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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission

DOCKET NO.

SEP 21 1996

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

DOCKET NO. U-3016-96-402
DOCKET NO. E-1051-96-402

DECISION NO. 59873

OPINION AND ORDER

DATES OF ARBITRATION: September 18, 19 and 20, 1996
PLACE OF ARBITRATION: Phoenix, Arizona
PRESIDING ARBITRATORS: Jerry L. Rudibaugh, Barbara M. Behun and Scott S. Wakefield
APPEARANCES: Ms. Deborah S. Waldbaum, Western Regional Counsel, TELEPORT COMMUNICATIONS GROUP, INC., and Mr. Bruce Meyerson, STEPTOE & JOHNSON, LLP, on behalf of TCG Phoenix; and
Mr. Gary L. Lane, Corporate Counsel, U S WEST, INC., and Mr. Timothy Berg, FENNEMORE CRAIG, on behalf of U S West Communications, Inc.

BY THE COMMISSION:

On July 17, 1996, TCG Phoenix ("TCG") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration ("Petition") pursuant to § 252(b) of the Telecommunications Act of 1996 ("Act") to establish an interconnection agreement with U S WEST Communications, Inc. ("U S WEST"). By Procedural Order dated August 8, 1996, an arbitration was scheduled for September 18, 1996, at the Commission's offices in Phoenix. On August 12, 1996, U S WEST filed its Response to the Petition. The arbitration was held as scheduled and the parties submitted closing arguments in writing on September 30, 1996. The issues resolved in this Decision are those which the parties indicated remain as of September 30, 1996.

DISCUSSION

1
2 On February 8, 1996, President Clinton signed the Act into law which established new
3 responsibilities for the Federal Communications Commission ("FCC") as well as for the various state
4 commissions.¹ On July 2, 1996, the FCC issued *Telephone Number Portability*, CC Docket No. 95-116,
5 First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-268 ("TNP Order"), which
6 established rules so that a customer who changes his local exchange carrier ("LEC") in the same local
7 service area may keep the same telephone number. On July 22, 1996, the Commission in Decision No.
8 59762 adopted A.A.C. R14-2-1501 through A.A.C. R14-2-1507 ("Arbitration and Mediation Rules"),
9 which authorized the Hearing Division to establish procedures and conduct arbitrations. Also on July
10 22, 1996, the Commission in Decision No. 59761 adopted A.A.C. R14-2-1301 through 1311
11 ("Interconnection Rules"), to govern the interconnection of local exchange services between incumbent
12 LECs ("ILECs") and competing LECs ("CLECs"). On August 8, 1996, the FCC released *Implementation*
13 *of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First
14 Report and Order, FCC 96-325 ("Order") and *Implementation of the Local Competition Provisions of*
15 *the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum
16 Opinion and Order, FCC 96-333, in which the FCC adopted initial rules ("Rules") designed to
17 accomplish the goals of the Act.²

18 Pursuant to the Act, telecommunications carriers desiring to interconnect with the facilities and
19 equipment of an ILEC may negotiate the terms of such interconnection directly with the ILEC. If the
20 parties are unsuccessful in negotiating an interconnection agreement, any party to the negotiation may
21 request the Commission to arbitrate any open issues regarding interconnection. The Act requires the
22 Commission to resolve any such issues within 180 days of a telecommunications carrier's initial request
23 to the ILEC for interconnection.

24 Pursuant to § 252 of the Act, state Commissions are required to determine just and reasonable
25

26 ¹ As part of the Act, the FCC was ordered to issue regulations no later than August 8, 1996
27 interpreting many of the broad and general terms of the Act.

28 ² Except in the section regarding the issue of number portability, any reference to "Para."
in this Decision is to Paragraphs in the Order.

1 rates for interconnection and network elements based on the cost of providing the interconnection or
2 network element which are nondiscriminatory and may include a reasonable profit. For resale services,
3 rates are to be the wholesale rates based on retail rates excluding costs of marketing, billing, collection
4 and other costs avoided by the LEC. The Commission's Interconnection Rules require the use of total
5 service long run incremental costs ("TSLRIC") to determine costs.

6 Our August 8, 1996 Procedural Order directed the parties to provide a joint pre-arbitration
7 statement which set forth their positions and the manner in which their disagreement should be resolved
8 by the arbitrators, a proposed interconnection agreement, a list of witnesses and a summary of their
9 testimony, as well as exhibits. The FCC's Rules issued on August 8, 1996, required the use of total
10 element long run incremental costs ("TELRIC"). TELRIC includes the forward-looking costs that can
11 be attributed directly to the provision of services using that element, and includes a reasonable share of
12 the forward-looking joint and common costs.

13 On September 16, 1996, U S WEST filed cost studies, which included avoided cost as well as
14 TELRIC cost studies. The materials were voluminous and complex. U S WEST further supplemented
15 its cost studies on September 30, 1996.

16 The arbitration in this matter was scheduled to begin on September 18, 1996. It was not
17 reasonable to expect TCG to conduct discovery, review and respond to any of U S WEST's cost studies
18 at the arbitration. No continuance could be granted due to the time frame for final resolution of the
19 disputed issues contained in the Act.

20 Accordingly, on August 30, 1996, a Procedural Order was issued which consolidated the
21 appropriate portions of this proceeding with similar portions of the dockets of interconnection arbitrations
22 between U S WEST and several other CLECs to consider the cost studies submitted by U S WEST in
23 each of those dockets. The Procedural Order indicated that interim rates would be set in accordance with
24 the Order, at the proxy ceilings or mid-points of proxy ranges set forth by the FCC, unless a party showed
25 that an alternate interim price consistent with the proxies would be appropriate. The interim rates would
26 be subject to true-up upon establishment of prices based upon Commission-approved cost studies.³

27
28 ³ The Arbitrator took additional argument on whether interim rates would be subject to true-up. Below, we conclude that interim rates will be subject to true-up upon the establishment of permanent

1 The cost studies will be used to set prices for all CLECs in U S WEST's service area.
2 Consolidating the cost study review allows input from the initial CLECs and provides for consistency
3 in the Commission's determination of costs. A separate review of the cost studies in each arbitration
4 could result in varying conclusions, depending upon the competitors' resources available to respond to
5 the studies and the capabilities of each party's witness. The CLECs need sufficient time to review and
6 prepare testimony in response to the cost studies, and the Commission needs to have adequate time to
7 review the conclusions reached by the parties.

8 U S WEST, as well as the CLECs, will not be harmed by the use of the interim prices. The cost
9 studies will be analyzed at a consolidated arbitration beginning on November 18, 1996, with a Decision
10 expected in early 1997. It is anticipated that the interim prices will be in effect a short time, and since
11 the interim prices are subject to a true-up at the conclusion of the cost study rulings, any deficiency will
12 be cured.

13 After the arbitration, on September 27, 1996, the United States Court of Appeals for the Eighth
14 Circuit ("Court") issued an Order Setting Hearing and Imposing Temporary Stay. Oral arguments on the
15 motions requesting stay until judicial review of the FCC's Order were held on October 3, 1996, and on
16 October 15, 1996, the Court stayed the operation and effect of the FCC's Rules' "pricing provisions and
17 the pick and choose' rule" pending the Court's final determination of the issues raised in the petitions
18 for review. Given the time constraints imposed by the Act in this proceeding; the fact that the arbitration
19 has been concluded, with the exception of the cost study portion; and the Court's issuance of a stay of
20 the pricing provisions of the Rules, the Commission has no choice but to approve prices that we believe
21 are the most reasonable, based on the information provided, whether it is the cost studies submitted by
22 the parties, or the final offers of the parties which in some cases may reflect the proxy ranges set forth
23 by the FCC. Since these will be interim prices, we find that there will be no irreparable harm to the
24 parties.

25 Pursuant to § 252(b)(4)(C), the Commission hereby resolves the issues presented for arbitration.
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rates.

1 **L. Interconnection**

2 **(a) Physical Interconnection Issues**

3 **(1) Where may TCG interconnect?**

4 The Act provides that an ILEC must provide interconnection "at any technically feasible point
5 within the carrier's network." 47 U.S.C. § 251(c)(2)(B). The Order, interpreting this requirement,
6 specifically lists several points at which an ILEC must provide interconnection. Para. 212; 47 C.F.R. §
7 51.305. One of the required points of interconnection is the trunk side of the tandem switch. U S
8 WEST's network has in operation both local tandems, through which it switches local traffic, and access
9 tandems, through which switched access (toll) traffic is routed. U S WEST's local tandems are connected
10 to some but not all of U S WEST's end offices. The access tandems are connected to all of U S WEST's
11 end offices.

12 **TCG's position:**

13 TCG has requested interconnection at U S WEST's access tandems. Routing to the local tandems
14 is problematic for TCG, because TCG cannot determine from the Local Exchange Routing Guide
15 ("LERG") which end offices are connected to the local tandems. The subtending arrangements of the
16 access tandems, however, are published in the LERG. In addition, U S WEST claims to lack capacity
17 at the local tandems. Finally, TCG claimed that the ISDN capabilities which it desires are not available
18 at U S WEST's local tandems, but those capabilities are available at the access tandems. TCG
19 acknowledged that U S WEST would have to make some adjustments in its processes in order for TCG
20 to connect at the access tandems. TCG proposed to create separate local interconnection trunk groups
21 which can be directly trunked by U S WEST to the end offices, without the need for any tandem
22 switching, when traffic reaches 512 ECCS.

23 **U S WEST's position:**

24 U S WEST opposed TCG's request to interconnect at the access tandems for the exchange of local
25 traffic. U S WEST instead suggested that TCG interconnect at the local tandems to exchange local
26 traffic, and at the access tandems to exchange switched access traffic. U S WEST did not deny that
27 routing local traffic through the access tandems was technically feasible, but argued that such a use would
28 be an inefficient use of the access tandems, akin to "using your Cadillac to carry lumber." (Tr. at 345).

1 In addition, using the access tandems to carry local traffic will limit the availability of the access tandems
2 to carry true access traffic.

3 U S WEST also proposed that TCG be limited to interconnect with U S WEST's network only
4 at the points specified in the Order.

5 Commission's resolution:

6 Interconnection at U S WEST's access tandems is technically feasible, therefore we will require
7 U S WEST to permit TCG to interconnect at that point. TCG should pay for the adjustments U S WEST
8 must make to its processes for such connections. We will not limit TCG's interconnection to the points
9 listed in the Order. The Order is clear that the list is the minimum of points to which an ILEC must grant
10 interconnection. We will also expect TCG to deliver end-office traffic to the point of interconnection
11 between U S WEST's and TCG's networks on separate trunk groups when traffic reaches 512 ECCs,
12 thereby allowing U S WEST to route this traffic directly to the end office without the need for any
13 tandem switching.

14 **(2) Sizing and Structure of Interconnection Facilities**

15 TCG's position:

16 TCG proposed that two-way trunks capable of carrying ISDN traffic be provided where
17 technically feasible. TCG claimed that U S WEST was unwilling to permit TCG to deliver local ISDN
18 traffic through the access tandem.

19 U S WEST's position:

20 U S WEST indicated that its local tandem was unable to handle ISDN traffic. Apparently, U S
21 WEST indicated to TCG that it could make a request for such capability and pay for the cost of
22 installation of the necessary facilities.

23 Commission's resolution:

24 Above, we required U S WEST to provide interconnection at its access tandem. TCG's ability
25 to carry ISDN traffic to U S WEST's access tandem should address its concern on this matter.

26 **(3) Trunking Directionality**

27 TCG's position:

28 TCG requested that it be given the option to use either one-way or two-way trunks for the delivery

1 of local exchange traffic. Para. 219 of the FCC Order requires an ILEC to accommodate two-way
2 trunking, when technically feasible, from a CLEC which does not carry a sufficient amount of traffic to
3 justify two separate one-way trunks.

4 U S WEST's position:

5 U S WEST did not put forth a position on this issue.

6 Commission resolution:

7 We will require U S WEST to permit TCG to use two-way trunks where technically feasible,
8 when TCG does not carry sufficient traffic to justify separate one-way trunks.

9 (4) Combination Interconnection Trunk Groups

10 TCG's position:

11 TCG proposed that the interconnection agreement include a trunking arrangement provision that
12 provides that the parties cooperate to combine local and meet point trunk groups when feasible.

13 U S WEST's position:

14 U S WEST opposed any requirement to combine local and toll traffic, with their different rate
15 structures, on a single trunk group. U S WEST asserted that combining trunk groups could raise network
16 design issues, including the potential shift of significant amounts of traffic from the local network to the
17 toll network, or vice versa. Such a shift could cause the unnecessary expansion of one network and the
18 unnecessary abandonment of capacity on the other network.

19 Commission's resolution:

20 TCG's proposal requires the parties to work together to combine the functionalities of local
21 interconnection trunk groups and meet point trunk groups when it is feasible. U S WEST's alleged
22 network design issues may result in a determination that such combining is not feasible. We will adopt
23 TCG's proposal and order the parties to cooperate to combine local and meet point trunk groups when
24 feasible. If local and toll traffic are combined in one trunk group, TCG must provide a measure of the
25 amount of local and toll traffic relevant for billing purposes to U S WEST. U S WEST will be allowed
26 to audit the traffic reported if it has reason to believe the reported measurement is not accurate.

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(5) Meet Point Trunking Arrangements**TCG's position:**

TCG proposed that, when meet point trunking is used to permit TCG and U S WEST jointly provide switched access services, either TCG or U S WEST can be the tandem carrier. The provision of tandem services is a competitive business, and TCG must have the right to fairly compete in that market.

U S WEST's position:

U S WEST did not address this issue in the arbitration or in its closing brief. TCG asserted, however, that U S WEST proposed that U S WEST remain the tandem carrier in all circumstances for the provision of switched access services.

Commission's resolution:

We will not permit U S WEST to restrict TCG's ability to compete for tandem services when U S WEST and TCG jointly provide switched access services.

(b) Financial Issues**(1) Reciprocal Compensation****a. Bill and Keep Compensation for Exchange of Local Traffic**

TCG and U S WEST have been unable to agree on the rate which each company will pay to transport and terminate traffic on each other's networks. The Commission's Interconnection Rules provide that a bill and keep arrangement be used for 24 months from the time the Commission approves the first interconnection agreement. A.A.C. R14-2-1304(A).

TCG's position:

TCG proposed that the Commission adopt a bill-and-keep arrangement for terminating local calls until one year after permanent number portability is implemented. If the Commission does not adopt bill-and-keep, TCG proposed that the Commission adopt an interim proxy price of \$0.002/minute, which was the lower end of the FCC's proposed range.⁴

⁴ As discussed above, the FCC's proxy rates have been stayed by the Court.

U S WEST's position:

U S WEST opposed the adoption of a bill-and-keep arrangement, and also opposed the adoption of default proxy rates. U S WEST instead proposed that the Commission adopt forward looking economic costs based upon the total element long-run incremental cost ("TELRIC") studies which U S WEST filed.

Commission's resolution:

In accordance with our Interconnection Rules, we will adopt bill and keep as a reciprocal compensation mechanism. A.A.C. R14-2-1304 provides that bill and keep be in place for 24 months from our approval of the first interconnection agreement. However, we will permit either party to seek an earlier termination of the bill and keep mechanism if it is able to show, based on six months of history, that traffic terminated by TCG and U S WEST is out of balance by more than ten percent.

b. **Should U S WEST pay tandem rates for the use of TCG's switch?**TCG's position:

TCG claimed that its switch serves a geographic area comparable to the area served by U S WEST's tandem switch, and therefore the rate it receives for use of its switch should be the same as U S WEST receives for the use of its tandem switch. TCG's switch serves its fiber ring network, which encompasses most of the metropolitan Phoenix area, and within one year will include Prescott, Sedona, Flagstaff and Page. TCG's switch serves 12 of the 14 rate centers served by U S WEST's Phoenix tandem switch.

U S WEST's end office switch, which U S WEST is claiming is the equivalent of TCG's switch, serves a limited geographic area. U S WEST serves the metropolitan Phoenix area with approximately fifty end office switches. U S WEST uses a second tandem switch to serve northern Arizona, which TCG will serve with its single switch.

U S WEST's position:

U S WEST claimed that TCG's switch does not serve a geographic area comparable to U S WEST's tandem switch, and should not be compensated the same as a tandem switch. U S WEST stated that as TCG's fiber ring does not yet occupy the entire area served by all of U S WEST's end offices in the Phoenix metropolitan area, it should receive compensation as an end office switch.

Commission's resolution:

Section 252(d)(2) of the Act requires the Commission to establish reciprocal compensation arrangements for the transport and termination of traffic between LECs based on a reasonable approximation of the additional costs of terminating such calls. We believe that when a CLEC's switch and network serves a geographic area comparable to that served by the ILEC's tandem switch, the ILEC should pay the CLEC for use of that switch at the same rate the CLEC pays for use of the ILEC's tandem switch.

TCG's switch serves a large portion of geographic area served by U S WEST's Phoenix tandem switch and end office system. TCG's switch also encompasses an area not covered by U S WEST's Phoenix tandem switch. As a result, we find it to be just and reasonable for TCG to receive compensation for use of its switch equivalent to that of U S WEST's tandem switch.

(2) Sharing Revenues from Jointly Provided Switched Access

Jointly provided switched access service is an arrangement whereby one local carrier (the "tandem carrier") provides transport of an interexchange carrier's ("IXC") traffic from the interexchange carrier's point of presence to another local carrier's (the "end office carrier") end office switch, and the end office carrier completes the call. TCG and U S WEST have been unable to agree on how the charges paid by the interexchange carrier for termination of traffic should be apportioned between the tandem carrier and the end office carrier.

U S WEST currently routinely shares switched access revenues with independent telephone companies pursuant to the terms set forth in its tariffs. Such revenue sharing arrangements are commonly referred to as "meet point billing" arrangements. There are four charges associated with such switched access which are billed to interexchange carriers under a meet point billing arrangement and then divided between the tandem and end office carriers. One of those charges is the Residual Interconnection Charge ("RIC"), which is paid to the end office carrier.

The FCC intends to address access charge issues in an upcoming access charge reform proceeding. The Order established a temporary mechanism to divide access charge revenues between competing LECs. Those provisions have been stayed by the Court, however.

...

1 TCG's position:

2 TCG claimed that the RIC actually recovers 80 percent of the costs of providing tandem service,
3 and the remaining 20 percent of the tandem costs are recovered in the tandem switching charge, which
4 is payable to the tandem carrier. TCG argues that, when it is the tandem carrier, it will not recover the
5 costs of the tandem services it provides if the RIC is paid to U S WEST as the end office carrier.

6 TCG claimed that passing the RIC to U S WEST as the end office carrier produces a double cross
7 subsidy by TCG to U S WEST. U S WEST's tandem prices, which TCG claims are subsidized by the
8 RIC, would effectively set a ceiling on the rates TCG could charge IXCs to compete with U S WEST.
9 TCG would subsidize U S WEST's below-cost tandem rates, and be required to compete against those
10 same subsidized rates.

11 TCG proposed, as an alternative, that when it is the tandem carrier, it bill the access customer for
12 both the end office and tandem charges, and then remit to U S WEST 70 percent of the end-office
13 charges, keeping 30 percent for itself. TCG claims that such a scheme would allow it to recover the
14 tandem costs it incurs. TCG claimed that such a sharing of revenues does not require any change in
15 switched access charges which would be billed to an interexchange carrier, and therefore it does not
16 contravene the Act's requirement to not interfere with U S WEST's pre-existing equal access obligations
17 (Section 251(g)).

18 U S WEST's position:

19 U S WEST proposed that revenues from jointly provided switched access services should be
20 apportioned in the same manner as they are currently apportioned under its tariffs. U S WEST contends
21 that section 251(g) of the Act prohibits carriers from changing the way exchange access services are
22 billed until the FCC acts to reform interstate access charges.

23 Commission's resolution:

24 We do not find TCG's proposal to violate the provisions of Section 251(g) of the Act. That
25 section requires interexchange carriers to be treated the same after the Act as they were before the Act.
26 TCG's proposal merely redistributes amounts which interexchange carriers must pay for access between
27 U S WEST and TCG. We therefore adopt TCG's proposal.

28 ...

1 **2. Collocation at U S WEST Premises**

2 The Act requires ILECs to provide at its premises for physical collocation of equipment
3 necessary for a CLEC to interconnect its own network with the ILEC's network. 47 U.S.C. § 251(c)(6).
4 The Order broadly interprets "premises" to include all buildings or similar structures that house the
5 ILEC's network facilities. Para. 573; 47 C.F.R. § 51.5.

6 **TCG's position:**

7 TCG requested that U S WEST permit collocation throughout its network. In addition, TCG
8 requested that it be granted unescorted access to its collocated facilities 24 hours a day, seven days a
9 week. TCG also requested that it be permitted to cross-connect its collocated facilities with those of other
10 CLECs also collocated at U S WEST's premises, as required by the FCC Order. Para. 594-595; 47
11 C.F.R. § 51.323(h). In addition to physical collocation, TCG proposed that the interconnection
12 agreement provide for shared space collocation, microwave collocation, POT bay engineering, virtual
13 collocation and mid-span meet arrangements.

14 **U S WEST's position:**

15 U S WEST requested that the presumptive point of collocation be at U S WEST's central offices,
16 with other arrangements to be made on an as-needed basis. U S WEST also proposed that TCG and each
17 other CLEC be limited to 400 square feet in any single central office for collocation. U S WEST raised
18 no objection to TCG's request for shared space collocation, microwave collocation, POT bay
19 engineering, virtual collocation and mid-span meet arrangements.

20 **Commission's resolution:**

21 We adopt the Order's broad definition of "premises", and will not presume any specific point of
22 collocation. TCG may collocate at any technically feasible premises. If TCG wishes to collocate at a
23 location other than a central office, U S WEST has the burden of proof to establish that the location, if
24 included in the Order's definition of "premises," is not technically feasible. We will permit the
25 agreement to include provisions for shared space collocation, microwave collocation, POT bay
26 engineering, virtual collocation and mid-span meet arrangements.

27 We will not issue a specific limitation on the square footage per competitor. TCG should receive
28 a reasonable space to collocate in an efficient manner the equipment which is necessary under the Act.

1 TCG should be permitted continuous access to its collocated space. U S WEST, whenever
2 technically feasible, should provide an isolated, secured space for each carrier's collocated equipment,
3 and provide for unrestricted and unescorted access to the equipment. TCG must pay the cost of
4 construction and maintenance of its collocated space. If each CLECs' collocated space cannot be
5 separately secured, then U S WEST must provide general security to the area, with escorted access upon
6 request by the carrier.

7 **3. Unbundled Network Elements**

8 **(a) Prices for Unbundled Elements**

9 The Act provides that the price for unbundled elements be based on costs, and may include a
10 reasonable profit.

11 **TCG's position**

12 TCG had offered, in its initial proposed agreement, particular prices for unbundled elements,
13 including unbundled loops. In light of the Arbitrator's Procedural Order of August 30, 1996, however,
14 TCG proposed that the interim proxy rate for unbundled loops be \$12.85, consistent with the Rules. TCG
15 also proposed that other rates for unbundled elements be set consistent with the Order.

16 U S WEST does not offer higher-grade local loops as requested by TCG. Instead, U S WEST has
17 offered to provide conditioning on its standard loops to improve their quality to meet TCG's needs. U S
18 WEST suggested that there should be an additional charge for the conditioning of loops. TCG indicated
19 it has no objection to the concept of an additional charge for conditioning. U S WEST did not indicate
20 what the charge for conditioning should be, however, so TCG proposed that the \$12.85 interim rate
21 should include conditioning as required by TCG.

22 **U S WEST's position**

23 U S WEST proposed that unbundled elements be priced at their forward looking costs, as set forth
24 in the cost studies provided by U S WEST. U S WEST argued that we should establish permanent rates
25 in this proceeding, based on those cost studies. As an alternative, U S WEST proposed that the
26 Commission use its TELRIC-based rates as interim rates.

27 **Commission resolution**

28 As we have previously recognized, the time constraints imposed on this proceeding do not permit

1 us or the parties time to do a thorough analysis of the cost studies. Accordingly, we will determine
 2 interim rates based on the most reasonable final offers of TCG and U S WEST. At this point in time,
 3 there has not been sufficient evidence/analysis to determine which rate is the most reasonable.
 4 Accordingly, for the interim period we are going to simply adopt the average of TCG's proposed \$12.85
 5 rate and U S WEST's proposed \$30.67, or a rate of \$21.76, for unbundled loops. For other unbundled
 6 elements, we will also adopt the average of the TCG proposed rate and U S WEST's proposed rate for
 7 the interim period.

8 With respect to conditioning charges, we will permit U S WEST to charge TCG for conditioning
 9 of local loops on the same terms which it charges its own retail customers for conditioning. If U S WEST
 10 normally charges its customers an up-front fee, it may require TCG to pay an up-front fee. If the fee for
 11 conditioning is built into the monthly costs for its customers, however, the conditioning costs should be
 12 considered as part of the forward looking economic costs of the upgraded loop. If U S WEST generally
 13 charges a conditioning charge up front, it may propose such a fee to TCG in response to a Bona Fide
 14 Request for such conditioning.

15 **(b) Combination of Unbundled Elements⁵**

16 **TCG's position:**

17 TCG claimed that the Order, Paras. 328-341, precludes any limitation on its ability to purchase
 18 unbundled network elements and combine them into a product. TCG does not want a limitation placed
 19 on it which is expressly forbidden by the Order.

20 **U S WEST's position:**

21 U S WEST requested that TCG be prohibited from purchasing from U S WEST all the elements
 22 of a "finished" service and recombining them into the same finished product which TCG could obtain
 23 from U S WEST on a resale basis. U S WEST is concerned that TCG could avoid the purchase of the
 24 retail service pursuant to the Act's resale provisions (i.e. at the retail cost less an avoided cost discount)
 25 and instead obtain the same service by purchasing all the unbundled elements of the service (at a price
 26 based on cost). U S WEST argues that permitting TCG to rebundle an entire service from unbundled
 27

28 ⁵ U S WEST referred to this issue as "sham unbundling."

1 elements it purchases from U S WEST will permit TCG to arbitrage the price between the resale service
2 and the prices of the unbundled elements. U S WEST recommended that the Commission ignore the
3 FCC's prohibition on restrictions on combining unbundled elements.

4 Commission's resolution:

5 We reject U S WEST's invitation to ignore the FCC's guidance. The Act establishes U S
6 WEST's affirmative duty to provide unbundled elements "for the provision of a telecommunications
7 service." 47 U.S.C. § 251(c)(3). The Act makes no suggestion that TCG's right to obtain unbundled
8 elements should in any way be limited. In fact, the Act requires U S WEST to provide unbundled
9 elements in such a way that allows TCG to provide telecommunications services. U S WEST's provision
10 of requested elements with the limitation requested by U S WEST would contravene that requirement.
11 We will therefore allow TCG to purchase unbundled elements without restriction as to how those
12 elements may be rebundled.

13 **4. Performance Standards and Remedies**

14 TCG's position:

15 TCG proposed that the interconnection agreement include performance standards with respect
16 to the obligations it imposes. TCG stated that it did not consider U S WEST's existing performance
17 record to be an adequate standard on which to measure future performance. TCG further proposed that
18 the agreement provide for liquidated damages as penalties for either party's failure to comply with the
19 performance standards.

20 U S WEST's position:

21 At the arbitration proceeding, U S WEST stated that it did not object to the establishment of
22 performance standards. In its Post-Arbitration Brief, however, U S WEST objected to performance
23 standards, claiming that it is already subject to rigorous anti-discrimination standards. U S WEST has
24 consistently opposed penalties. U S WEST argued that nothing in the Act or the FCC Order requires the
25 Commission to establish liquidated damages for failure to satisfy performance standards, and that
26 adequate remedies already exist if TCG believes it has been the victim of discrimination. If the
27 Commission does order performance standards, however, U S WEST proposed that they should be
28 uniform between the different interconnecting CLECs.

1 Commission's resolution:

2 In general, performance standards are a reasonable method to provide for the service required by
3 the Act. We adopt, in the interim, the measurements proposed by U S WEST in its Best and Final Offer
4 submitted in *The Matter of the Petition of AT&T Communications of the Mountain States, Inc. for*
5 *Arbitration with U S West Communications, Inc. of Terms and Conditions Pursuant to 47 U.S.C. § 252(b)*
6 *of the Telecommunications Act of 1996*, Docket No. U-2428-96-417 et al. as well as dedicated access
7 services to be measured and reported, as the proper measurement on which to gauge U S WEST's
8 performance. We find that pursuant to the Act, the proper standard of performance for each of those
9 measurements should be the quality of service which U S WEST provides to itself, to its ten largest
10 customers, to other CLECs, or other quality of service requirements imposed by the Commission,
11 whichever is higher. In addition, the Arbitrators shall establish a generic proceeding to determine
12 permanent quality of service measurements/liquidated damages.

13 We will not require that the agreement include automatic penalties for a party's failure to comply
14 with performance standards. The FCC declined to establish performance penalties. Paras. 307-311.
15 Instead, the FCC stated that an aggrieved party may file a section 208 complaint with the FCC and that
16 the FCC will initiate a proceeding to develop expedited procedures to handle section 208 complaints.
17 In addition, a carrier could file a section 207 complaint seeking the recovery of damages. Paras. 126-129.
18 We will not establish performance penalties where the FCC declined to do so, and where other
19 procedures exist to remedy failures to comply with performance standards.

20 The Commission has rendered its Decision regarding the parties to this arbitration proceeding.
21 Nothing in this Decision shall be considered to prejudice the outcome of the Commission's Decision in
22 any other arbitration proceeding regarding U S WEST's performance standards or the applicability of
23 penalties.

24 5. Nondiscriminatory Access to Poles, Ducts, Conduits and Rights of Way

25 TCG's position:

26 TCG proposed that the interconnection agreement include certain terms regarding poles, ducts
27 and conduit. One of those terms required a conduit's owner to prepare the conduit for occupancy and
28 proportionately recover the costs through its conduit charges.

U S WEST's position:

U S WEST proposed a "make ready" charge to cover the costs of any rearrangements it must make to accommodate a licensee's facilities, to be charged up front.

Commission's resolution:

If the "make ready" charge would be charged up-front to other, non-competing licensees, U S WEST may charge the "make ready" charge up front. Otherwise, U S WEST must recover its costs to rearrange existing facilities as part of its recurring charges. Where U S WEST is permitted to charge a "make ready" charge up front, the "make ready" charge shall be subject to refund by U S WEST as set forth in TCG's proposal with respect to the refunding of a proportionate share of infrastructure charges paid for physical collocation.

6. Customer Guide in White Pages/Billing for Advertising**TCG's position:**

TCG proposed that the interconnection agreement require that TCG have the same number of Customer Guide pages in the White Pages as U S WEST has. TCG also proposed that it be permitted to directly bill its own customers for their advertising in the Yellow Pages directory, and that TCG then remit those payments to U S WEST.

U S WEST's position:

U S WEST contended that it is not obligated to TCG regarding White Pages or Yellow Pages matters, because the directories are published by a separate company, U S West Direct. U S WEST believes, however, that U S West Direct intends to treat TCG in the same manner it treats U S WEST.

Commission's resolution:

We will retain jurisdiction over this issue and resolve it if TCG is not satisfied with the outcome of its negotiations with U S WEST Direct. We desire to make it clear that we expect TCG to receive the same treatment as U S WEST receives with respect to White Pages and Yellow Pages matters.

7. Resale of Telecommunications Services**(a) Should private line services be available for resale at a wholesale discount?****TCG's position:**

TCG has requested that it be able to purchase private line services at a resale discount. TCG

1 claimed that private line services are offered to end-users, and should be offered at resale, subject to the
2 resale discount.

3 U S WEST's position:

4 U S WEST claimed that private line services are already discounted, and should not be further
5 discounted. In addition, U S WEST's private line and special access tariffs were merged into a single
6 tariff pursuant to Decision No. 57109 (September 21, 1990). The FCC Order provides that there need
7 not be any wholesale discount on special access services (Paras. 873-874). Therefore, U S WEST
8 claimed that private line service should not receive a resale discount.

9 Commission's resolution:

10 We believe that the Act requires any service which is sold to end-user customers to be offered for
11 resale an appropriate wholesale discount. Regardless of the merging of the private line and special access
12 tariffs, private line service is offered to end-user customers, and therefore it should be made available for
13 resale at a discount.

14 **(b) Should residential service be available for resale at a discount?**

15 TCG's position:

16 TCG requested that residential services be subject to the wholesale rate.

17 U S WEST's position:

18 U S WEST claimed that residential services are already priced below costs, and therefore should
19 not be offered for resale with further discount.

20 Commission's resolution:

21 The wholesale discounting requirement of the Act applies to "any telecommunications service
22 that the carrier provides at retail to subscribers who are not telecommunications carriers" and makes no
23 exceptions. We therefore require U S WEST to make its residential services available for resale at a
24 wholesale discount.

25 **(c) Should retail services priced at volume discount be available for resale at further discount?**

26 TCG's position:

27 TCG requested that retail services priced at a volume discount to end users be made available for
28 resale at wholesale rates. TCG claimed that there are avoided costs associated with the resale of retail

1 services, even when those services are sold at a volume discount. Therefore, the services should be
2 available for resale at a discount.

3 U S WEST's position:

4 U S WEST claimed that it should not be required to offer further discounts to resellers on services
5 which are already offered at a volume discount. U S WEST argued that the volume discounts already
6 reflect costs that are avoided because of the quantities and term of the contract.

7 Commission's resolution:

8 Section 251(c)(4) of the Act provides that ILECs must offer for resale at wholesale rates "any
9 telecommunications service" that the ILEC provides at retail to non-carrier subscribers. This requirement
10 would include discounted services. We acknowledge that discounts for services which are already
11 discounted, such as volume discount services, may not have as high an avoided cost as full-priced
12 services.

13 (d) What discount should apply to resold services?

14 TCG's proposal:

15 TCG proposed that resale services should be priced at U S WEST's retail rate less an interim
16 discount of 17 percent until the Commission can determine U S WEST's actual avoided costs.

17 U S WEST's proposal:

18 U S WEST submitted an avoided cost study on August 30, 1996 and requested that discount rates
19 be set pursuant to its study. U S WEST argued that the Commission cannot set interim prices based on
20 the default proxy range of 17 to 25 percent when an avoided cost study exists. U S WEST further argued
21 that, if the Commission does set an interim wholesale discount, it establish that discount at 17 percent.

22 Commission's resolution:

23 The Commission has not had adequate time to review the cost studies submitted by U S WEST
24 to determine whether they comply with the requirements of the Act. Nor has TCG had time to review
25 and comment upon the studies. Based on all the evidence presented we find that the most reasonable
26 discount submitted in this arbitration proceeding was a discount rate of 17 percent. Therefore, we will
27 adopt an interim discount rate of 17 percent, to apply to all resale services until the Commission
28 completes its evaluation of the cost studies.

(e) Should TCG be required to pay a "customer transfer charge" to U S WEST?**TCG's position:**

TCG objected to U S WEST's proposal to charge a fee to transfer a U S WEST customer account to a Reseller, or to transfer an account from one Reseller to another. TCG argued that the proposed charge imposes a burden on resellers that U S WEST does not have to bear for itself, in violation of the Act's requirements.

U S WEST's position:

U S WEST proposed that a non-recurring customer transfer charges apply when transferring a U S WEST customer to a Reseller, or when transferring a customer from one Reseller to another. The charge will cover the costs U S WEST will incur to initiate and complete the transfer of an account between LECs (e.g., order costs).

Commission's resolution:

We will authorize a customer transfer charge. The fee does not impose a burden on resellers which U S WEST would not bear itself should a resale customer chose to transfer back to U S WEST. We will adopt U S WEST's proposed charge as an interim rate. We will further permit TCG to demonstrate what its own costs will be upon termination of a resale customer, so that amount may be discounted from the customer transfer charge payable to U S WEST.

(f) Construction Charges**TCG's position:**

TCG opposed the imposition of up-front charges for the construction of new facilities used to provide resold services.

U S WEST's position:

U S WEST proposed that TCG should be required to pay construction charges if U S WEST must construct new facilities for resale. U S WEST argued that it should not be required to finance its competitors' entry into the market.

Commission's resolution:

We agree with TCG that requiring a Reseller to pay up-front construction charges which are not payable by an end-user who requests service from U S WEST could hamper competition. Therefore, if

1 the tariff for a specific service would pass construction costs up-front to an end user, it is appropriate to
 2 charge TCG up-front for the construction. If another CLEC receives a benefit from the construction,
 3 TCG is entitled to recover contribution from the CLEC for a share of the construction costs. If
 4 construction costs are not tarified for payment up-front, the construction costs should be recovered in the
 5 recurring price of a service.

6 **8. Interim Number Portability**

7 TCG and U S WEST agree that interim number portability ("INP") should be offered pursuant
 8 to remote call forwarding. The parties disagree on how costs of INP will be recovered.

9 **TCG's position:**

10 TCG proposed that the costs of INP be recouped from all CLECs in a competitively neutral
 11 manner, consistent with Section 251(e) of the Act the FCC's TNP Order. In that Order, the FCC required
 12 apportionment of the costs of INP among relevant carriers by using any of several competitively neutral
 13 allocators, including number of active telephone lines.

14 **U S WEST's position:**

15 U S WEST proposed that the costs of INP be paid by TCG, in accordance with A.A.C. R14-2-
 16 1310(B).

17 **Commission's resolution:**

18 We adopt the FCC's determination of acceptable cost recovery mechanisms. We will require an
 19 annual surcharge for number portability to be assessed based upon each carrier's number of ported
 20 telephone numbers relative to the total number of active telephone numbers in the local service area,
 21 which is the first INP cost recovery method recommended by the FCC in the TNP Order, Para. 136.
 22 While this is not a generic proceeding and therefore we cannot order all carriers to comply with the
 23 payment method at this time, we anticipate ordering each carrier to comply as part of its interconnection
 24 proceeding. Our consistent application of this requirement should achieve the competitively neutral cost
 25 recovery mandated by the Act.

26 **9. Interim Rates**

27 **(a) True-up of Interim Rates**

28 In the August 30, 1996 Procedural Order, the Arbitrator indicated that interim rates would be

1 established subject to true-up after permanent rates are established following the Commission's
2 consideration of cost studies.

3 TCG's position:

4 TCG argued that true-up should not occur. The FCC Order specifically states that if default
5 proxies are set, they must be replaced by cost-based rates on a going-forward basis after cost studies are
6 approved (Para. 769).

7 U S WEST's position:

8 U S WEST proposed that the question of whether interim rates should be subject to true-up should
9 be deferred until the consolidated cost proceeding which will establish permanent rates. U S WEST
10 believes, however, that the Commission has full authority to set interim rates subject to refund upon the
11 setting of permanent rates.

12 Commission's resolution:

13 We will require a true-up of the interim rates established herein upon our establishing permanent
14 rates. Our adoption of interim rates is not meant to provide a windfall to either party, but to serve as a
15 mechanism to comply with the Act's strict timetable to arbitrate interconnection agreements
16 expeditiously. TCG's basis for claiming that permanent rates must be used on a going-forward basis has
17 been negated by the Court's stay of pricing provisions of the Rules.

18 **(b) Interim Rates for Services Where FCC Did Not Set a Proxy Rate**

19 **(1) Conduit**

20 TCG's position:

21 TCG proposed a rate of \$0.60 per foot per year.

22 U S WEST's position:

23 U S WEST disagreed with TCG's proposed rate, but did not propose any other rate.

24 Commission's resolution:

25 We will authorize an interim rate of \$0.60 per foot per year. We will consider additional evidence
26 on this matter at the consolidated proceeding, after which we will establish a permanent rate and subject
27 this interim rate to true-up.

28

(2) Non-recurring charges associated with unbundled loops**TCG's position:**

TCG proposed that the interim rate for non-recurring charges associated with the provision of unbundled loops be set at the retail non-recurring charge that U S WEST charges, less a wholesale discount.

U S WEST's position:

U S WEST proposed that the interim rate be set based on the TELRIC studies it has submitted.

Commission's resolution:

TCG's proposal strays from the cost-based rate design required by the Act. Therefore, while we do not intend to give approval to the cost-based rates submitted by U S WEST in their cost studies at this time, we will set the interim rate for non-recurring charges associated with unbundled loops at the rate U S WEST proposed.

(3) Collocation**TCG's position:**

TCG proposed that a rate of \$3.00 per square foot for rental of floor space, which was the high end of U S WEST's ballpark estimate of its costs. TCG further proposed a \$40,000 charge for infrastructure expenditures. TCG also proposed a refund provision, whereby U S WEST refund to TCG certain amounts upon collocation by other CLECs at the same premises.

U S WEST's position:

U S WEST proposed that interim rates for physical collocation elements which are not also provided for in its interstate tariff be set at U S WEST's proposed cost-based rates.

Commission's resolution:

We will permit U S WEST to establish physical collocation rates for elements not provided for in its interstate tariff on an individual case basis. We will, however, require the refunding provision which TCG proposed regarding subsequent collocation by additional CLECs.

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1 **10. Miscellaneous Contractual Terms**

2 **(a) Most Favorable Terms and Treatment**

3 **TCG's position:**

4 Section 252(i) of the Act permits TCG, and any other telecommunications carrier, to obtain from
5 U S WEST any interconnection, service or network element which U S WEST provides under an
6 approved interconnection agreement, on the same terms and conditions as provided in the interconnection
7 agreement. TCG proposed that its interconnection agreement include a provision granting TCG the right
8 to select any individual element from another carrier's interconnection agreement.

9 **U S WEST's position:**

10 U S WEST opposed the inclusion of a "most favored nation" provision in the interconnection
11 agreement. The Court has stayed the Rules' requirement that any carrier be permit to select any
12 individual term from any interconnection agreement. U S WEST argued that including a most favored
13 nations provision in the agreement with TCG is at best redundant, at worst would deny U S WEST the
14 benefit of its appeal of the Rules.

15 **Commission's resolution:**

16 We will not require that the agreement include a most favored nations provision. We do not
17 desire to subject U S WEST to a most favored nations provision beyond that required by the Act. The
18 Commission has rendered its Decision regarding the parties to this arbitration proceeding. Nothing in
19 this Decision shall be considered to prejudge the outcome of the Commission's Decision in any other
20 arbitration proceeding regarding the applicability or interpretation of the Most Favored Nation Clause.

21 **(b) Term of Agreement**

22 **TCG's position:**

23 TCG proposed that the interconnection agreement be in force for three years. Based on the
24 resources which have been put into obtaining the agreement, TCG believes that a term shorter than three
25 years would disadvantage TCG.

26 **U S WEST's position:**

27 U S WEST proposed that the agreement be for a term of two years. U S WEST claimed that the
28 Interconnection Rules permit it to renegotiate an interconnection agreement, and alleged that an

1 agreement which provides a three year term impedes on that right.

2 Commission's resolution:

3 We will authorize a three year term for the interconnection agreement. We believe that requiring
4 TCG to expend the resources to renegotiate after only two years would disadvantage TCG.

5 **(c) Indemnity**

6 TCG's position:

7 TCG proposed an indemnity provision providing that each party will indemnify the other for
8 claims made due to their own negligence or misconduct.

9 U S WEST's position:

10 U S WEST proposed an indemnity provision which provided that each party indemnify the other
11 from all losses.

12 Commission's resolution:

13 Neither TCG nor U S WEST discussed this provision at the arbitration. Only TCG presented the
14 issue in its closing brief. Therefore, we will adopt TCG's proposal.

15 **(d) Dispute Resolution and Binding Arbitration**

16 The parties agreed that disputes arising under the interconnection agreement should be settled by
17 arbitration. The parties could not agree, however, on who would pay the costs of such arbitration.

18 TCG's position:

19 TCG proposed that the loser pay the costs, including attorneys fees, of the arbitration.

20 U S WEST's position:

21 U S WEST proposed that each party bear its own costs of arbitration.

22 Commission's resolution:

23 We will require that the agreement provide that the arbitrator shall determine which party or
24 parties will bear the costs of arbitrations.

25 **(e) Limitations of Liability**

26 TCG's position:

27 TCG proposed that the agreement's provision limiting liability of the parties not preclude either
28 party's liability for punitive damages.

1 U S WEST's position:

2 U S WEST proposed that the contract specifically prohibit the recovery of punitive damages. U S
3 WEST argued that punitive damages are not usually awarded for contractual disputes.

4 Commission's resolution:

5 We will not require the agreement to prohibit the recovery of punitive damages. Should either
6 party engage in conduct which justifies an award of punitive damages, the agreement should not prohibit
7 such a remedy.

8 (f) Definitions

9 The parties do not dispute the need for definitions in the arbitrated interconnection agreement,
10 but they have not reached an agreement on the definitions to be used.

11 TCG's position:

12 TCG proposed that, because both parties have focused on the TCG proposed agreement, the
13 definitions set forth therein be used.

14 U S WEST's position:

15 U S WEST offered a set of definitions as part of its original proposed agreement.

16 Commission's resolution:

17 Because the parties focused on the TCG agreement, we will adopt the definitions it proposed.

18 The parties will be instructed to prepare for the Commission's review an interconnection
19 agreement incorporating in its terms the issues resolved by arbitration.

20 * * * * *

21 Having considered the entire record herein and being fully advised in the premises, the
22 Commission finds, concludes, and orders that:

23 FINDINGS OF FACT

- 24 1. TCG has applied to the Commission for authority to provide competitive
- 25 telecommunications services to the public in Arizona.
- 26 2. U S WEST is certificated to provide local exchange and intraLATA telecommunications
- 27 services to the public in Arizona pursuant to Article XV of the Arizona Constitution.
- 28 3. On July 17, 1996, TCG filed with the Commission a Petition pursuant to the Act.

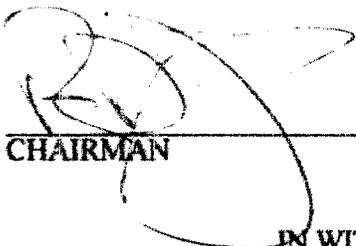
REC'D - WDC - HMC

1 IT IS FURTHER ORDERED that TCG Phoenix and U S WEST Communications, Inc. shall
2 prepare an interconnection agreement incorporating the terms of the Commission's resolutions.

3 IT IS FURTHER ORDERED that the interconnection agreement shall be submitted to the
4 Commission for its review within thirty days of the date of this Decision.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9
10


CHAIRMAN



COMMISSIONER



COMMISSIONER

11 IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive Secretary of the
12 Arizona Corporation Commission, have hereunto set my hand and caused the
13 official seal of the Commission to be affixed at the Capitol, in the City of
14 Phoenix, this 29 day of October 1996.

15

16 JAMES MATTHEWS
17 EXECUTIVE SECRETARY

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DISSENT 59873
SSW:dap

1 SERVICE LIST FOR:

TCG PHOENIX and U S WEST COMMUNICATIONS,
INC

2 DOCKET NO:

U-3016-96-402 and E-1051-96-402

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