high or otherwise  
20 inappropriate.

21 Issue No. 14

22 GST's proposed Part (C) 2.2.7.3 addresses the  
23 forecasting process for Local Interconnection Service ("LIS")  
24 trunks. GST's proposal ignores the reality of ordering and  
25 installation intervals associated with LIS trunks and is  
26 unworkable. In the end, it results in nothing more than a moving

1 target which is of little value to U S WEST. U S WEST's proposal  
2 allows the parties to cooperate on forecasting in a manner which  
3 at least provides some measure of certainty to facilitate joint  
4 planning. Given the resource-intensive construction projects  
5 which result from the forecasting process, forecasts which may  
6 change on a quarterly basis quickly become meaningless. GST's  
7 proposal is, therefore, all but impossible to implement and  
8 completely ignores the fact that U S WEST (unlike GST) must deal  
9 with dozens of carriers in the forecasting process. Absent  
10 uniformity in that process there will be chaos. And, even though  
11 GST's proposal would undoubtedly be exceedingly difficult to  
12 implement, there is no support for the argument that the GST  
13 proposal would prevent a shortage of LIS trunks or associated  
14 problems. GST's forecasting proposal should be rejected in favor  
15 of U S WEST's proposal.

16 Issue No. 15

17 Part (C) 2.2.7.5 addresses forecast disputes. When the  
18 parties cannot resolve a dispute over a particular forecast,  
19 U S WEST proposes to use the lower forecast (GST proposes to the  
20 use the higher forecast) while the parties pursue dispute  
21 resolution. It must be kept in mind that U S WEST is dealing  
22 with multiple carriers, not just GST. U S WEST creates, in  
23 effect, a blended forecast of all the carriers to make  
24 construction decisions. Consistent with this reality, U S WEST  
25 must use the forecast of all carriers in developing the final  
26 blended forecast. U S WEST's proposal is more reasonable because

1 it better reflects the reality of the forecasting process and  
2 because it prevents wasteful over building of unnecessary  
3 capacity.

4 Issue Nos. 16 & 18

5 GST's proposed Part (C) 2.2.7.13 suggests inclusion in  
6 the Agreement of a meaningless platitude (the parties expect  
7 there to be sufficient trunking capacity available) and is  
8 superfluous to the detailed forecasting information already  
9 required by the Agreement. This language is proposed only to  
10 establish a foundation for GST's proposed Part (C) 2.2.7.16 which  
11 calls for a capacity shortfall charge (i.e., a penalty) to be  
12 paid to GST by U S WEST if U S WEST does not meet the forecasted  
13 demand for LIS trunks. U S WEST opposes mandatory penalties  
14 associated with LIS trunk forecasting which is, admittedly, an  
15 inexact science. GST's proposal is inherently unsound because it  
16 places all of the responsibility and all of the risk of network  
17 construction on U S WEST. In practice, U S WEST, not GST, builds  
18 the network, GST only places the orders. GST can then stand by  
19 (including under its proposal (Issue No. 14 above) amending its  
20 forecast every quarter) while U S WEST builds GST's network. GST  
21 can then, under its proposal, collect penalties if U S WEST fails  
22 to meet GST's standards. GST is not proposing a mutually fair  
23 approach to constructing a network, but a one-sided process where  
24 it enjoys the benefits and U S WEST suffers the risks. At some  
25 point all carriers, including GST, are going to have to accept  
26 responsibility for delivering their traffic to U S WEST in

1 addition to simply placing orders for new facilities from  
2 U S WEST. In the meantime, GST's penalty proposal should be  
3 rejected.

4 Issue No. 17

5 U S WEST's proposed Part (C) 2.2.7.14 which GST seeks  
6 to delete reserves for U S WEST substantial authority and  
7 autonomy to manage the LIS trunk groups serving both parties.  
8 Such authority is necessary. U S WEST must maintain tight  
9 control over its facilities to ensure efficient construction and  
10 maintenance of LIS trunk facilities. Put simply, so long as  
11 U S WEST has the responsibility to construct and maintain the  
12 network and GST assumes no such responsibility, it must have  
13 authority to adequately manage it. Again, it must be borne in  
14 mind that U S WEST is managing a blended network comprised of  
15 dozens of carriers, not just GST. The standards set forth in  
16 U S WEST's language are necessary to properly manage that  
17 function and U S WEST's language should be approved.

18 Issue No. 19

19 Part (C) 2.2.8.5 deals with terminating local and  
20 extended area service ("EAS") traffic. GST correctly states that  
21 the parties agree on the majority of language for this section.  
22 However, GST's proposal that it be allowed to rely on U S WEST  
23 access tandem for the termination of local/EAS traffic in the  
24 event of a trunk shortage should be rejected because it gives GST  
25 a distinct advantage given the industry standards regarding  
26 blocking for toll trunk groups. Further, the logic behind GST's

1 proposal is flawed. The proposal (alternative routing) does not  
2 solve the problem identified (blocking). GST's proposal also has  
3 the disadvantage of potentially making blocking problems worse,  
4 not better, by tying up access tandem facilities and switching  
5 capacity. These facilities are not engineered to perform local  
6 functions. GST's proposal should be rejected.

7 Issue No. 20

8 Part (C) 2.2.9.2.2 deals with LIS acceptance testing.  
9 U S WEST proposes to set the testing fees based upon its  
10 applicable rates. U S WEST's proposal allows U S WEST to  
11 appropriately recover costs pursuant to a Commission established-  
12 rate and in a nondiscriminatory fashion. The Agreement already  
13 provides for basic LIS acceptance testing at no charge (See Part  
14 C 2.2.9.2.1). GST is requesting additional service for which it  
15 should be required to pay. Deleting U S WEST's language as  
16 proposed by GST would be unfair and unduly burdensome to U S WEST  
17 because U S WEST would be denied reasonable cost recovery. To  
18 address the specific concern stated by GST, U S WEST will  
19 identify the tariff provision which contains the applicable  
20 rate.<sup>1</sup> U S WEST rejects the proposition that additional LIS  
21 testing services are telecommunication services subject to TELRIC  
22 pricing. GST's proposed deletion from this section should be  
23 rejected.

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26 <sup>1</sup> Arizona State Access Service Tariff, Section 12.3.3, Testing Services.

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Issue No. 21

GST proposes to add language to Part (C) 2.3.1.1.1 which would make certain payment obligations thereunder reciprocal. At a conceptual level, U S WEST may not dispute the general proposition underlying GST's proposal. However, to be fair, the concept should be fully developed in a reciprocal manner. GST's proposal is akin to the car pool member who, once his partner has purchased the car, and paid for insurance, gas and maintenance offers to split the cost of the parking meter. The offer is fair as far as it goes, it just doesn't go far enough. For now, GST's limited cost sharing proposal should be rejected.

Issue No. 22

Part (C) 2.3.1.2 deals with the cross-connect charges (or the expanded interconnection channel termination ("EICT") charges) that GST must pay when collocating in U S WEST's central offices. GST's proposal to add language stating that "when collocation is purchased, one-half of the LIS EICT recurring and nonrecurring rate elements . . . will apply" should be rejected for the reasons set forth in the preceding paragraph (Issue No. 21). Until adequate and comprehensive cost sharing mechanisms can be developed, GST's proposals aimed at limited cost sharing unfairly benefits GST at U S WEST's expense and should be rejected.

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1                   Issue No. 23

2                   GST's proposed Part (C) 2.3.4.1.3 which would require  
3 U S WEST to treat the GST switch as a tandem for purposes of  
4 reciprocal compensation should be rejected and U S WEST's  
5 language should be adopted. It has generally been held that end-  
6 office switches do not receive tandem treatment for purposes of  
7 compensation because the critical inquiry is the functionality of  
8 the switch not just the geography it covers. Put another way, it  
9 is perhaps appropriate to consider the geographical coverage of a  
10 switch in determining whether it is a tandem so long as that  
11 consideration is part of a larger consideration of the manner in  
12 which that switch (i.e., its functionality) covers that  
13 territory. This Commission ought not accept the fiction that  
14 GST's end-office switches should receive tandem treatment thereby  
15 permitting GST to recover costs for a service (tandem switching)  
16 it does not truly perform.

17                   Issue No. 24

18                   U S WEST's proposed Part (C) 2.3.4.1.4 makes clear that  
19 the reciprocal compensation provisions of the Agreement do not  
20 apply, as a matter of law, to Enhanced Service Provider ("ESP")  
21 traffic. U S WEST's language should be approved. It should be  
22 beyond dispute that the Agreement covers interconnection related  
23 to, and the exchange of, local traffic. The FCC has made it  
24 clear that ESP traffic is interstate in nature. Requiring the  
25 payment of reciprocal compensation on ESP traffic is illogical  
26 and counter to public policy because, in the end, such a

1 requirement results in a tremendous economic hardship to U S WEST  
2 and an unearned economic windfall for GST. Finally, intercarrier  
3 compensation is not an appropriate subject for this arbitration  
4 since § 251(b) (5) of the Act does not apply to such ESP traffic.

5 Issue No. 25

6 Part (C) 2.3.5.2 sets forth the process for expediting  
7 LIS trunk orders. U S WEST's proposed language permits U S WEST  
8 to handle expedited orders on a fair and nondiscriminatory basis.  
9 U S WEST must be able to control the LIS trunk forecasting and  
10 construction process with respect to, not only GST, but to the  
11 many other carriers making such requests. GST's proposal is  
12 unworkable and could lead to unmanageable number of expedited  
13 requests at best and discrimination in favor of GST at worst.  
14 Finally, GST's proposal suffers from an irreconcilable failure of  
15 logic. "Expedites" have long been used when a customer needs to  
16 have available facilities installed quickly and is willing to pay  
17 a premium for the service. The expedite process has nothing to  
18 do with forecasting. Simply, if facilities are not in place to  
19 begin with the expedite process will do GST no good. For these  
20 reasons, GST's language should be rejected and U S WEST's  
21 language approved.

22 Issue No. 27

23 Part (C) 2.3.7 deals with the terms for handling local  
24 transit traffic. GST's proposed additional language should be  
25 rejected. First, the entire issue of the manner in which  
26 transiting traffic is handled is only now being addressed and is

1 far from being resolved. Such resolution may have bearing on  
2 GST, for example, possibly through pick-and-choose rights.<sup>2</sup> In  
3 the meantime, GST cannot avoid its obligation to pay for  
4 transiting traffic and that is the issue now before the  
5 Commission in this arbitration. Second, GST's request for parity  
6 with wireless carriers is inappropriate. Wireless and wireline  
7 carriers operate under an entirely different regulatory regime.  
8 Treatment of wireless carriers regarding this issue has no  
9 bearing on GST. For these reasons, U S WEST's position is the  
10 more reasoned and should be adopted without the modification  
11 proposed by GST.

12 **D. Part D of the Agreement**

13 Issue No. 28

14 Part (D) 2.1.9 sets forth a process for GST to request  
15 a quote from U S WEST for the costs to reclaim central office  
16 space and/or equipment in order to make room for collocation.  
17 While GST opposes the interval (60 days) offered by U S WEST to  
18 provide the quote, it provides no factual basis for its  
19 suggestion that the interval be halved. U S WEST must deal with  
20 collocation requests from dozens of competing carriers, and its  
21 proposed interval reflects the ever increasing volume of  
22 collocation requests it is receiving and its experience in  
23 dealing with such requests. U S WEST's proposal is based on  
24 experience. In particular, the amount and nature of research

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26 <sup>2</sup> It is worth noting that this is an example where the definition of "Co-provider" has meaning (Issue No. 3) and demonstrates the correctness of U S WEST's position on that issue.

1 required for this process (e.g., with respect to identifying the  
2 availability of and performing the grooming of circuits) does in  
3 fact take up to 60 days. GST's proposal is unsupported and  
4 should be rejected.

5 Issue Nos. 29-30

6 Parts (D) 2.1.15 and (D) 2.1.16 address instances in  
7 which U S WEST will construct entrance facilities to GST's  
8 collocation cage. GST proposes adding a burdensome notice  
9 requirement in each of these sections. Without explanation, GST  
10 labels the impact of its proposal "de minimis." Most of the  
11 facilities placed in a central office will never be used for  
12 collocation and therefore information and notice regarding these  
13 facilities is of no use to GST. U S WEST will take into account  
14 GST's (and other CLECs) requirements prior to modifying entrance  
15 facilities based upon forecasts. GST's added notice proposal is  
16 unnecessary, burdensome and, in addition, discriminatory in favor  
17 of GST. It should be rejected.

18 Issue No. 31

19 Part (D) 2.3.1 addresses issues related to caged  
20 physical collocation. GST seeks to add language to this section  
21 requiring U S WEST to provide connections to other Co-providers  
22 at rates set forth in the Agreement. From U S WEST's  
23 perspective, the issue raised by GST in its proposal is a matter  
24 involving GST and other CLECs, not U S WEST. U S WEST does not  
25 read federal law as requiring U S WEST to provide connections  
26 between CLECs in the manner suggested by GST. This matter should

1 be resolved between GST and the appropriate third-party CLEC. As  
2 such, GST's language should be rejected.

3 Issue No. 31(a)

4 Part (D) 2.4.1 addresses cageless physical collocation.  
5 For the reasons set forth in the preceding paragraph (Issue No.  
6 31), the language GST proposes to add to the agreed upon language  
7 ". . . or, pursuant to the rates set forth in (H) 4.1.1, requests  
8 USW to provide connections to other Co-providers collocated  
9 within the same USW Wire Center . . ." should be rejected.

10 Issue No. 32

11 Part (D) 2.5.8, proposed by U S WEST to permit  
12 collection of applicable construction costs related to cross-  
13 connects, should be included in the Agreement because U S WEST is  
14 entitled to cost recovery from GST where appropriate. It cannot  
15 be seriously argued that U S WEST is required to incur  
16 unrecoverable costs on behalf of customers or other carriers.  
17 Legitimate cost recovery is neither discrimination nor double  
18 recovery. These are merely labels, applied without support, to  
19 undermine U S WEST's insistence on legitimate cost recovery to  
20 which it is entitled. U S WEST's language should be adopted.

21 Issue No. 32(a)

22 Part (D) 3.1.3 defines a "Quote Preparation Fee" and  
23 Part (H) 3.1.1 sets forth the fee. Contrary to GST's unsupported  
24 position, there is no valid cost relationship between the subject  
25 matter of the quote preparation and its cost. Put in simple  
26 terms, a quote preparation is a quote preparation regardless of

1 the subject matter of the quote. The cost associated with such  
2 quotes are largely labor related and, as such, the distinction  
3 proposed by GST is invalid. GST's proposal should be rejected  
4 and U S WEST's language approved.

5 Issue No. 33

6 In Part (D) 4.3.6.2 GST proposes requiring U S WEST to  
7 provide GST with telephone numbers of certain U S WEST personnel.  
8 This proposal should be rejected for two reasons. First, no  
9 party should be compelled to disclose telephone numbers of its  
10 employees in the manner suggested by GST. Second, GST's  
11 suggestion that it be allowed to contact U S WEST personnel  
12 directly is contrary to the U S WEST's established and practice  
13 of handling all interconnection matters through the account team  
14 and would lead to lesser, not greater, efficiency. In other  
15 words, even if U S WEST supplied GST with an employee handbook  
16 listing every telephone number of every employee in the company,  
17 any individual contacted by GST about an issue arising under the  
18 Agreement would (after ascertaining the nature of the call)  
19 advise GST to contact the account team. U S WEST is simply  
20 suggesting that GST begin at that point. For these reasons,  
21 GST's proposal should be rejected.

22 **E. Part E of the Agreement**

23 Issue No. 34

24 Part (E) 1.1 sets forth the manner in which GST may  
25 access U S WEST's unbundled network elements. U S WEST's  
26 proposal that GST use an Interconnection Distribution Frame

1 ("ICDF") should be adopted. Fundamentally, this is an  
2 engineering issue and U S WEST has developed a nondiscriminatory,  
3 reasonable and technologically efficient manner for facilitating  
4 carrier access to unbundled elements.<sup>3</sup> U S WEST is not precluded  
5 under federal law from proposing a technical solution which  
6 permits orderly interconnection and carrier access to unbundled  
7 network elements in its central offices and U S WEST's language,  
8 not GST's proposed language, should be adopted.

9 Issue No. 35

10 Part (E) 1.4 addresses the issue of installation  
11 intervals for unbundled network elements. GST's proposal, which  
12 equates unbundled network elements to retail services, should be  
13 rejected as fundamentally illogical. Unbundled network elements  
14 are not the equivalent of retail services and there is no  
15 requirement (under federal law or otherwise) that they be treated  
16 similarly, much less identically. Even though U S WEST attempts  
17 to achieve similar installation intervals for similar elements  
18 and retail services this is not always technically possible.  
19 While GST raises the issue of discrimination, it does not offer  
20 any suggestion as to how its improper proposal to equate  
21 unbundled network elements with retail services would address any  
22 issues of discrimination, real or imagined. GST's proposal is  
23 improper as a matter of logic and law and should be rejected.

24

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25 <sup>3</sup> GST's proposal that the ICDF be utilized only when U S WEST utilizes the ICDF for provision of its  
26 retail services represent a fundamental flaw in logic (i.e., confusing the concepts of retail services and  
unbundled network elements) this issue is discussed in more detail in subsequent sections.

1                   Issue No. 36

2                   Part (E) 1.8 deals with the installation of new  
3 unbundled network elements. GST's proposal suffers from a  
4 misunderstanding of the testing process. With respect to the  
5 installation of unbundled network elements, continuity testing,  
6 not transmission measurements, is appropriate. Transmission  
7 measurements are appropriate for finished retail services. In  
8 other words, it would be appropriate for U S WEST to offer  
9 continuity testing in conjunction with the installation of new  
10 unbundled network elements. However, it should be noted that  
11 U S WEST does not perform these tests for every new service  
12 installation. Transmission measurements are tests that would be  
13 performed by GST in the provision of services to its retail  
14 customers. Further, regardless of the nature of testing relative  
15 to the service, GST's proposal ignores the additional costs the  
16 proposal would cause. Therefore, GST's proposal to add language  
17 requiring "transmissions measurements" should be rejected.  
18 Finally, the addition of the word "facility" into the Agreement  
19 in addition to the word "circuit" (in relation to testing  
20 procedures) as proposed by GST is unnecessary and should also be  
21 rejected.

22                   Issue No. 37

23                   Part (E) 2.1.3 deals with Extended Unbundled Dedicated  
24 Interoffice Transport. The U S WEST language opposed by GST,  
25 which merely states that the services offered in this section may  
26 not be used for the bypass of toll or access charges, must

1 remain. Surely, neither the Act nor the FCC ever intended that  
2 interoffice facilities would permissibly be used by carriers to  
3 bypass appropriate toll or access charges. Contrary to GST's  
4 assertion, U S WEST may impose the non-bypass restriction on the  
5 use of interoffice facilities and, as a matter of law and public  
6 policy, should be encouraged to do so. U S WEST's proposed  
7 restriction against improper toll bypass should be upheld.

8 Issue Nos. 38 & 39

9 Part (E) 4.2.4 (including subparts) sets forth GST's  
10 loop provisioning options. GST's position in this section can  
11 best be described as a request for a great deal of additional and  
12 expensive service without offering a mechanism to pay for it. In  
13 short, coordinated cuts are expensive and, to the extent GST  
14 desires same, GST should be expected to pay for the service.  
15 U S WEST' s proposal should be adopted and GST's proposal should  
16 be rejected.

17 Issue No. 40

18 Part (E) 4.4.3 deals with the installation intervals  
19 for analog and digital loops. Once again, GST is confusing the  
20 very different concepts of unbundled network elements and  
21 finished retail services and is improperly requesting identical  
22 treatment of these unrelated offerings. Even though U S WEST  
23 attempts to achieve similar installation intervals for similar  
24 elements and services, this is not always technically possible.  
25 U S WEST's proposed language is based on experience and is  
26 reasonable and nondiscriminatory. For these reasons and those

1 described in preceding sections (e.g., Issue No. 35), GST's  
2 proposal should be rejected.

3 Issue No. 41

4 Part (E) 11 addresses construction charges U S WEST is  
5 entitled to assess when GST causes U S WEST to incur construction  
6 costs relative to the provision of unbundled network elements.  
7 By now it should be beyond dispute that U S WEST is not required  
8 to provide facilities for unbundled elements if the facilities do  
9 not already exist. Rather, U S WEST is still free to make its  
10 own network construction decisions and, pursuant to state and  
11 federal law is able to recover construction charges as a result.  
12 To the extent GST is suggesting that U S WEST does not recover  
13 costs from retail customers, this is a mistaken premise. When  
14 GST makes a request (for example for new network elements) and  
15 U S WEST is willing to construct facilities for GST in a manner  
16 which causes U S WEST to incur construction costs, U S WEST is  
17 clearly entitled to compensation. Finally, GST again raises the  
18 spectre of discrimination (without any factual support) in effort  
19 to bolster its argument that U S WEST must deal with its retail  
20 customers and competing carriers in identical fashion. As argued  
21 above, this is not the case and nothing in federal or state law  
22 compels the result urged by GST. Therefore, GST's proposal  
23 should be rejected and the language confirming U S WEST's right  
24 to cost recovery should remain.

25 . . .

26 . . .

1           **F.    Part F of the Agreement**

2                   Issue No. 42

3                   Part (F) 2.3 relates to instances in which U S WEST  
4 will act as the default carrier for purposes of local number  
5 portability when it receives calls to telephone numbers that have  
6 been ported to another carrier.       Through its proposed  
7 modification to this section, GST is attempting to impose a  
8 contractual obligation involving U S WEST and third-parties.  
9 U S WEST is willing to contract as the default carrier under  
10 these circumstances for GST.   U S WEST cannot be compelled, in  
11 the context of this arbitration, to serve as the default carrier  
12 for all other carriers.   GST's proposal is not only unnecessary  
13 as a matter of fact, it is over-reaching as a matter of law.   It  
14 should be rejected.

15                   Issue No. 43

16                   Part (F) 2.19 deals with local number portability  
17 cutovers.   GST has proposed language which would require each  
18 party to update its respective network element translation within  
19 15 minutes.   GST has taken an aspirational goal discussed in  
20 various industry forums and has improperly converted that goal  
21 into a strict requirement with legal consequences if not met.  
22 The 15-minute goal is, as of yet, unrealistic to be implemented  
23 as a mandatory requirement and GST's proposal should be rejected.

24                   Issue No. 44

25                   Part (F) 9.2.6 deals with the abandonment or sale of  
26 U S WEST poles and conduit.   GST proposes adding language which

1 restricts U S WEST's ability to deal with third-parties in  
2 selling poles and conduit. U S WEST must be free to manage its  
3 poles and conduits, including selling them, without unreasonable  
4 burdens or restrictions. Contrary to GST's assertions, pole  
5 attachment agreements are not like "standard lease agreements"  
6 and whether other companies in other states have agreed to limit  
7 or waive their rights with respect to the management of their  
8 facilities is irrelevant to the issue of whether U S WEST should  
9 be required to do so. It should not. GST's proposal represents  
10 over reaching and should be rejected.

11 Issue No. 45

12 Part (F) 9.2.7 concerns the proper apportionment of  
13 make-ready costs to GST with respect to pole and innerduct space.  
14 The only issue remaining in this section is GST's request that  
15 its costs be limited to a fee which does not exceed the cost of  
16 installing "only the innerduct(s) necessary" to accommodate GST's  
17 facilities. This proposal ignores reality. If the make-ready  
18 costs cannot be apportioned among multiple parties (as U S WEST  
19 has agreed to do where possible) GST, not U S WEST, must bear the  
20 full cost. In short, if GST is causing costs in the installation  
21 of innerduct and there are no other parties to share those costs,  
22 GST must make U S WEST whole. Therefore, GST's proposed language  
23 should be modified accordingly or rejected.

24 Issue No. 46

25 **Issue Closed.**

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Issue No. 47

Part (F) 9.2.10 addresses access to U S WEST's central office manholes. U S WEST must be allowed to control and manage its outside plant facilities. The right to interconnect does not change this. Even though U S WEST tries to avoid splices in man-hole zero, such splices are sometimes necessary. GST's proposal is an improper attempt to preclude U S WEST from splicing cables in its own manholes in such situations. Because the limitation proposed by U S WEST is necessary, reasonable and applicable to all CLECs, it does not run afoul of federal law. U S WEST's language should be approved.

Issue No. 48

Part (F) 9.2.11 reasonably requires both parties to make its maintenance policies and procedures available to each other. U S WEST's proposed language in this regard is reasonable and should be approved. On the other hand, GST's proposed addition to this section that would excuse GST from the disclosure obligation and, in addition, would require U S WEST to provide 60 days prior written notice of changes in the federal law. This is unreasonable. GST is equally able to comply with the disclosure requirements and also to monitor federal law. Regarding this last issue, it is unreasonable to require U S WEST to perform this task for GST. GST's proposed language in this regard should be rejected.

. . .  
. . .

1                    Issue Nos. 49, 50, 51, 52 & 53

2                    The parties dispute the appropriate language that  
3 should apply to the various sections in the Agreement which  
4 require GST to reimburse various costs incurred by U S WEST.  
5 These include Parts (F) 9.2.12, 9.2.14., 9.2.16, 9.2.20, 9.3.2,  
6 and 9.3.3. GST asserts that the word "reasonable" should be  
7 inserted before the word "costs" in each of those sections.  
8 U S WEST, on the other hand, believes that the duty to act in  
9 good faith and in a reasonable manner is implied in every  
10 contract term including in this Agreement. It would be  
11 inappropriate and unnecessary to modify every obligation either  
12 party may have under the Agreement with the word "reasonable" or  
13 some similar modifier. Such conduct is presumed under the law.  
14 In the event GST believes U S WEST is acting unreasonably, in the  
15 performance of any obligation under the Agreement, it may seek  
16 appropriate relief pursuant to the agreed upon dispute resolution  
17 provisions. GST's proposal to further modify those sections  
18 should be rejected.

19                    With respect to Part (F) 9.2.13, U S WEST believes that  
20 existing FCC rules and policies applicable to cost sharing  
21 arrangements and requirements should apply and that the  
22 Commission should not adopt language in this Agreement which may  
23 be contrary to such existing rules and policies. U S WEST's  
24 language should be adopted.

25 . . .

26 . . .

1                   Issue No. 54

2                   GST's proposal that the amount of the penalty for  
3 unauthorized pole attachments in Part (F) 9.2.21 be reduced  
4 should be rejected because the \$200 penalty (per unauthorized  
5 attachment per pole) proposed by U S WEST is reasonable and, in  
6 addition, serves as an economic deterrent to unauthorized  
7 attachments.

8                   Issue Nos. 55 & 56

9                   GST's proposal to revise Part (F) 9.3.2 and (F) 9.3.3  
10 should be rejected because GST's proposal could be too limiting  
11 of U S WEST's rights to reasonable cost recovery in performing  
12 the field verification and make-ready work. As argued above  
13 (Issue Nos. 49-53), U S WEST believes that established federal  
14 law which governs cost recovery with respect to pole attachments  
15 should apply to this Agreement. GST's language, which could be  
16 read to vary from that approach, should be rejected.

17                   Issue No. 57

18                   In Part (F) 9.4.3, U S WEST proposes to fix the time  
19 interval for responding to and performing the work associated  
20 with a formal request for attachment. The intervals suggested by  
21 U S WEST are reasonable and are calculated based upon actual  
22 experience in performing the work which includes time-intensive  
23 physical examination of every pole, or for interduct, every  
24 manhole. U S WEST does not read federal law as requiring the  
25 result suggested by GST which, depending upon the size of a given  
26 request, could be unworkable and unreasonable. U S WEST's

1 proposal should be adopted.

2 Issue No. 58

3 Part (F) 9.4.5 addresses the process by which U S WEST  
4 completes the pole attachment work described in this section.  
5 GST seeks to impose a defined interval (of 30 business days for  
6 up to five miles of innerduct or five hundred poles) and for  
7 quantities greater than that within a "reasonable time". Once  
8 again, GST's proposal is not based on factual support or actual  
9 experience and is, therefore, unreasonable. At the very least,  
10 if the Commission is inclined to impose intervals it should do so  
11 based on a factual record. Lacking such a record in the  
12 meantime, GST's proposal should be rejected.

13 **G. Part G of the Agreement**

14 Issue No. 59

15 Part (G) 2.10 addresses cost recovery for operations  
16 support systems. GST advocates removing language which permits  
17 U S WEST to achieve cost recovery for any costs not addressed in  
18 a specific cost docket hearing. U S WEST's language should be  
19 approved. U S WEST is entitled to recover its reasonably  
20 incurred costs whether such costs are addressed in a cost docket  
21 or not. U S WEST has learned from experience that, inevitably,  
22 certain legitimate and reasonable costs which must be incurred by  
23 U S WEST will not be addressed in a cost docket proceeding.  
24 U S WEST should not be required to waive recovery of these costs.  
25 Rather, U S WEST has put forth a reasonable proposal which  
26 permits negotiation and, if necessary, dispute resolution to

1 resolve issues related to recovery of these costs. Its language  
2 should be adopted.

3 Issue No. 60

4 Part (G) 8.9.1 provides that U S WEST will notify GST  
5 of network outages and will act to restore network service in the  
6 same nondiscriminatory manner in which it provides this  
7 information to call CLECs consistent with industry standards.  
8 This requirement is consistent with federal law and it goes far  
9 enough. GST's proposed additional notice requirements would be  
10 unduly burdensome to implement and would be discriminatory in  
11 favor of GST. It should be rejected.

12 Issue No. 61

13 GST's proposed Part (G) 8.12.3 would require the parties  
14 to exchange "escalation lists" to facilitate communications.  
15 However, these lists are very expensive to maintain (and easily  
16 to go out of date), tend to slow down rather than speed up the  
17 communication process and are less efficient than the tried and  
18 reliable communication processes already in place.

19 Issue No. 62

20 Part (G) 12 (including subsections) addresses  
21 construction charges appropriately assessed by U S WEST when such  
22 charges result from a request made by a competing carrier,  
23 including GST. Quite simply, and as argued above, where GST  
24 causes costs, it must pay for such costs. Part (G) 12 provides  
25 U S WEST with a guarantee that, insofar as it incurs construction  
26 costs as a result of a GST request, it will recover such costs.

1 U S WEST is entitled to nothing more and nothing less and,  
2 therefore, Part (G) 12 should be adopted.

3 Issue No. 63(A)

4 Part (G) 13.7.7 proposes penalties for U S WEST's  
5 failure to meet service performance indicators. Such penalties  
6 are unworkable, inappropriate and unnecessary. In addition, the  
7 Commission has already ordered that the issue of service  
8 performance indicators and penalties, if any, be addressed in the  
9 pending Service Quality Proceedings. Insofar as GST proposes to  
10 add a sentence that it may seek regulatory or other legal relief,  
11 such language is superfluous. GST already has such rights under  
12 the Agreement.

13 **H. Part H of the Agreement**

14 Issue No. 64

15 Part (H) sets forth U S WEST's proposed rates under  
16 the Agreement. The only issue appears to be with respect to  
17 rates not established by the Commission. GST proposes that these  
18 rates be declared interim subject to true-up. Insofar as the  
19 Commission deems it necessary to modify any of the rates set  
20 forth in Part (H), U S WEST believes that the modification should  
21 be on a going forward basis only and that no true-up mechanism,  
22 which undoubtedly would be difficult to create and implement,  
23 should be adopted. There is no basis under federal law or as a  
24 matter of policy for GST's proposal to declare any rates interim  
25 subject to true-up and it should be rejected.

26 . . .

1 **III. CONDITIONS THAT GST REQUESTS TO BE IMPOSED UPON BY U S WEST.**

2 U S WEST requests that the Commission adopt all of  
3 U S WEST's proposals in the course of arbitration and, in  
4 addition, approve those portions of the Agreement negotiated to  
5 resolution by the Parties.

6 **IV. GST'S PROPOSED SCHEDULE FOR IMPLEMENTATION OF THE TERMS AND  
7 CONDITIONS OF THE AGREEMENT**

8 U S WEST concurs that the Agreement should become  
9 effective upon approval by the Commission pursuant to the Act and  
10 subject to the appellate rights of the parties.

11 **V. GST'S RECOMMENDATION AS TO INFORMATION THAT THE ARBITRATOR  
12 SHOULD REQUEST FROM U S WEST**

13 With respect to GST's request for documentation,  
14 U S WEST states that GST should pursue all document requests  
15 through appropriate discovery channels.

16 **VI. PROPOSED INTERCONNECTION AGREEMENT**

17 GST has attached to its Petition a copy of the most  
18 recent interconnection agreement between the parties in a format  
19 which identifies closed and open issues.

20 **VII. ALL DOCUMENTS RELEVANT TO THE DISPUTE**

21 U S WEST has no documents, at this time, to attach to  
22 this Response while reserving the right to offer documentary  
23 exhibits to the Commission at the time of the arbitration.

24 **VIII. CONCLUSION**

25 For the foregoing reasons, U S WEST respectfully  
26 requests that Commission grant the relief requested by U S WEST  
in this Response.

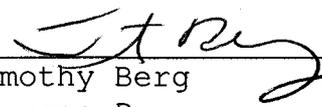
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Dated: September 13, 1999.

U S WEST, INC.  
Law Department  
Thomas Dethlefs

and

FENNEMORE CRAIG, P.C.

By   
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U S WEST Communications, Inc.

ORIGINAL and TEN COPIES  
filed September 13<sup>th</sup>, 1999, with:

Docket Control  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

COPY of the foregoing  
hand-delivered this 13<sup>th</sup> day  
of September, 1999, to:

Jerry Rudibaugh, Chief Hearing Officer  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007



1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 13th day of September,  
3 1999, a true and correct copy of the foregoing U S WEST  
4 COMMUNICATIONS, INC.'S RESPONSE TO PETITION FOR ARBITRATION OF  
5 GST NET (AZ), INC. UNDER 47 U.S.C. § 252(B) was served via  
6 facsimile transmission and overnight mail (Federal Express), to:

7  
8 Eric J. Branfman  
9 Antony Richard Petrilla  
10 Swidler Berlin Shereff Friedman, LLP  
11 3000 K Street, NW, Suite 300  
12 Washington, DC 20007-5116

13 and overnight mail (via Federal Express) to:

14 Michael R. Moore  
15 Interconnection Counsel  
16 GST Telecom, Inc.  
17 4001 Main Street  
18 Vancouver, WA 98663

19 

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