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BEFORE THE ARIZONA CORPORATION COMMISSION

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RENZ D. JENNINGS  
CHAIRMAN  
MARCIA WEEKS  
COMMISSIONER  
CARL J. KUNASEK  
COMMISSIONER

Commission  
TED  
1996

IN THE MATTER OF THE PETITION )  
OF TCG PHOENIX FOR ARBITRATION )  
PURSUANT TO §252(b) OF THE TELE- )  
COMMUNICATIONS ACT OF 1996 TO )  
ESTABLISH AN INTERCONNECTION )  
AGREEMENT WITH U S WEST )  
COMMUNICATIONS, INC. )

Docket No.U-3016-96-402

U S WEST'S EXCEPTIONS

**INTRODUCTION**

U S WEST Communications, Inc. ("USWC") files these exceptions to the recommendations of the Arbitrator issued October 17, 1996 ("Recommended Order"). Sections 252 (b)(4)(c) and 252(c) of the Telecommunications Act of 1996 (the "Act") require the Commission as the arbitrator to resolve open issues, including the establishment of rates and charges for interconnection and unbundled elements.

The Commission must address the following issues in its final order. First, the Commission should determine that the interim rate for unbundled loops and other unbundled elements should be set at the USWC-proposed TELRIC-based prices. Since the Eighth Circuit Court of Appeals has stayed the FCC pricing provisions, the Commission may not apply the FCC proxy rate for interconnection and unbundled elements. Because Section 252(d) of the Act requires the Commission to determine just and reasonable rates for interconnection and unbundled elements based on the cost of their provision, the Commission should adopt USWC's cost based pricing proposals since they are supported by credible evidence, and are the only cost based proposals in the record. Second, the Commission should determine what services may be purchased from USWC at wholesale prices and resold by TCG. The Commission must also determine the

WINDCO, FCC, J. J. F.

1 appropriate interim wholesale discount for resold services. Because §252(d)(3) of the Act  
2 requires the Commission to determine wholesale rates based on "costs that will be  
3 avoided by the local exchange carrier" and the only evidence in the record of the avoided  
4 costs is contained in the testimony of Ms. Santos-Rach, the Commission must adopt  
5 USWC's proposed wholesale discounts. Third, the Commission should not permit sham  
6 unbundling which will significantly erode the development of facilities-based competition  
7 and undercut the role of legitimate resale in Arizona. Fourth, the Commission should  
8 establish the levels of reciprocal compensation paid by USWC and TCG for call  
9 termination. Fifth, the Commission should permit USWC to charge TCG cash in advance  
10 for special construction for any facilities it constructs specifically to serve TCG. Sixth,  
11 the Commission should reject the Recommended Order's treatment of jointly provided  
12 switch access and adopt USWC's proposal.

13 As will be more fully described hereafter, USWC takes strong exception to several  
14 of the findings and rulings in the Recommended Order. If adopted, these rulings will  
15 cause substantial prejudice and harm to USWC in the following ways:

- 16  
17 1. The rates proposed by the arbitrator will not allow USWC to recover the  
18 cost of providing the services. Therefore, the Recommended Order, if adopted by  
19 the Commission, will constitute a confiscatory taking under the 5th and 14th  
20 Amendments to the United States Constitution and Article II, Section 4 of the  
21 Arizona Constitution.
- 22 2. By not allowing USWC to recover the cost of providing the services or in  
23 not providing a mechanism for the recovery of certain costs, the Recommended  
24 Order is inconsistent with the provisions of the Act. Therefore, the  
25 Recommended Order, if adopted, would directly violate the statutes governing the  
26 Commission's actions in this matter and would be in excess of the Commission's  
27 authority. As such, the Commission's actions would be contrary to law.
- 28 3. In several instances, the findings in the Recommended Order are not based  
on substantial evidence in the whole record before the arbitrator and the  
Commission. To the contrary, the substantial evidence in the record would  
mandate that the Commission find that proposals made by USWC must be adopted  
as fair and reasonable.
4. The scope of the Commission's authority to arbitrate issues is limited by  
§252(c) to those open issues to (i) ensure compliance with §251 and the FCC  
regulations, and (ii) establish rates pursuant to §252(d) and to provide a schedule  
for implementation. No other authority is granted to the arbitrator by the Act.  
Thus, where the parties have not agreed on contract provisions, such as those



1 accepted by the Commission. Therefore, the Commission should reject the  
2 Recommended Order and adopt an unbundled loop price of \$30.67 based on USWC's  
3 cost studies, the only evidence of cost in the record. The adoption of a rate less than the  
4 proposed USWC rate would be inconsistent with the mandate of the Act and constitute an  
5 illegal taking of USWC's property.

6 **2. RESALE WHOLESALe RATES**

7 The Recommended Order adopts a discount rate of 17%, which is simply the low  
8 end of the FCC proxy price range. Because of the stay, the Commission may not rely on  
9 the proxy discounts. Section 252(d)(3) of the Act requires the Commission as arbitrator  
10 to determine wholesale rates "on the basis of retail rates...excluding the portion thereof  
11 attributable to...costs that will be avoided by the local exchange carrier." (emphasis  
12 added). Thus, the discount price for resale services should be set at USWC's retail rate  
13 for the relevant service minus USWC's avoided cost. Because the only competent  
14 evidence of avoided costs introduced by either party was Ms. Santos-Rach's testimony  
15 concerning USWC's avoided cost study, the Recommended Order is not based on  
16 substantial evidence and must be rejected. Instead, the Commission should set the resale  
17 prices based on USWC's cost study at the rates ranging from 0 to 9%.

18 Further, while the Recommended Order suggests that USWC agreed that an  
19 appropriate wholesale discount was 17%, this was not USWC's position at the hearing.  
20 Rather, USWC took the position that if the Arbitrator adopted the FCC proxy range of  
21 discounts, 17% was the right number in that range to use. At no time, however, did  
22 USWC agree that the range of the proxy rates was reasonable. Because of the stay by the  
23 Eighth Circuit, any statement as to the use of the proxy range is irrelevant.

24 **3. RESALE RESTRICTIONS**

25 The Recommended Order specifically requires that the following services be  
26 available for resale at a discount: (1) private line transport (special access and private  
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1 line) services, (2) services subject to volume discounts, and (3) basic residential services.<sup>2</sup>  
2 The Recommended Order misapplies the standards of the Act, reaches conclusions  
3 unsupported by any substantial evidence and will result in confiscatory rates.

4 The Recommended Order should be amended so as not to require USWC to  
5 provide private line services to resellers at a further discount because they are already  
6 wholesale services. In Arizona, private line services are sold to carriers and end users  
7 from the special access tariff. Further, private line services are already discounted in  
8 Arizona as wholesale services and require no further discounts to set a wholesale price.  
9 The FCC Order provides that exchange access services are not subject to resale  
10 requirements even though these services are offered to and taken by end users as well as  
11 carriers. (FCC Order ¶¶ 873-874). The FCC also recognizes that LECs do not avoid  
12 any retail costs if access services are offered at wholesale to competitors. (*Id.*). Because  
13 private line and special access are the same service, provided out of the same tariff, they  
14 should not be available to resellers at a discount.

15 The Recommended Order should also be amended so that it does not require  
16 USWC to offer further discounts to resellers services that are already offered at a volume  
17 discount.<sup>3</sup> Services that are provided at discounts to large customers, such as Motorola,  
18 are already priced to reflect the fact that USWC avoids many of the usual costs of selling  
19 at retail. Further, discounts are based primarily on commitments for certain quantities of  
20 a service and for a certain term. The discounts therefore reflect costs avoided because of  
21 the quantities and the term of the contract. For example, marketing expenses such as  
22 advertising are avoided when selling large volume of services to a customer for an  
23 extended period. It makes no sense to apply a further discount to these services on the  
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25 <sup>2</sup> Both parties agree that enhanced services, deregulated services, and promotions of less  
26 than 90 days, need not be provided to TCG for resale.

27 <sup>3</sup> The FCC Order is not clear in its treatment of volume discount services. On one hand,  
28 the FCC seems to require that discounted services be provided to resellers at the discount  
rate minus the avoided cost. On the other hand, to a large extent, the FCC has left the  
determination of "the substance and specificity of rules concerning which discount and  
promotion restrictions may be applied to resellers in marketing their services to end  
users" to the state commissions. (FCC Order ¶¶ 951-952).

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1 basis that USWC has avoided significant costs. If USWC contracted to provide  
2 telecommunications services to Motorola at a 10% discount because of the quantity  
3 purchased and term of the contract, and the Arbitrator required USWC to offer the same  
4 services to TCG at an additional 10% discount, TCG would inevitably be able to  
5 underbid USWC for Motorola's business based on the margin between the volume  
6 discount price and the price paid by TCG. If a new entrant is allowed to compete with  
7 USWC both by selling its own services and by reselling USWC's service at a discount in  
8 excess of the avoided cost, USWC will be unable to effectively compete.

9 USWC should not be required to offer basic residential service for resale at a  
10 wholesale discount. As the only competent evidence in the record indicates, USWC's  
11 current IFR rate of \$13.18 does not cover its cost. Requiring USWC to discount a  
12 below-cost service will force USWC to subsidize competitors, such as TCG, with  
13 revenues from USWC's retail customers. Basic residential service is priced below cost in  
14 order to ensure universal service. It is not therefore appropriate for resellers to obtain  
15 this below-cost service at a discount. Further, if USWC is required to provide  
16 residential service to resellers at a price below cost, it will retard the development of  
17 facilities-based competition. New entrants in the market will have no incentive to build  
18 facilities if they can purchase USWC services for less than their cost to construct new  
19 facilities.

20 **4. COMBINATION OF UNBUNDLED ELEMENTS ("SHAM UNBUNDLING")**

21 The Recommended Order would allow carriers, such as TCG, to purchase  
22 unbundled elements and combine them into a service to be offered for resale. The ability  
23 to combine unbundled elements and offer the service for resale in this fashion is known as  
24 "sham unbundling". Sham unbundling will lead to severe rate arbitrage between resale  
25 prices and unbundled element prices. To prevent rate arbitrage, sham unbundling should  
26 not be permitted until USWC has been allowed to re-balance its retail rates.

27 Under the Recommended Order, TCG could purchase the equivalent of a  
28 "finished" service solely through the purchase of unbundled network elements at "cost-

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1 based" rates. Thus, TCG can order USWC to provide a finished retail service but get a  
2 cheaper price than the Act's resale price (retail less cost avoided) by utilizing the fiction  
3 that TCG is buying unbundled network elements -- when in reality there is no unbundling  
4 involved and TCG is not self-provisioning any elements. In this manner, TCG can  
5 completely circumvent the resale provisions of the Act -- engaging in "sham" unbundling.

6 In effect, sham unbundling upsets the balance between resale and unbundling that  
7 was established by Congress when it passed the Act. Congress realized that both  
8 unbundling and resale are critical to the development of meaningful competition, and  
9 crafted a carefully balanced mechanism which would allow new entrants to enter local  
10 markets rapidly, through resale, while developing their facilities-based networks in  
11 conjunction with the purchase of unbundled network elements from incumbent LECs.  
12 The Recommended Order, therefore, misapplies and is inconsistent with the Act.

13 Congress also realized that the state commissions have set prices for some retail  
14 services to include large contributions to help support residence basic exchange service.  
15 Therefore, Congress defined "margin neutral" resale rules in §§251(c) and 252(d)(3) of  
16 the Act that would allow retail services to be purchased by resellers at wholesale rates,  
17 based on the retail price less avoided costs. Thus, the margins that existed for these retail  
18 services -- and the contributions to other services -- would be preserved.

19 In summary, sham unbundling allows new entrants to arbitrage the resale of local  
20 exchange service and violates the objectives of the Act. The overwhelming weight of the  
21 evidence mandates that the Commission modify the Recommended Order to prohibit sham  
22 unbundling.

23 **5. RECIPROCAL COMPENSATION**

24 The Act requires that, in order for rates to be just and reasonable, reciprocal  
25 compensation must "provide for the mutual and reciprocal recovery by each carrier of  
26 costs associated with transport and termination." Act § 252(d)(2)(A)(i). The FCC has  
27 determined that for shared transmission facilities between tandem switches and end  
28 offices, states may establish usage-sensitive or flat-rate charges to recover those costs,

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1 and the states may use as a default proxy, the rate derived from the incumbent LEC's  
2 interstate direct-trunked transport rates in the same manner that the FCC derives  
3 presumptive price caps for tandem switched transport under the interstate price cap rules.  
4 (FCC Order ¶ 822). The FCC has also determined that a bill and keep arrangement is  
5 appropriate only when rates are symmetrical and traffic is in balance, a situation that is  
6 not likely to occur in Arizona. (FCC Order ¶ 1111). See A.A.C. Rule R-2-1304.  
7 Nonetheless, the Recommended Order adopts bill and keep for a period lasting until two  
8 years from the date an agreement is approved.

9       Until TCG can directly trunk to each end office over its facilities, TCG's  
10 exchange of traffic with USWC will necessarily impose additional costs on USWC. The  
11 existing USWC network routes traffic directly from end office to end office through the  
12 use of direct trunks. Traffic during unusual calling patterns or peak usage periods may  
13 overflow to the local tandem switching office via tandem trunks. TCG would make use  
14 of the tandem switches not as overflow routers, but rather as primary call routers, causing  
15 USWC to add capacity to its tandem switches and tandem transport facilities to  
16 accommodate the increased traffic. Traffic that had historically been intraoffice in nature  
17 (e.g., calls between neighbors served by the same USWC central office) will be converted  
18 to interoffice (i.e., calls between a USWC end office and an interconnector's end office),  
19 representing an increased traffic load on the USWC interoffice transport network. Under  
20 the Act, USWC must be allowed to recover the costs of this transport, but bill and keep  
21 does not allow USWC to recover these costs.

22       a.     **Bill and Keep**

23       Bill and Keep is simply inappropriate because it does not permit USWC to recover  
24 its costs of terminating TCG's traffic. Any assumption that USWC's terminating traffic  
25 and TCG's terminating traffic would be in balance, which is the key assumption under  
26 any bill and keep system, is patently unreasonable. Since TCG can choose to target  
27 particular types of customers (such as businesses) and since different customers have  
28 different patterns of originating and terminating traffic, traffic is not likely to be in

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1 balance between USWC and TCG. Further, because TCG is not required to and cannot  
2 provide ubiquitous service on its network, the difference in size of networks and number  
3 of customers served by the networks will inevitably result in traffic imbalance. Because  
4 bill and keep will prevent USWC from recovering its real costs of terminating TCG's  
5 traffic, it will inevitably result in under-recovery by USWC of its costs and is, therefore,  
6 confiscatory. Bill and keep should be rejected by the Commission.

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

16 **b. Treatment of TCG's Switch as a Tandem Switch**

17 USWC should not pay TCG tandem switching rates for the use of TCG's non-  
18 tandem switch as required by the Recommended Order. In determining that TCG should  
19 charge USWC reciprocal rates including a tandem switching rate, the Arbitrator failed to  
20 properly consider whether (1) TCG's switch performs a function similar to USWC's  
21 tandem switch, (2) TCG's and USWC's costs are symmetrical, and (3) TCG's switch  
22 serves a geographic area comparable to that served by USWC's tandem switch.

23 TCG's switch will not perform functions similar to USWC's tandem switch. TCG  
24 has a fiber ring network located predominantly in the central business area of Phoenix,  
25 which will not provide ubiquitous service. USWC's network is a tree and branch system  
26 that provides ubiquitous service throughout the Phoenix calling area. TCG's fiber ring  
27 and switch do not cover a geographic area comparable with the USWC network. Indeed,  
28 TCG's switch cannot handle all switched traffic within the Phoenix metropolitan area.



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1 charges, is consistent with the FCC Order, allowing incumbent LECs to recover the costs  
2 of unbundling network elements from requesting carriers. In addition, the only way to  
3 insure that the benefits of unbundling will exceed the costs is to have the requesting party  
4 pay.

5 The Recommended Order provided that USWC may collect up-front construction  
6 charges from a new entrant *only* if those charges would be recovered from a USWC end  
7 user pursuant to USWC's tariffs. This is both inconsistent with the Act and confiscatory.  
8 The Recommended Order should be modified to clearly provide that USWC should be  
9 compensated up-front by TCG for construction costs if USWC has to construct new  
10 facilities to enable it to provide services at resale or on an unbundled basis to TCG and  
11 should not be limited only to situations in which an end-user tariff is involved. If USWC  
12 is required to build facilities, then TCG should also pay a construction charge whether an  
13 end-user tariff is involved or not. The Recommended Order should be modified  
14 accordingly.

15 Further, the Recommended Order in discussing several issues, provides that  
16 USWC should recover specific costs of providing service to new entrants but fails to  
17 provide for a recovery mechanism. For example, on page 6 of the Recommended Order,  
18 the Arbitrator provides that "TCG should pay for the adjustments U S WEST must make  
19 to its processes" to provide physical interconnection at USWC's access tandem but fails  
20 to provide a mechanism whereby USWC may recover those costs. Under the Act,  
21 USWC is entitled to recover its cost of providing service to the new entrants. The  
22 Commission should amend the Recommended Order to grant USWC a means to recover  
23 the costs due from TCG.

24 **7. SHARING REVENUES FROM JOINTLY PROVIDED SWITCHED ACCESS**

25 The Recommended Order requires that when TCG provides tandem switching<sup>4</sup> and  
26 some portion of the tandem transport, TCG will receive not only the rate chargeable to  
27

28 <sup>4</sup> While as discussed earlier, the evidence establishes that TCG's initial switch will act as an end office switch and not a tandem switch, TCG has indicated that at some point it will

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1 the interexchange carrier for tandem switching and transport but also 30% of the end  
2 office charges that are payable by the IXC to USWC under the applicable interstate or  
3 intrastate tariff. This portion of the Recommended Order is contrary to the Act,  
4 inconsistent with tariffs on file with this Commission and is not supported by substantial  
5 evidence.

6 First, the Recommended Order alters the compensation for switched access service  
7 in clear violation of the Act. Section 251(G) of the Act provides for the continued  
8 enforcement of exchange access and interconnection requirements. That section provides  
9 that LECs are to provide exchange access under the same restrictions and obligations,  
10 including receipt of compensation, until the restrictions and obligations are explicitly  
11 superseded by regulations provided by the FCC. Further, the FCC in its First  
12 Interconnection Order expressly states that reciprocal compensation does not apply to  
13 transport termination of interstate or intrastate interexchange traffic. (FCC Order, ¶  
14 1034). If TCG believes that providers of end office access services are overcompensated  
15 and providers of tandem switching for access termination are undercompensated, it should  
16 seek rate relief before the FCC and the Commission in access restructure dockets. The  
17 Recommended Order should be rejected on this basis alone.

18 Second, the required division of switched access revenues also violates the express  
19 terms of the interstate tariff and the intrastate tariff concerning charges for provision of  
20 access service. Both the interstate and the intrastate access tariffs expressly set forth the  
21 charges that may be levied on the IXC by the carrier providing tandem switching and  
22 transport and the charges that may be levied on the IXC by the carrier providing end  
23 office switching and call termination. Under those tariffs, when TCG and USWC provide  
24 joint switched access service with TCG providing tandem switching and transport and  
25 USWC providing end office switching and termination, the tariffs explicitly provide that  
26 TCG receives the rates set in the tariffs tandem switching, its portion of tandem transport

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28 provide competitive tandem service by connecting to interexchange carriers and providing  
tandem switching between those carriers and USWC end office switches.



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tariffs and the evidence in the record.<sup>5</sup> The result is significant prejudice and harm to USWC.

**8. TRUNKING REQUIREMENTS**

The Recommended Order adopted TCG's suggestion that the parties be required to work together to combine local and meet point trunk groups when feasible. USWC opposes the combination of local and toll traffic on a single trunk group. The reason why separate trunk groups are required for these types of traffic is for billing purposes. This type of traffic is called transit traffic and will be billed differently depending on how it is routed. To ensure accuracy in the billing, separate trunk groups should be required. The Commission should amend the Recommended Order to require toll and local traffic be placed on separate trunk groups.

**9. INTERIM NUMBER PORTABILITY COST RECOVERY**

USWC and TCG appear to be in substantial agreement that interim number portability should be offered pursuant to remote call forwarding. The parties agree on the price of the service, but disagree on who should pay for the service. TCG argues the service should be offered to it at no charge with the cost borne by USWC's retail customers, while USWC believes the cost of interim number portability should be borne by the cost causer, TCG.

The FCC has adopted specific rules concerning the recovery of interim number portability costs from carriers based on the number of lines served. The Recommended Order attempted to follow the FCC Order, but it leaves out a crucial part of the recovery formula. The FCC has not established any mechanism for USWC to recover the portion of the costs that are allocated to it.

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<sup>5</sup> TCG's request for 30% of USWC's end office charges for both intrastate switched access and intrastate switched access is further undercut by its own corrected testimony that TCG receives 20% of the end office revenues on intrastate switched access and 15% of the end office revenues on interstate switched access from Pacific Bell pursuant to an interconnection agreement between TCG and Pacific Bell. The Recommended Order, therefore, imposes a significantly more draconian subsidy requirement on USWC than TCG was able to persuade Pacific Bell to pay.

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1 USWC has proposed non-recurring and recurring charges that apply to USWC's  
2 proposed interim number portability service based on the TELRIC studies submitted  
3 into evidence. The proposed charges for interim number portability are described in  
4 Exhibit A to Ms. Mason testimony. The Commission should adopt these TELRIC-  
5 based rates for interim number portability.

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

11 The Commission should reject these unreasonable provisions of the FCC Order.  
12 USWC should be allowed to retain the local switching and local transport charges it  
13 receives from interexchange carriers when calls are forwarded to TCG as a result of  
14 interim number portability. USWC does not incur any less expense for the local  
15 switching or local transport services it offers to an interexchange carrier when USWC  
16 forwards an incoming call to TCG. Sharing the revenues for these services with TCG  
17 would amount to a further unwarranted subsidy to TCG and would be confiscatory for  
18 USWC.<sup>6</sup>

19 **10. COLLOCATION**

20 The Recommended Order permits TCG to collocate at any technically feasible  
21 point and rejects USWC's proposal that the space available to any single new entrant for  
22 collocation in a given central office be limited so as to make space available for other new  
23 entrants. This portion of the Recommended Order is contrary to the evidence and to  
24 sound public policy.

25 \_\_\_\_\_  
26 <sup>6</sup> In the interest of compromise, however, USWC is prepared to 'forward' carrier  
27 common line charges to TCG. But, rather than incurring the expense of identifying,  
28 recording and billing the individual minutes of use that are forwarded to TCG under an  
interim number portability arrangement, USWC proposes to provide a credit on each  
TCG 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.

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1           In order to protect the rights of all potential competitors, USWC believes that the  
2 agreement must contain some limitation on the amount of floor space in a central office  
3 which is made available to TCG for physical collocation. USWC will be obligated to  
4 provide physical collocation to a number of new entrants, and there will be limits on the  
5 available amount of floor space, particularly in light of the space limitation problems  
6 USWC already faces in some of its Arizona central offices. USWC has proposed that  
7 TCG and each other new entrant be limited to 400 feet in any single central office. TCG  
8 offered no reasonable alternative suggestion to the Arbitrators, and the Recommended  
9 Order simply fails to come to grips with this issue.

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

23       **11. INDEMNITY/LIMITATION OF LIABILITY CLAUSES**

24           The Recommended Order adopts TCG's position and includes a provision relating  
25 to indemnity and limitation of liability. Nothing in the Act, the FCC Order, this  
26 Commission's rules or the law of this State allows for the inclusion of such clauses.  
27 There is simply no legal basis for the Commission to impose these clauses. A party's  
28 remedy instead should be through a contract dispute resolution process, a proceeding

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1 before this Commission or a court action for the recovery of actual damages. The  
2 Commission should amend the Recommended Order to remove the indemnity and  
3 limitation of liability provisions.

4 **12. DEFINITIONS**

5 The Recommended Order opts for the use of the definitions contained in the TCG  
6 Agreement "because the parties focused on the TCG Agreement . . ." Recommended  
7 Order at 25. The Recommended Order is in error in this regard and is not based on  
8 substantial evidence. The parties did not focus on the TCG Agreement but instead on the  
9 matrix of issues presented to the Arbitrators.

10 Instead of mandating the use of TCG's definitions, the Commission should amend  
11 the Recommended Order to require the parties to negotiate mutually acceptable definitions  
12 as part of the process of putting together a final agreement.

13 **CONCLUSION**

14 The Commission should amend the Recommended Order as set forth in these  
15 exceptions and thereby adopt a resolution to the disputed issues that fairly balances the  
16 interests of USWC and its ratepayers with the interests of TCG and the other new  
17 entrants. The Recommended Order, with its use of uneconomic and unrealistic proxy  
18 prices and its authorization of price arbitrage through sham unbundling, unfairly  
19 disadvantages USWC and its customers. USWC has offered evidence of its costs of  
20 service that form a just, reasonable and fair basis on which to establish interim prices and  
21 interim wholesale discounts. Because any interim rates are subject to true-up following  
22 the permanent pricing proceeding, TCG and the other new entrants will not be prejudiced  
23 by the use of interim rates based on USWC's cost studies.

24 Therefore, based on the reasons set forth herein, USWC asks that the Commission  
25 modify the Recommended Order as requested.

26 **RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of October, 1996.

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this 28<sup>th</sup> day of October,  
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Copy of the foregoing hand-  
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ENCLOSURE

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