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BEFORE THE ARIZONA CORPORATION COMMISSION

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CARL J. KUNASEK
Chairman
JAMES IRVIN
Commissioner
RENZ D. JENNINGS
Commissioner

DOCKETED BY

IN THE MATTER OF THE PETITION OF)
MCIMETRO ACCESS TRANSMISSION)
SERVICES, INC. FOR ARBITRATION OF)
INTERCONNECTION RATES, TERMS, AND)
CONDITIONS PURSUANT TO SECTION)
§ 252 (b) OF 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 US WEST COMMUNICATIONS, INC.)
PURSUANT TO SECTION. § 252 (b) OF)
THE TELECOMMUNICATIONS ACT OF 1996.)

DOCKET NO. U-2428-96-417
DOCKET NO. E-1051-96-417

**APPLICATION FOR
REHEARING ON ORDER
APPROVING CONTRACT**

I. INTRODUCTION

Pursuant to A.R.S. ' 40-253 and A.A.C. R14-3-111, U S WEST Communications, Inc. ("USWC") applies for rehearing of Decision No. 60308 (the "Decision") entered by the Arizona Corporation Commission (the "Commission") on July 31, 1997 because the Decision is unlawful and unreasonable for the reasons set forth below.

On December 10, 1996 and December 18, 1996, the Commission issued orders, Decision No. 59915 and 59931, resolving issues arbitrated between USWC and AT&T or MCI, requiring USWC to file a

1 written Interconnection Agreements (the "Contract") with AT&T and
2 MCI. USWC filed applications for rehearing of Decision No. 59915
3 and 59931 which were later denied by operation of law.

4 The Arbitrators, held subsequent proceedings to resolve
5 additional issues among the parties and on July 14, 1997 issued a
6 procedural order requiring the filing of contracts consistent with
7 the resolution of issues in that procedural order.

8 USWC filed the contracts as ordered on July 18, 1997 under
9 reservation of right. In fact, USWC explicitly stated that by
10 filing the contracts, it was not waiving any of its rights to
11 challenge the contracts or the Commission's decisions resolving
12 the issues arbitrated between the parties requiring the filing of
13 the contracts.

14 On July 31, 1997, the Commission entered Decision No. 60308
15 approving the contracts except those provisions of the contract
16 severing rebundling of unbundled elements. USWC now moves for
17 rehearing of Decision 60308 because the decision approves
18 contracts that are unlawful and unreasonable for the reasons set
19 forth below.

20 **II. RECIPROCAL COMPENSATION**

21 The Act requires that, in order for rates to be just and
22 reasonable, reciprocal compensation must "provide for the mutual
23 and reciprocal recovery by each carrier of costs associated with
24 transport and termination." Act ' 252(d)(2)(A)(i). For shared
25 transmission facilities between tandem switches and end offices,
26

1 states may establish usage-sensitive or flat-rate charges to
2 recover those costs.

3 Under the Act, a bill and keep arrangement is appropriate
4 only when rates are symmetrical and traffic is in balance, a
5 situation not likely to occur in Arizona. Nonetheless, the
6 Decision adopts a contract that allows bill and keep for two years
7 from the date an agreement is approved or until traffic is
8 demonstrated to be out of balance on the basis of six months of
9 collected data. The contracts, are therefore contrary to the Act,
10 not supported by substantial evidence, and should be reconsidered.

11 Until MCI and AT&T (jointly, the "Parties") can directly
12 trunk to each end office over its facilities, the Parties exchange
13 of traffic with USWC will necessarily impose additional costs on
14 USWC. The existing USWC network routes traffic directly from end
15 office to end office through the use of direct trunks. Traffic
16 during unusual calling patterns or peak usage periods may overflow
17 to the local tandem switches. The Parties would use trunks to the
18 tandem not as overflow routers, but rather as primary call
19 routers, causing USWC to add capacity to its tandem switches and
20 tandem transport facilities to accommodate the increased traffic.

21 This will result in USWC's cost of terminating the Parties
22 traffic exceeding the Parties cost of terminating USWC's traffic,
23 even if the volume were the same. Further, traffic that has
24 historically been intraoffice in nature (e.g., calls between
25 neighbors served by the same USWC central office) will be
26 converted to interoffice (e.g., calls between a USWC end office

1 and an interconnector's end office), representing an increased
2 traffic load on the USWC interoffice transport network. Under the
3 Act, USWC must be allowed to recover the costs of this transport.
4 Bill and keep does not allow USWC to recover these costs. Even if
5 the minutes of use balance, the cost of each minute will differ
6 and thus the costs will not balance.

7 **A. Bill and Keep**

8 Bill and keep is also inappropriate because it does not
9 permit USWC to recover the cost of terminating the Parties'
10 traffic. Any assumption that USWC's terminating traffic and the
11 Parties' terminating traffic would be in balance or that USWC's
12 cost of terminating calls is the same as the Parties, which are
13 key assumptions under any bill and keep system, is patently
14 unreasonable. Because the Parties can choose to target particular
15 types of customers (such as businesses), and because different
16 customers have different patterns of originating and terminating
17 traffic, traffic is not likely to be in balance between USWC and
18 the Parties. Given the different network architectures, the cost
19 of termination for each of the carriers will not be the same.

20 Further, the Parties are not required to and cannot provide
21 ubiquitous service on their networks. The difference in size of
22 networks and number of customers served by the networks will
23 create an imbalance in both traffic and the cost of termination.
24 Because bill and keep will prevent USWC from recovering its real
25 cost of terminating the Parties' traffic, it will inevitably
26 result in under-recovery by USWC and is, therefore, confiscatory.

1 Other commissions have rejected bill and keep for a number of
2 compelling reasons in addition to its unwarranted assumption that
3 traffic will inevitably balance. First, these commissions have
4 recognized that bill and keep does not reflect the different costs
5 of the respective networks of the local exchange carriers ("LECs")
6 and the new entrants. Second, bill and keep creates the
7 opportunity for new entrants to shift costs to the LECs through
8 selection of meet points. Third, bill and keep assumes that costs
9 will be equal and does not recognize the additional cost incurred
10 by LECs in providing transport. The contracts adoption of bill
11 and keep should be rejected, and USWC's rates for call transit,
12 transport and termination should be adopted instead.

13 At a minimum, the contracts should be amended to provide that
14 bill and keep is subject to a true-up at the end of the interim
15 period during which it is in effect. Otherwise, the interim
16 implementation of bill and keep will result in USWC not recovering
17 its costs of terminating traffic for the period bill and keep is
18 in effect and will result in the illegal confiscation of USWC's
19 property. The FCC First Order interprets the Act to allow
20 commissions to adopt true-ups in connection with bill and keep.
21 The Commission, therefore, cannot simply rely on the absence of a
22 true-up mechanism in its Rules, but not consider whether such a
23 true-up is appropriate under the evidence in the record.

24 **B. Interconnection**

25 The contract permits the Parties to each select a
26 single point of interconnection ("POI") in each LATA.

1 Establishing a single POI per LATA will lead to inefficient
2 engineering of the network and will impose significant additional
3 costs on USWC, who will have to back haul traffic from the single
4 POI if and when the Parties chooses to offer facilities-based
5 local service outside the Phoenix calling area. To discourage the
6 establishment of inefficient POIs, USWC should be permitted to
7 charge construction costs to the Parties if they each choose a POI
8 that requires USWC to construct additional facilities to carry the
9 Parties traffic.

10 Because the contracts as approved by the Commission have
11 adopted bill and keep, USWC cannot recover the additional costs of
12 hauling this traffic. Further, the contracts permit the Parties
13 to interconnect at USWC's access tandem. This will further
14 increase the costs that USWC cannot recover. The contracts should
15 be amended to require the Parties to each establish one POI per
16 local calling area at a place agreed upon by USWC and AT&T or MCI.
17 Alternatively, the Parties should, at a minimum, establish its
18 local POI at points of presence ("POPs") in Arizona for the
19 provision of long distance service.

20 Additionally, the Parties switch should be treated as an end
21 office switch rather than a tandem switch for call termination
22 rates for reciprocal compensation whether or not the Parties enter
23 into an agreement with its long distance affiliates permitting the
24 Parties to use the affiliates' facilities to terminate calls.
25 Neither AT&T's nor MCI's switch serves or will serve the same
26 geographic area or provides the same tandem switching functions as

1 USWC's tandem. The Parties' switches are much more equivalent to
2 MFS's switch, which the Commission treated as an end office
3 switch, then TCG's switch, which it treated as a tandem switch.
4 Compare MFS Order at 6-7 to TCG Order at 9-10. Accordingly, the
5 Parties switches ought to be treated as a end office switches
6 rather than as tandem switches, see FCC First Order & 1090, and
7 USWC should not pay tandem rates for its use.

8 **III. DARK FIBER**

9 USWC opposes the unbundling of dark fiber as outside the
10 scope of the Act. Section 251(c)(3) of the Act requires the
11 unbundling of "network elements." Analyzing the issue of whether
12 to require unbundled access to dark fiber, the FCC concluded:

13 We also decline at this time to address unbundling of an
14 incumbent LECs' "dark fiber." Parties that address[ed] this
15 issue [did] not provide us with information on whether dark
16 fiber qualifies as a network element under sections 251(c)(3)
17 and 251(d)(2).

18 FCC First Order at & 450. Unlike in other parts of the FCC First
19 Order, the FCC did not leave the dark fiber issue open to the
20 states: "We will continue to review and revise our rules in this
21 area as necessary." Id.

22 The record in these dockets does not support the required
23 unbundling of dark fiber. No witness demonstrated that failure to
24 provide unbundled dark fiber "would impair the ability of the
25 [CLEC] seeking access to provide the services that is seeks to
26 offer." 47 U.S.C. ' 251(d)(2)(B). Other competitive local
exchange carriers ("CLECs") such as MFS, TCG, ACSI and Brooks have

1 constructed fiber optic SONET rings in the Phoenix or Tucson metro
2 area. Obviously, lack of access to USWC dark fiber has not
3 "impaired" their ability to construct SONET rings and to offer
4 services using those SONET facilities. Moreover, because the Act
5 requires USWC to provide non-discriminatory access to its ducts,
6 conduit or rights-of-way, nothing prevents a CLEC from pulling its
7 own fiber through USWC's existing pathways. Dark fiber is simply
8 not an essential facility. The Parties' demand for access to
9 USWC's dark fiber essentially boils down to a request by a
10 competitor for exclusive use of USWC's spare network capacity.
11 The contract requires USWC to turn over detailed information on
12 the amount and location of its spare capacity. Forcing USWC to
13 make its network capacity available to competitors like the
14 Parties constrains USWC's ability to fulfill its statutory
15 provider of last resort obligations. Thus, USWC should be granted
16 rehearing on the dark fiber issue because the contracts violate
17 the Act and are not based on substantial evidence.

18 In addition, the reciprocity requirement in the contracts is
19 not effective until "such time as all CLECS in U S WEST's service
20 territory reach a combined total of 200,000 access lines."
21 Decision at 8. By imposing the 200,000 line minimum, the
22 contracts misapply A.A.C. R14-2-1307. The rule was designed to
23 require that small LECs with less than 200,000 access lines be
24 exempt from the unbundling requirements in the rules which did not
25 anticipate unbundling of dark fiber. It was intended to create an
26 exemption for small carriers who would never reach such a

1 capacity, and not to create a cushion for large carriers like the
2 Parties. Indeed, based on the evidence at the hearings, the
3 Parties may well have more dark fiber than USWC.

4 **IV. Resale Restrictions.**

5 The contracts require that the following services be made
6 available for resale at a discount: (1) private line transport
7 (special access and private line) services, (2) services subject
8 to volume discounts, and (3) basic residential services.¹ The
9 contracts misapply the standards of the Act, reaches conclusions
10 unsupported by any substantial evidence, and will result in
11 confiscatory rates.

12 USWC should not be required to provide private line services
13 to resellers at a discount because these services are already sold
14 at wholesale prices. In Arizona, private line services are sold
15 to carriers and end users from the special access tariff.
16 Further, private line services are already discounted in Arizona
17 as wholesale services and require no further discounts to set a
18 wholesale price. The FCC First Order provides that exchange
19 access services are not subject to resale requirements even though
20 these services are offered to and taken by end users as well as
21 carriers. (FCC First Order && 873-874). The FCC also recognizes
22 that LECs do not avoid any retail costs if access services are
23 offered at wholesale to competitors. Id. Because private line

24 _____
25 ¹The parties agree that enhanced services, deregulated services,
26 and promotions of less than 90 days, need not be provided to the
parties for resale.

1 and special access are the same service, provided out of the same
2 tariff, they should not be available to resellers at a discount.

3 The contracts should also not require USWC to offer further
4 discounts on resellers services that are already offered at a
5 volume discount.² Services that are provided to large customers,
6 such as Motorola, are already priced to reflect the fact that USWC
7 avoids many of the usual costs of selling at retail. Further,
8 discounts are based primarily on commitments to receive specified
9 quantities of service for defined terms. The discounts therefore
10 reflect costs avoided because of the quantities and the term of
11 the contract. For example, marketing expenses such as advertising
12 are avoided when selling a large volume of service to a customer
13 for an extended period. It makes no sense to apply the same
14 discount to these services on the basis that USWC has avoided
15 significant costs. If a new entrant is allowed to compete with
16 USWC, both by selling its own services and by reselling USWC's
17 service at a discount in excess of the avoided cost, USWC cannot
18 be able to effectively compete. At the very least, the Commission
19 in the generic pricing proceeding should establish separate
20 discount rates for these services.

21 _____
22 ² The FCC Order is unclear in its treatment of volume discount
23 services. The FCC requires that discounted services be provided to
24 resellers at the discount rate less the avoided cost. However, to
25 a large extent, the FCC has left the determination of "the
26 substance and specificity of rules concerning such discount and
promotion restrictions may be applied to resellers in marketing
their services to end users" to state commissions. (FCC First
Order && 951-952).

1 USWC should not be required to offer basic residential
2 service for resale at a wholesale discount. The only evidence in
3 the record confirms that USWC's current 1FR rate of \$13.18 does
4 not cover its cost. Requiring USWC to discount a below-cost
5 service will force USWC to subsidize competitors with revenues
6 from USWC's retail customers. Basic residential service is priced
7 below cost in order to ensure universal service. Therefore, it is
8 not appropriate for resellers to obtain this below-cost service at
9 a discount. Further, if USWC is required to provide residential
10 service to resellers at a price below cost, it will retard the
11 development of facilities-based competition. New entrants in the
12 market will have no incentive to build facilities if they can
13 purchase USWC services for less than their cost to construct new
14 facilities. The Commission should grant rehearing and amend the
15 contract to remove the requirement that these service be provided
16 to the Parties at a discount.

17 Similarly, the record does not support the contract's
18 requirement that USWC offer pay phone service and Link-up and
19 Life-link services for resale. These services are not
20 telecommunications services offered at retail to end users within
21 the meaning of the Act and are not subject to resale. Similarly,
22 the evidence in the record establishes that there is no reason
23 that USWC should be required to offer promotional offers of longer
24 than 90 days for resale at a discount. Rather than dealing with
25 the factual issues raised at hearing, the Commission simply defers
26 to the FCC's resolution of this issue. For reasons discussed

1 elsewhere in these exceptions, such deferral is wholly
2 inappropriate. The Commission should address this issue on the
3 record and order that promotions longer than 90 days need not be
4 offered for resale.

5 **V. UNBUNDLED SWITCHING**

6 The contract adopts the Parties' request that vertical
7 features be included in unbundled local switching rather than
8 being treated as separate elements that are purchased separately.
9 Although the FCC has defined unbundled local switching to include
10 vertical features, the 8th Circuit indicated that vertical
11 features are not a part of switching but are features that can be
12 provided separately. The contract should be amended to provide
13 that the Parties must purchase vertical features separately from
14 switching elements.

15 **VI. COLLOCATION**

16 **A. Collocation of Remote Switching Units.**

17 USWC opposes the collocation of remote switching units
18 ("RSUs") in its end offices. The Commission should refuse to
19 order collocation of RSUs because: (1) the FCC First Order
20 excludes switching equipment; (2) it is not necessary for
21 interconnection or access to unbundled elements; (3) it creates a
22 significant threat of bypass of switched access services; (4) it
23 will exacerbate space limitation problems in USWC central offices;
24 and (5) alternatively, the Parties can locate their RSU, where
25 their POPs are located or at some other location and connect to
26 USWC's central office without collocating the RSU.

1 The FCC specifically required ILECs to permit collocation of
2 transmission equipment, including any type of equipment used to
3 terminate basic transmission facilities. FCC First Order at
4 & 580. Despite the specific requests of the CLECs, the FCC
5 declined to order that the ILECs permit collocation of switching
6 equipment "since it does not appear that [switching equipment] is
7 used for the actual interconnection or access to unbundled
8 elements." Id. at & 581. An RSU is switching equipment and not
9 transmission equipment; it is not primarily used for
10 interconnection or access to unbundled elements but, as configured
11 by the Parties with trunking capacity, for other purposes.

12 Further, placing a trunking-capable RSU in USWC's central
13 office raises a significant prospect of access by-pass. Collo-
14 cating an RSU, which is trunked directly to the other Parties
15 switches or to other CLEC's switches, creates a significant
16 possibility of by-pass. Id. at 500. USWC cannot effectively
17 monitor the Parties' use of its RSU to ensure that by-pass was not
18 occurring, and there is no method to program or otherwise disable
19 the RSU so that it could not be used for by-pass. The Parties
20 promised not to use RSUs for by-pass; however, because USWC
21 collected \$238,000,000 from interstate and intrastate switched
22 access charges in Arizona, and the Parties have substantial market
23 penetration in Arizona, the Parties would have a powerful
24 incentive to by-pass whenever the opportunity arises.

25 Collocating RSUs in USWC central offices also will exacerbate
26 serious space limitations in those offices. When RSUs with

1 trunking functionalities are deployed in a USWC central office,
2 additional transmission equipment must also be installed, placing
3 further demands on scarce space.

4 Finally, the Parties can often place their RSUs within the
5 space currently leased or owned for their POPs used to deliver
6 interstate and interLATA traffic to USWC or in other space located
7 near USWC's central offices and avoid collocating those facilities
8 in USWC central offices. It is technically feasible for the
9 Parties to collocate RSUs in their space near USWC's central
10 offices and connect to USWC through their facilities or USWC
11 facilities. For these reasons, the Commission should at a minimum
12 order the Parties to locate their RSUs in their own premises or in
13 premises obtained by the Parties where technically feasible and
14 economically reasonable.

15 **B. Other Collocation Issues.**

16 The contracts permit the Parties to collocate at any
17 technically feasible point and rejects USWC's proposal that the
18 space available to any single new entrant for collocation in a
19 given central office be limited so as to make space available for
20 other new entrants. These portions of the contract are not
21 supported by substantial evidence and are contrary to sound public
22 policy.

23 In order to protect the rights of all potential competitors,
24 USWC argued that the agreement must contain some limitation on the
25 amount of floor space in a central office, made available to the
26 Parties for physical collocation. USWC will have to provide

1 physical collocation to a number of new entrants, and there will
2 be limits on the available amount of floor space, particularly in
3 light of the space limitation problems USWC already faces in some
4 of its Arizona central offices. USWC has proposed that the
5 Parties and each other new entrant be limited to 400 feet in any
6 single central office. The Parties offered no reasonable
7 alternative suggestion, and the contracts simply fail to address
8 the issue.

9 An even more significant issue with respect to collocation is
10 the premises at which collocation should be offered. The
11 contracts simply adopt the FCC's broad definition of "premises"
12 without considering the significant evidence of problems created
13 by a general rule that new entrants can collocate at manholes,
14 vaults and other locations outside the central office. Although
15 the FCC First Order states that USWC should offer collocation at
16 its "premises", USWC proposed that the presumptive point of
17 collocation be in USWC's central offices, with other arrangements
18 to be made on an as-needed basis. Because the most efficient form
19 of interconnection would be for the Parties to interconnect at
20 USWC's end office or tandem switches, and because collocation at
21 other points raises serious issues concerning adverse service
22 impacts, it makes sense for collocation to occur in the central
23 offices. The Parties have not requested collocation at any
24 "premise" other than a USWC central office, nor have they given an
25 example about what such a request might possibly be.

26

1 Alternatively, the contracts should require the Parties to use the
2 best and final offer process to resolve such issues.

3 Finally, the contracts adopt the Parties' request that no
4 restriction be placed on the types of cable used for entry into
5 collocated space. Where entry into the collocated space is
6 through USWC's conduit or ducts, the use of copper facilities will
7 lead to a quicker exhaust of that conduit and duct and it may well
8 be impossible to build more. The use of fiber facilities for
9 connection of the RSUs would require significantly less duct or
10 conduit. This will preserve the space for use by the Parties and
11 other CLECs as well as USWC. The contracts should be amended to
12 provide that the Parties should mutually agree on the type of
13 facilities used to enter collocated space and that where technical
14 feasibility requires the use of fiber, USWC may require the
15 Parties to enter the central office on fiber facilities.

16 **VII. ACCESS TO RIGHTS-OF-WAY**

17 The contracts adopt the Parties position with respect to
18 USWC's obligation to furnish access to rights-of-way and related
19 facilities. USWC's first come, first served access proposal is
20 nondiscriminatory, and the contracts should be modified to the
21 extent they suggests otherwise. The contracts are also unlawful
22 to the extent it indicates that USWC has an obligation to
23 rearrange facilities or build new facilities to accommodate
24 requests from the Parties and other competitive local exchange
25 carriers ("CLECs").

26

1 Certainly, USWC has an obligation, as do the Parties, to
2 provide nondiscriminatory access to facilities that exist or that
3 are constructed in the ordinary course of business. The Act does
4 not and cannot require USWC to obtain additional rights-of-way or
5 build additional facilities solely to provide access to CLECs
6 fully capable of obtaining their own rights-of-way or building
7 their own facilities. USWC has rights-of-way under existing state
8 law and under private agreement. The use of these rights-of-way
9 may be restricted and the Commission has no lawful authority to
10 order counties, cities and private owners to permits CLECs to use
11 rights-of-way granted to USWC. These entities may well have fees
12 or other requirements they apply to the grants of their rights-of-
13 way and they should not be deprived of their authority to collect
14 such fees or apply such requirements to the Parties and other new
15 entrants by means of letting those entrants use USWC's pre-
16 existing rights.

17 Similarly, nothing in the Act authorizes either the FCC or
18 the Commission to require that USWC exercise its eminent domain
19 power on behalf of the CLECs. Indeed, it may be an abuse of that
20 power in contravention of state law for USWC to use the power to
21 benefit a third party. Further, under Arizona law, any public
22 service corporation has the power of eminent domain so the CLECs
23 can exercise that power on their own behalf.

24 **VIII. TRUNKING REQUIREMENTS**

25 The contracts adopt the Parties's suggestion that they work
26 together to combine local and meet point trunk groups when

1 feasible. USWC opposes the combination of local and toll traffic
2 on a single trunk group. The reason why separate trunk groups are
3 required for these types of traffic is for billing purposes. Toll
4 and local traffics are billed differently to CLECs and separate
5 trunk groups are necessary to ensure accurate billing. To ensure
6 accuracy in the billing, separate trunk groups should be required.
7 The Commission should amend the contract to require toll and
8 local traffic be placed on separate trunk groups.

9 **X. INTERIM NUMBER PORTABILITY COST RECOVERY**

10 USWC and the Parties reached substantial agreement that
11 interim number portability should be offered pursuant to remote
12 call forwarding. The parties agreed on the price of the service,
13 but disagreed on who should pay for the service. The Parties
14 argued that the service should be offered to it at no charge with
15 the cost borne by USWC's retail customers. USWC countered that
16 the cost of interim number portability should be borne by the cost
17 causer, the Parties.

18 The FCC has adopted specific rules concerning the recovery of
19 interim number portability costs from carriers based on the number
20 of lines served. The contracts attempt to follow the FCC Order,
21 but omits a crucial part of the recovery formula. The FCC has not
22 established any mechanism for USWC to recover the portion of the
23 costs that are allocated to it.

24 USWC proposed nonrecurring and recurring charges that apply
25 to USWC's proposed interim number portability service based on the
26

1 TELRIC studies submitted into evidence. The contract should use
2 these TELRIC-based rates for interim number portability.

3 In addition, the FCC requires USWC to share with the Parties
4 switched access charges received from interexchange carriers on
5 calls interexchange carriers deliver to USWC to numbers that are
6 'ported' to the Parties. USWC assesses four charges to inter-
7 exchange carriers for terminating traffic -- the local transport,
8 local switching, interconnection, and carrier common line charges.

9 The contracts fail to reject these unreasonable provisions of
10 the FCC Order. USWC should be allowed to retain the local
11 switching and local transport charges it receives from inter-
12 exchange carriers when calls are forwarded to the Parties as a
13 result of interim number portability. USWC does not incur any
14 less expense for the local switching or local transport services
15 it offers to an interexchange carrier when USWC forwards an
16 incoming call to the Parties. Sharing the revenues for these
17 services with the Parties amounts to a further unwarranted subsidy
18 to the Parties and would be confiscatory for USWC.³

19

20

21 ³ In the interest of compromise, USWC was prepared to
22 'forward' carrier common line charges to the Parties. But, rather
23 than incurring the expense of identifying, recording and billing
24 the individual minutes of use that are forwarded to the Parties
25 under an interim number portability arrangement, USWC proposed to
26 provide a credit on each Party's portable number equivalent to the
effective carrier common line rate times the average minutes of
use of toll use (both interstate and intrastate) per number per
month.

1 X. MISCELLANEOUS CONTRACTUAL TERMS

2 A. USWC's proposed bona fide request process.

3 USWC's best and final offer to the Parties contains a
4 proposed bona fide request process that CLECs can use to request
5 interconnection or additional unbundled network elements on a
6 case-by-case basis. The time frames within this process are
7 reasonable and comply with the applicable rules of the FCC and the
8 Commission. USWC Ex. 8 at 11-13 (Mason).

9 The response time adapted in the contracts, is unreasonable
10 and unnecessary. Initial requests often lack complete information
11 on the scope of the request, and the Parties plainly will not be
12 able to deploy a service within this short time in any event.

13 B. Construction Charges and Other Expenses.

14 New entrants, such as the Parties, who request additional
15 unbundled elements, require the construction of additional
16 facilities for resale. Other special construction is often
17 desired in connection with collocation. New entrants should pay
18 for the construction costs incurred by USWC -- they should not
19 shift these costs to USWC and its retail customers.

20 Requiring that any carrier requesting an additional network
21 element pay the cost that USWC incurs to unbundle and provide that
22 element, such as special construction charges, follows the FCC
23 First Order, which permits ILECs to recover the costs of
24 unbundling network elements from requesting carriers. In
25 addition, the only way to insure that the benefits of unbundling
26 will exceed the costs is to have the requesting party pay.

1 The contracts provide that USWC may collect up-front
2 construction charges from a new entrant only if USWC end users
3 would pay these charges pursuant to USWC's tariffs. This is both
4 inconsistent with the Act because it does not require new entrants
5 to pay the true cost of providing the service and is confiscatory.
6 The contracts should be reconsidered and amended to require that
7 USWC be compensated up-front by the Parties for construction costs
8 if USWC has to construct new facilities to enable it to provide
9 services at resale or on an unbundled basis to the Parties, and
10 should not be limited only to situations in which an end-user
11 tariff is involved. If USWC is required to build facilities, then
12 the Parties should also pay a construction charge whether an end-
13 user tariff is involved or not.

14 Further, although USWC should recover specific costs of
15 providing service to new entrants, the contract fails to provide
16 for a recovery mechanism. Under the Act, USWC is entitled to
17 recover its cost of providing service to the new entrants. The
18 contract does not grant USWC a means to recover the costs due from
19 the Parties. The contract is, therefore, contrary to the Act and
20 confiscatory. The Commission should grant rehearing and amend the
21 contract to grant USWC a means to recover the costs due from the
22 parties.

23 **C. Minimum purchase requirements for space.**

24 The Commission should not permit the Parties and other
25 requesting carriers to use pole and conduit space in an
26 inefficient or disruptive manner. The Commission should permit

1 USWC to impose reasonable minimum purchase requirements so that
2 the Parties or another CLEC cannot tie up long lengths of conduit
3 or pole runs by selecting individual poles or very short spans of
4 conduit. USWC Ex. 8 at 105 (Mason).

5 **D. Limitation of Liability.**

6 The contracts contain language proposed by the parties and
7 accepted by the arbitrators that will create an exception to the
8 limitation of liability clause where "a pattern of conduct is
9 found to exist ... in violation of a party's obligations under the
10 Agreement that justifies an award of Consequential Damages."
11 Procedural Order at pp. 5-6. Courts have recognized that a party
12 cannot limit its liability in instances of gross or intentional
13 negligence, but USWC has not found any reported decision that
14 used "repeated breach" to justify unlimited liability. The
15 Parties supplied no other contract with any other company to
16 support their assertion that such language is common in
17 commercial contracts. This vague language contained in the
18 contracts is not commercially reasonable for a complex commercial
19 contract, and could serve to render the remainder of the
20 limitation of liability clause meaningless, exposing USWC to
21 unlimited liability.

22 The Procedural Order recognized that "it is appropriate to
23 allow contractual recovery for a pattern of conduct breaching a
24 contractual obligation as though intentional conduct or gross
25 negligence had occurred." Procedural Order at p. 6 (emphasis
26 added). The Commission's Resolution made it clear that the

1 Directory advertising is not subject to the requirements of
2 the Act or this Commission's jurisdiction, and, as commercial
3 speech, directory advertising has constitutional protections with
4 which the interconnection agreement language will interfere.

5 1. Jurisdiction.

6 DEX publishes telephone books in a competitive advertising
7 market, and it has substantial incentives to make business
8 decisions that enhance the use and value of its directories in
9 order to increase its profitability. Thus, DEX has every
10 incentive to want the listings and directory advertising of CLEC
11 customers in its directories. But, DEX is neither an ILEC under
12 47 U.S.C. § 251(h), nor a "telecommunications carrier" under 47
13 U.S.C. § 153(44). Thus, the Parties could not negotiate with
14 USWC DEX under Section 251 and did not petition the Commission
15 for arbitration with USWC DEX. As a result, the Commission has
16 no jurisdiction over USWC DEX and may not create jurisdiction
17 through requirements which run to USWC Communications.

18 Furthermore, nothing in the Act authorizes the Commission to
19 regulate USWC DEX's Yellow Pages advertising publishing business
20 activities. The Commission has authority only to impose terms
21 and conditions to implement the requirements of § 251(b) and (c).
22 Yellow Pages advertising publications are not "network elements"
23 that must be unbundled because they are not "a facility or
24 equipment used in the provision of telecommunications service."
25 47 U.S.C. § 153(29). Nor must an ILEC provide Yellow Pages
26 advertising services as part of its resale obligations. Section

1 251(c)(4)(A) requires ILECs to provide resale only of "any
2 telecommunications service" the ILEC provides to retail
3 customers. Yellow pages advertising is not a "telecommunications
4 service." 47 U.S.C. § 153(43) (defining "telecommunications" as
5 transmission of information); id. § 153(49) (defining
6 "telecommunications services").

7 Moreover, because Yellow Pages advertising publishing is an
8 unregulated service available from numerous entities, the
9 Commission has no authority to and does not regulate it under
10 state law. Accordingly, the Commission has no authority to
11 impose Yellow Pages directory advertising publishing requirements
12 upon DEX through USWC Communications. Indeed, this Commission
13 has already ruled that deregulated non-telecommunications
14 services available on the open market, such as voice mail and
15 inside wire maintenance, need not be resold. (Tr. 1627, 8 AT&T
16 Order p. 14; MCI Order p. 12).

17 **2. Commissions.**

18 The contracts will allow the Parties to participate in, and
19 receive commissions from, the Yellow Pages advertising business
20 of a separate corporate entity, USWC DEX, **even though USWC**
21 **Communications currently receives no such commissions.** The
22 Contracts will provide CLECs with an unearned and unwarranted
23 windfall. DEX, which is neither a party to the arbitrations nor
24 the interconnection agreements, **does not** pay commissions to USWC
25 Communications when USWC Communications' customers purchase
26 directory advertising from DEX. Yet, the Commission appears to

1 believe it fair that the Parties receive a substantial commission
2 from DEX for the mere fact that a local telephone customer of the
3 Parties purchases directory advertising from DEX.

4 Adoption of this provision or the contracts does not
5 constitute "nondiscriminatory treatment with respect to directory
6 matters," which the Commission recognized the Act requires.
7 Procedural Order at p. 8. In the circumstance required by the
8 Commission's resolution of this matter, DEX's employees will do
9 the work to create the customer's directory advertising, publish,
10 and distribute the directory. But, DEX will have to provide the
11 Parties with a revenue stream (a revenue stream DEX does not
12 currently provided to USWC Communications) solely based on the
13 fact that customers who may have purchased directory advertising
14 from DEX for years, now take local service from the Parties.
15 Nothing in the Act requires revenues from directory advertising
16 to follow the provider of the customer's local service. And,
17 such a result will create a windfall when the CLEC does nothing
18 to create additional revenues for the directory publisher or to
19 enhance the directory. The Commission should remove this
20 requirement from the interconnection agreements.

21 Any arrangement to pay "commissions" must result from
22 private negotiation between DEX and the Parties, and any such
23 negotiations would fall completely outside the jurisdiction of
24 this Commission.

25
26

1 3. Names on the Directory Cover.

2 The contracts improperly require USWC Dex to place the
3 parties' names on the cover of the directories. DEX publishes a
4 white pages directory at great expense to meet USWC's state-
5 imposed directory obligation. The Parties have the same
6 obligation, but DEX has agreed to meet that duty for no charge.
7 To add on an additional obligation that DEX place CLEC names on
8 its directory covers would significantly interfere with DEX's
9 editorial rights. DEX, as the directory publisher, has a
10 fundamental editorial right to decide whether and under what
11 circumstances it will include any information on the covers of
12 its directories.

13 DEX has always arranged various information in its
14 directories based on its overriding goal to create an easy to use
15 product for directory readers. All of these placement issues
16 make the directory more valuable to DEX customers thereby
17 enhancing the business success of DEX's directory business.

18 In addition to seriously impairing DEX's business
19 prerogatives as a directory publisher, imposition of these
20 obligations would raise serious First Amendment issues. The
21 first Amendment protects commercial speech from unwarranted
22 government regulation. *Virginia State Bd. Of Pharmacy v.*
23 *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 761-62
24 (1976). As the Supreme Court has recognized, the free flow of
25 commercial information is "indispensable to the proper allocation
26 of resources in a free enterprise system." *Id.* At 763. Indeed,

1 consumers' interest in the unencumbered commercial speech "may be
2 as keen, if not keener by far, than [their] interest in the day's
3 most urgent political debate." Id. At 765.

4 Government normally may not compel a speaker to make
5 statements either of opinion or fact, since either form of
6 compulsion burdens protected commercial speech. See, *Riley v.*
7 *Nat'l Fed'n of Blind, Inc.*, 487 U.S. 781, 797-98 (1988). In
8 other words, the First Amendment also protects the right to
9 decide "what not to say." *Hurley v. Irish-American Gay, Lesbian*
10 *& Bisexual Group*, 115 S. Ct. 2338, 2347 (1995); *Pacific Gas &*
11 *Elec. Co. v. Pub. Utils. Comm'n*, 475 U.S. 1, 11 (1986) ("[A]ll
12 speech inherently involves choices of what to say and what to
13 leave unsaid"). Thus, states generally cannot compel commercial
14 speech, except under the limited exception for affirmative
15 disclosure in commercial advertising where necessary to prevent
16 deception to consumers. See, *Zauder v. Office of Disciplinary*
17 *Counsel*, 471 U.S. 626, 651 (1985). This exception is applicable
18 only if the disclosure requirement is "reasonably related to the
19 State's interest in preventing deception to consumers." *Id.*;
20 *Virginia Board*, 425 U.S. 772 n.4 (noting that it may be
21 "appropriate to require that a commercial message appear in such
22 a form, or include such additional information, warnings, and
23 disclaimers, as are necessary to prevent its being deceptive").

24 Requiring the Parties and other CLEC names on the cover does
25 not fall within this limited exception. Merely stating that the
26 directory contains all LEC listings will avoid confusion. The

1 Commission should delete this requirement of the interconnection
2 agreements.

3 **F. Coin Phone Signaling.**

4 The contracts require the unbundling of coin phone signaling
5 despite the fact that the FCC already rejected this position as a
6 requirement of the Act. Procedural Order at p. 18-19; see FCC
7 Order 96-128, ¶ 16 at p.8. There, the FCC ruled that its
8 payphone orders "do not require that LECs unbundle more features
9 and functions from the basic payphone line by April 15, 1997 than
10 the LEC provides on an unbundled basis." Thus, all that USWC
11 must to provide is "tariffed, non-discriminatory basic pay phone
12 services that enable competitive providers to offer payphone
13 services using either instrument-implemented 'smart payphones' or
14 'dumb' payphones that utilize central office coin services, or
15 some combination of the two in a manner similar to the LECs."
16 FCC Order 96-439, ¶ 162. Since USWC provides coin telephone
17 service to itself on an integrated whole (access line, sent paid
18 call rating, coin signaling), that is all that is required by the
19 FCC.

20 The FCC also ruled that the unbundling of payphones was not
21 subject to the unbundling provisions of the Act. The FCC ruled
22 that the Sections 251 and 252 unbundling requirement did not
23 apply to payphones:

24 We decline to require, as proposed by the Parties,
25 that the pricing regime under Sections 251 and 252
26 apply to all Section 276 payphone services offered
 by incumbent LECs. . . . In addition, Section 276

1 does not refer to or require the application of
2 Sections 251 and 252 to LEC payphone services.

3 FCC Order 96-388 at p. 75, ¶ 147.

4 The FCC's finding that coin signaling does not require
5 unbundling under sections 251 or 252 of the Act is tantamount to
6 a finding by the FCC that coin signaling does not constitute a
7 network element. Conversely, the Commission's Resolution makes
8 it clear that the Commission viewed coin signaling as a network
9 element that USWC must unbundle and the contracts carry this
10 requirement forward. In its recent Opinion, the Eighth Circuit
11 gave deference to the FCC's determinations on what constitutes a
12 network elements that ILECs must unbundle. 1997 WL 403401, *21.
13 Thus, the FCC's previous finding that payphone services do not
14 come under the requirements of sections 251 and 252 of the Act
15 must control over the Commission's finding that coin signaling
16 constitutes a network element.

17 **G. Shared Transport.**

18 The Eighth Circuit Opinion also must substantially alter the
19 Commission's resolution of the shared transport issue.
20 Procedural Order at p. 17. The entire concept of shared
21 transport is predicated on USWC recombining unbundled trunks and
22 unbundled local switching purchased by the Parties. But, the
23 Eighth Circuit ruled that ILECs were under no obligation to
24 recombine unbundled elements for CLECs: "the plain meaning of the
25 Act indicates that the [CLECs] will combine the unbundled
26 elements themselves; the Act does not require [ILECs] to do all

1 of the work." 1997 WL 403401, *25. AT&T/MCI can recombine
2 unbundled local switching with their own interoffice transport
3 facilities, but USWC has no obligation to recombine unbundled
4 local switching with USWC trunks in order to create for the
5 Parties a shared interoffice network. The Commission should adopt
6 the USWC proposed language for shared transport which, in
7 accordance with the Eighth Circuit's Opinion, allows the Parties
8 to combine USWC's unbundled local switching with the Parties own
9 interoffice transport facilities, or with interoffice transport
10 facilities provided by USWC as unbundled network elements. The
11 Commission must remove the shared transport requirement from the
12 interconnection agreements.

13 **H. Operational Support System Schedule.**

14 The Procedural Order discusses the "target" dates for
15 implementation of electronic interfaces which target dates were
16 carried forward into the contracts. Procedural Order at p. 24.
17 The interconnection agreements should not specify "targets" for
18 implementation of electronic interfaces, as the targets proposed
19 by the Commission are not realistic and cannot be reasonably met
20 by USWC. The establishment of electronic interfaces according to
21 evolving and developing industry standards is a difficult
22 proposition at best. The interconnection agreement should not
23 include unrealistic targets for deployment of electronic
24 interfaces, especially since the parties are in the process of
25 negotiating the specifications to which the electronic interfaces
26 will be built.

1 **I. Audits/Examinations.**

2 The Commission, by bench order, approved the AT&T sponsored
3 language that will allow the Parties to conduct up to nine
4 "examinations and audits" per year regarding unresolved disputes
5 concerning services and the contracts incorporated these
6 requirements. Part A, Section 49.9. Adoption of this provision
7 will allow the Parties yet another tool to hamstring USWC with
8 process and meetings, and divert USWC 's attention from providing
9 telecommunications services. No commercially reasonable
10 justification exist for allowing one competitor to enter another
11 competitor's facilities to examine records or processes at the
12 competitor's whim. Such provisions are intrusive and
13 unnecessary, and should be deleted by the Commission.

14 **J. Call Monitoring.**

15 Part A, section 50.2.3.7 of the AT&T contract allows AT&T to
16 monitor call between AT&T's customers and USWC's operator
17 services and directory assistance personnel. Again, no business
18 justification exists for this intrusive contract provision.
19 AT&T indicated it wants to listen in on conversations between
20 USWC's operators and their customers in order to monitor quality.
21 Yet, USWC has been providing AT&T customers with directory
22 assistance and operator services for at least 10 years, and never
23 have concerns over quality or call monitoring arisen. AT&T
24 offered no evidence why the advent of local telecommunications
25 competition needs to change this long standing relationship in
26 such a dramatic fashion.

1 **XII. Eighth Circuit Issues**

2 Subsequent to the issuance of Decision Nos. 59915 and 59931,
3 on July 18, 1997, the 8th Circuit issued its opinion concerning
4 the FCC First Order. Therefore, in addition to the issues with
5 regard to those decisions and to the issues raised in USWC's
6 exceptions to the Procedural Order of July 14, 1997, there are
7 issues raised by portions of both contracts that are inconsistent
8 with the 8th Circuit Opinion for the reasons set forth in the
9 final sections of this application.

10 The contracts do not comply with the recent 8th Circuit
11 Court of Appeals decision. A revised Agreement which is
12 consistent and complies with the recent 8th Circuit Court of
13 Appeals decision is attached and should be adopted.

14 Generally the issues raised in the recent decision⁴ are as
15 follows:

16 **A. Operational Support Systems.**

17 One of the key concerns with the FCC's First Order is that
18 the Order could be read as permitting new entrants such as the
19 Parties to demand that the new OSS systems be created solely for
20 their use. Such a rule would have been seriously anti-
21 competitive and would have raised significant constitutional
22 problems.

23

24

25 ⁴ USWC does not address the impact of the 8th Circuit's decision
26 on rebundling because the Commission expressly extended approval
of any contractual language covering rebundling in the decision.

1 The 8th Circuit's decision reaffirmed that USWC must offer
2 OSS access to new entrants on equal terms to its own OSS access,
3 but that USWC need not create new systems for the new entrants,
4 which, by law and logic, these providers should create for
5 themselves. Thus to the extent that the contracts require
6 development of additional OSS systems, solely for the Parties,
7 they are inconsistent with the 8th Circuit's Order and should be
8 reconsidered.

9 Operational Support Systems were affirmed by the 8th Circuit
10 as network elements which are required to be unbundled; however,
11 the 8th Circuit made it clear that there is no duty on the part
12 of USWC to provide service or access to its systems which is
13 superior to what it provides to itself. Equal service and access
14 is required.

15 USWC will continue to make its Interconnection Mediated
16 Access ("IMA") interface, the WEB gateway, available to new
17 entrants in order to allow competition to continue. Through the
18 use of the IMA interface, new entrants are able to pre-order,
19 order, provision, have access to maintenance and repair and
20 billing for purchased unbundled elements and for resold services.

21 USWC is currently involved in discussions with some new
22 entrants to explore the mutual development of a nationally
23 standard interface which provides a business advantage to both
24 parties, which allows for costs to be borne by the cost-causes,
25 and that provides for more efficiency in the transaction
26 relationships between the two parties.

1 **E. Request for Superior and/or Additional Services.**

2 In its discussion, as with OSS and service quality, the 8th
3 Circuit stated that USWC has no obligation to provide superior or
4 additional services. However, it is reasonable to expect that
5 CLECs may, from their own individual business perspective, desire
6 superior or additional services and be willing to pay for any
7 superior or additional services rendered.

8 The "bona fide request" process, contained in many
9 interconnection agreements, applies to requests for existing
10 network elements and network elements based on existing
11 technologies and services, not for additional or superior
12 services. To the extent that the contracts suggest otherwise,
13 they are improper in light of the 8th Circuit's decision and
14 should be revisited. USWC plans on evaluating any requests for
15 superior or additional services, outside of that process, to
16 determine if mutual business advantages exist for both USWC and
17 the requesting CLEC.

18 **C. The Presumption of Unbundling.**

19 However, the contracts generally require USWC to unbundle
20 main elements that are not set forth in the FCC Order merely
21 because the unbundling of the elements is technically realistic.

22 The 8th Circuit invalidated the presumption of unbundling just
23 because unbundling is technically feasible and upheld the
24 distinction between "proprietary" and "non-proprietary" elements.
25 This ruling was important because the "technically feasible"
26 standard articulated by the FCC would have given the new entrants

1 excessive and uneconomic control over the networks of local
2 exchange carriers. Operating on the principle that one will be
3 much more careful and prudent in dealing with one's own property
4 than with the property of others, the 8th Circuit's decision
5 demands that local exchange carriers maintain control over their
6 network and not be subject to arbitrary demands of the new
7 entrants.

8 For non-proprietary elements, the 8th Circuit required a
9 showing on the part of the CLEC that, absent the unbundling, the
10 ability of the CLEC to compete would be significantly impaired or
11 thwarted. For proprietary elements, the CLEC must show that
12 absent the unbundling, the quality of service a new entrant can
13 offer declines or its cost of service rises.

14 Under the rules which now exist, all requests for unbundling
15 of new elements can be rationally reviewed under a reasonable
16 economic test--whether the requesting CLEC actually needs the
17 requested network element or whether the demand is being
18 submitted in order to disrupt USWC or for the CLEC to avoid
19 making its own reasonable and prudent investment in the network.

20 New technologies which are not essential and which can be
21 developed by any provider need not be unbundled under the FCC
22 standard and the requirements of the Act.

23 The contracts should be revisited to incorporate unbundling
24 requirements consistent with the FCC Order.

25
26

1 **D. Construction Charges.**

2 The contracts impermissibly restricts USWC's right to
3 recover up front construction costs from the Parties and requires
4 USWC to construct facilities for the Parties beyond the scope of
5 of what is reasonable under the Act. The 8th Circuit has held
6 that USWC has no obligation to provide a superior quality network
7 just for new entrants; instead, USWC must provide access to our
8 existing network. The reason for this decision is grounded in
9 the fact that if something is not yet built, the CLEC is every
10 bit as capable of constructing it as is USWC. Nothing in the Act
11 supports the notion of USWC becoming the construction company for
12 the new entrants.

13 This decision means that USWC may charge new entrants
14 construction charges where we are asked to build facilities. The
15 Act does not impose an obligation on USWC to build facilities for
16 new entrants, instead, the decision to build rests with USWC.
17 For these reasons, the contracts should be revisited to include
18 the following counts:

19 USWC is only required to resell services where facilities
20 exist.

21 USWC will only do special construction for new entrants if
22 it chooses to be in that market.

23 USWC is not required to assume loops are already conditioned
24 to provide DSL service.

25

26

1 **XIII. LEGAL ISSUES**

2 **A. UNCONSTITUTIONAL CONFISCATORY TAKINGS**

3 Under the Takings Clause of the United States Constitution,
4 public utilities are entitled to just and reasonable utility
5 rates. Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S.
6 591, 603 (1944). "If the rate does not afford sufficient
7 compensation, the State has taken the use of utility property
8 without paying just compensation. . . ." Duquesne Light Co. v.
9 Barasch, 488 U.S. 299, 308 (1989). Indeed, utilities are entitled
10 to a reasonable opportunity to recover not only their costs but a
11 reasonable profit as well. Hope, 320 U.S. at 603; Duquesne, 488
12 U.S. at 310. The Takings Clause of the Arizona Constitution, art.
13 2, ' 17, bars confiscatory takings as well. Thus, under both the
14 United States and Arizona Constitutions, the Commission must set
15 rates that permit USWC at least to recover all of the actual costs
16 incurred for unbundled network elements and resale. It may not
17 set below-cost rates.

18 **B. SUBSTANTIAL EVIDENCE STANDARD**

19 Submitting a proposed interconnection agreement does not put
20 all issues or language in that proposed agreement before the
21 Commission. The Act provides, "The State Commission shall limit
22 its consideration of any petition under paragraph (1) (and any
23 response thereto) to the issues set forth in the petition and in
24 the response." 47 U.S.C. ' 252 (b) (4) (A). In this proceeding MCI
25 introduced testimony that highlighted key issues in dispute with
26 USWC, but did not identify with specificity all of the disputed

1 terms and conditions of the proposed interconnection agreements or
2 provide testimony in support of all these terms and conditions.

3 Under Arizona law a court will examine the decision of the
4 Commission to determine if it is supported by substantial
5 evidence. USWC Communications, Inc. v. Arizona Corp. Comm'n, 185
6 Ariz. 277, 281-82, 915 P.2d 1232, 1236-37 (App. 1996); Tucson
7 Elec. Power Co. v. Arizona Corp. Comm'n, 132 Ariz. 240, 241, 645
8 P.2d 231, 232 (1982); Simms v. Round Valley Light & Power Co., 80
9 Ariz. 145, 154-55, 294 P.2d 378, 384 (1956). Furthermore, a
10 Commission order may be unlawful even though supported by
11 substantial evidence if the evidence was improper or illegal.
12 Arizona Corp. Comm'n v. Citizens Utility Co., 120 Ariz. 184, 187-
13 88, 584 P.2d 1175, 1178-79 (App. 1978). Accordingly, those issues
14 without substantial evidentiary support are not properly before
15 the Commission.

16 Moreover, section 252 of the Act limits the matters at issue
17 in an arbitration to section 251, section 252 (d) and the
18 establishment of an implementation schedule. 47 U.S.C. ' 252(c).
19 If a party requests the Commission to adopt other terms and
20 conditions of a proposed interconnection agreement, the Commission
21 need not resolve issues concerning those other matters.

22 **XIV. CONCLUSION**

23 The Commission should grant rehearing and adopt the proposed
24 interconnection agreement attached hereto or amend the contracts
25 as set forth herein thereby adopting a resolution to the disputed
26 issues that fairly balances the interests of USWC and its

1 ratepayers with the interests of the Parties and the other new
2 entrants.

3 Therefore, based on the reasons set forth above, USWC asks
4 that the Commission grant USWC a rehearing to modify the contracts
5 as requested herein.

6 DATED this 19th day of August, 1997.

7

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21 ORIGINAL AND 10 copies of the foregoing
22 hand-delivered for filing this 19th
day of August 1997, to:

23 Arizona Corporation Commission
24 DOCKET CONTROL
25 1200 W. Washington Street
26 Phoenix, Arizona 85007

1 FOUR COPIES of the foregoing hand-delivered
2 this 19th day of August, 1997 to:

3 Hearing Division-Arbitration
4 Arizona Corporation Commission
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DKT	NUMBER	DIV	YEA	MATTER	DOC	DO	COMPANY
T	02752	A	96	0362	06		MFS Intelenet of Arizona,
T	02432	B	96	0505	06		Sprint Communications Com
T	03009	A	96	0478	06		Brooks Fiber Communicatio
T	03245	A	96	0448	06		American Communications S
T	03016	A	96	0402	06		TCG Phoenix
T	02428	A	96	0417	06		AT&T Communications of th
T	03175	A	96	0479	06		MCIMetro Access Transmiss
T	03021	A	96	0448	06		ACSI
T	03242	A	97	0017	06		Cox Arizona Telcom Inc.
T	03155	A	96	0527	06		GSTnet (AZ) Inc.

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