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FOR THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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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 COMMUNICATIONS,
INC. POST-ARBITRATION
BRIEF

INTRODUCTION

This Arbitration between U S WEST Communications, Inc. ("USWC") and TCG Phoenix ("TCG") pursuant to the 1996 Federal Telecommunications Act ("the Act") represents far more than a simple arbitration of a dispute between two private parties. At issue is whether contractual terms and prices can be adopted which facilitate telecommunications competition in this state while also allowing for the continued attraction of private capital for constructing and maintaining the telecommunications infrastructure which serves all customers and all telecommunications providers in Arizona.

This Arbitration raises seven key issues. First, the Arbitrators must determine what interim rate to set for unbundled loops and whether the Arbitrators should apply the FCC proxy rate. Second, the Arbitrators must determine what services may be purchased from USWC at wholesale prices and resold by TCG and the interim wholesale prices for such services. Third, the Arbitrators must determine whether they will adopt the erroneous interpretation of the Act put forward in the FCC Orders and permit sham unbundling which will significantly erode the development of facilities-based competition

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1 and undercut the role of legitimate resale. There appears to be little dispute between the
2 parties over this issue. Fourth, the Arbitrators must determine the levels of reciprocal
3 compensation paid by USWC and TCG. Because the parties have reached agreement on
4 interim rates for some aspects of switching and call termination, the principal issue to be
5 resolved is whether TCG should be permitted to charge tandem rates for use of its non-
6 tandem switch. Fifth, the Arbitrators must decide whether USWC will be permitted to
7 charge TCG cash in advance for special construction for any facilities USWC must
8 construct specifically to serve TCG. Sixth, the Arbitrators must decide whether, contrary
9 to the interstate and intrastate switched access tariffs, USWC must pay 30% of the
10 Carrier Common Line Charge ("CCLC"), the Residual Interconnection Charge ("RIC"),
11 Local Switching Charge and the Local Transport Charge. Seventh, the Arbitrators should
12 not accept TCG's proposed penalties for failure to meet performance standards.

13 Before discussing these key issues and any of the other unresolved issues, USWC
14 will address TCG's argument that the Arbitrators must follow the FCC Order even when
15 provisions of that Order are contrary to the Act, the laws of Arizona or the rules of this
16 Commission.

17 The threshold issue to be addressed in this arbitration is whether the state of
18 Arizona is, as a matter of state policy, going to exercise its independent regulatory
19 jurisdiction in interpreting the Federal Act, while also meeting its constitutional
20 regulatory duties in this state, or rigidly adhere to the FCC's ultra vires interpretation of
21 the Act. The issues in this case must be addressed by the Arbitrators and by the
22 Commission as a matter of state policy consistent with a sovereign state's authority to
23 interpret its rights and responsibilities under both federal and state law.

24 Indeed, certain of the FCC's rules, if adopted by this Commission and not
25 reversed on appeal, will so damage USWC's ability to attract capital that the public
26 switched network in this state will deteriorate irreparably in a very short period of time.
27 Accordingly, USWC asks the Arbitrators to rule in the following manner: (1) The
28 Arbitrators should reject the FCC's rules and proxy prices. The FCC's proxy prices do

1 not leave USWC with a viable business plan. Instead, the FCC's proxy prices are a
2 prescription for: "arbitrage" masquerading as "competition." Unlike true facilities-based
3 competition, this arbitrage will create no new services, no true customer choice, no new
4 investment, no new jobs (other than telemarketing jobs) -- in short it will create none of
5 the public benefits intended by Congress in passing the Act. (2) The Arbitrators should
6 not allow new entrants to breach their contracts with USWC in order to "cherry pick"
7 more favorable contract provisions. Under the FCC's rules, any provision of any
8 contract is available to all other competitors at any time. (3) The Arbitrators should not
9 allow new entrants to obtain services or unbundled elements below cost. If TCG is
10 granted the ability to obtain services or unbundled network elements below cost, all other
11 providers will have that ability. (4) The Arbitrators should prohibit sham unbundling. If
12 TCG is allowed to arbitrage cost/price relationships in USWC's current rate structure
13 through "sham unbundling" -- without allowing for retail rebalancing and deaveraging,
14 such that it is allowed to pocket subsidies which have heretofore gone to support
15 residential and rural service -- then all competitors will have that right. Ultimately, if all
16 competitors are able to ride on USWC's network at below cost rates and arbitrage
17 USWC's current price structure, then not only will USWC not be able to attract
18 investment capital to invest in Arizona's telecommunications infrastructure, neither will
19 facilities-based new entrants. If adherence to the FCC's order requires massive retail
20 price rebalancing and retail deaveraging or if it has a catastrophic effect on network
21 investment in this state, then this Commission, not the FCC, will be left to deal with the
22 consequences.

23 USWC and TCG have negotiated issues and submitted a joint position statement
24 that resolves many of the issues raised. This brief will focus on the issues remaining in
25 dispute between the parties.

26 **I. The Arbitrators Need Not And Should Not Follow The FCC Orders Where**
27 **The Orders Are Contrary To The Act Or Usurp The Jurisdiction Of This**
28 **Commission.**

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Fundamental to our system of justice is the notion that no one has an obligation to comply with an unlawful regulation or statute.¹ An arbitrator who believes that provisions of the FCC Orders are unlawful, either as contrary to the Act or in excess of the FCC's jurisdiction, may ignore them on the ground that they are ultra vires and instead, adopt rules inconsistent with the FCC Orders but consistent with federal law. See Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, 374 (1986) (FCC regulations preempting state depreciation regulations are ultra vires).

The language that confers appellate jurisdiction upon federal district courts over the decisions of state arbitrators under § 252(e)(6) of the Act confirms this general rule. That section provides that any party aggrieved by the arbitration process may bring an action in federal district court "to determine whether the agreement or statement meets the requirements of section 251 and this section." (emphasis added.) This provision on its face clearly requires the federal courts to determine not whether the arbitral decision is in harmony with the FCC rules, but whether it abides by the Act.

It is clear, therefore, based on the appellate standard contained in the Act, that the Arbitrators are required to resolve issues in these arbitrations in compliance with the Act. If the Arbitrators conclude that provisions of the FCC Orders are inconsistent with the Act or exceed the jurisdiction of the FCC and constitute an impermissible infringement on the authority of the Arizona Corporation Commission over intrastate matters, the Arbitrators may adopt the contractual provision that best meets the requirements of the Act or that best vindicates the policies of this State with respect to intrastate telecommunications issues. The Arbitrators' obligation is one of fidelity to the Act and not to the FCC Order.²

¹ This is in marked contrast to the obligation to abide by an unlawful injunction. See e.g., Walker v. City of Birmingham, 388 U.S. 307 (1967).

² The Eighth Court of Appeals has issued an order imposing a temporary stay of the effective date of the FCC's First Report and Order of August 8, 1996, and set a hearing for October 3, 1996 to hear argument on the stay motions. Iowa Utilities Board v. Federal Communications Commission and United States of America, No. 96-3321 (8th Cir. September 27, 1996) (Order setting hearing and imposing temporary stay).

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In addition, the "Tenth Amendment confirms that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to States." Koog v. U.S., 79 F.3d 452, 455 (3rd Cir. 1996). The Federal Government lacks the "power to compel the States to require or prohibit [certain] acts." Id. at 456. Whatever the outer limit of the Tenth Amendment, "one thing is clear: The Federal Government may not compel the States to enact or administer a federal regulatory program." Id. quoting New York v. United States, 505 U.S. 144 (1992). Based upon this line of reasoning, the Koog court held that there were four principles to be considered in determining whether or not the Federal Government has over stepped its bounds. These four principles are:

1. The Federal Government may not coerce the States into administering a federal regulatory program.
2. States may not be precluded from rejecting the role envisioned for them by the Federal Government
3. Unconstitutional coercion of the States threatens state sovereignty because it strips States of choice and control over state policies.
4. Federal commandeering of state government blurs political accountability, a democratic value protected by the principles of federalism.

Koog, 79 F.3d at 457.

Finally, the Arbitrators have an obligation to protect the public interest. In interpreting the Act, the Commission should do so in a manner that will "protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. See § 253(b). U S WEST urges the Commission not to follow parts of the FCC Order because it is either inconsistent with the Act or not in the public interests of Arizona and its citizens. The Arizona Constitution vests the Commission with "full power to....prescribe ...just and reasonable rates and charges to be made and collected, by public service corporations within the State." Ariz. Const. Article 15, § 3. This section effectuates broad delegation of legislative power to the

1 In arbitrations of interconnection arrangements, or in rulemaking the
2 results of which will be applied in arbitrations, states must set prices for
3 interconnection and unbundled network elements based on the forward-
4 looking, long-run, incremental cost methodology we describe below.
5 Using this methodology, states may not set prices lower than the forward-
6 looking incremental costs directly attributable to provision of a given
7 element. They may set prices to permit recovery of a reasonable share of
8 forward-looking joint and common costs of network elements. In the
9 aftermath of the arbitrations and relying on the state experience, we will
10 continue to review this costing methodology, and issue additional guidance
11 as necessary.

12 **FCC Order ¶ 620.**

13 Consistent with Interconnection Rule R 14-2-1310, USWC's cost studies initially
14 filed in this docket were based on Total Service Long Run Incremental Cost ("TSLRIC").
15 Subsequently, USWC prepared TELRIC cost studies that comply with the methodology
16 mandated by the FCC. Those TELRIC studies have been introduced into evidence in this
17 matter and USWC has proposed prices that are consistent with those studies. Since
18 USWC's proposed prices are based on TELRIC, there is no reason for the Arbitrators to
19 set prices based on the FCC proxy prices and, in fact, to do so would be directly contrary
20 to the FCC's order.

21 Further, the Arbitrators should set the nonrecurring cost for a local loop and any
22 other price element for which there is no FCC proxy price at the levels set forth in
23 USWC's TELRIC studies. Ms. Santos-Rach testified about the rigorous process USWC
24 used in preparing those studies and that they comply with the TELRIC standards adopted
25 by the FCC. (USWC Ex-2; Tr. at 193-194). She testified that the appropriate interim
26 rate for local service nonrecurring installation charges was the TELRIC rate. (Tr. at 194).
27 While TCG argued that the Arbitrators should adopt the residential or business retail
28 service installation charge less the wholesale discount as the rate for installation, they
presented no evidence that those rates covered the cost of those elements on either a
TSLRIC or TELRIC basis.

Finally, USWC proposes that the Arbitrators limit the network elements required
to be unbundled to those set forth in the FCC Order: local loops, network interface

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1 devices, local and tandem switching capability, interoffice transmission facilities,
2 signaling and call-related data bases, operator support systems functions, and operator
3 services and directory assistance facilities. (FCC Order ¶ 366). No evidence has been
4 put forth by TCG that would warrant additional unbundling beyond those elements. Nor
5 has TCG requested further unbundling.

6 **II. The Arbitrators Should Adopt USWC's Proposals For Resale.**

7 There are two primary issues concerning resale -- what services are available for
8 resale and at what price. Both parties agree that enhanced services, deregulated services,
9 and promotions of less than 90 days, need not be provided to TCG for resale. USWC
10 proposes that the following services be available for resale but not at a discount: (1)
11 private line transport (special access and private line) services, (2) services subject to
12 volume discounts, (3) discontinued services such as Centrex, and (4) basic residential
13 services.

14 USWC should not be required to provide private line services to resellers at a
15 further discount because they are already wholesale services. In Arizona, private line
16 services are sold to carriers and end users from the special access tariff. (USWC Ex.-5 at
17 106-107). Further, private line services are already discounted in Arizona. (Id.).
18 Because private line and special access are the same service, provided out of the same
19 tariff, they should not be available to resellers at a discount. This position is also
20 supported by the FCC Order. The FCC Order provides that exchange access services are
21 not subject to resale requirements even though these services are offered to and taken by
22 end users as well as carriers. (FCC Order ¶¶ 873-874). The FCC also recognizes that
23 LECs do not avoid any retail costs if access services are offered at wholesale to
24 competitors. (Id.).

25 The Arbitrators should not require USWC to offer further discounts to resellers
26 services that are already offered at a volume discount³. Services that are provided at

27 _____
28 ³ The FCC Order is not clear in its treatment of volume discount services. On one hand,
the FCC seems to require that discounted services be provided to resellers at the discount

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1 discounts to large customers, such as Motorola, are already priced to reflect the fact that
2 USWC avoids many of the usual costs of selling at retail. Further, discounts are based
3 primarily on commitments for certain quantities of a service and for a certain term. The
4 discounts therefore reflect costs that are avoided because of the quantities and the term of
5 the contract. For example, marketing expenses such as advertising are avoided when
6 selling large volume of services to a customer for an extended period. For this reason
7 alone, it makes no sense to apply a further discount to these services on the basis that
8 USWC has avoided significant costs. In addition, if USWC is required to sell discounted
9 services to TCG at an additional discount, it will lose a significant portion of its volume
10 discount business. For example, if USWC contracted to provide telecommunications
11 services to Motorola at a 10% discount because of the quantity purchased and term of the
12 contract, and the Arbitrators required USWC to offer the same services to TCG at an
13 additional 10% discount, TCG would inevitably be able to underbid USWC for
14 Motorola's business based on the margin between the volume discount price and the price
15 paid by TCG. Mr. Washington testified that, if a new entrant could compete with USWC
16 both by selling its own services and by reselling USWC's service at a discount in excess
17 of the avoided cost, USWC would be "in a very tight squeeze" where it would be unable
18 to effectively compete. (Tr. at 321).

19 Discontinued services, such as Centrex, should not be subject to resale. USWC
20 has pending before the Commission an application to withdraw Centrex services. Under
21 the FCC Order, the issue of what services can be discontinued is left to the state
22 commissions. Where a service is discontinued, it is not subject to resale, except where
23 that service is grandfathered. (FCC Order ¶ 968). If the Commission permits USWC to
24 withdraw Centrex service, then TCG should be restricted to reselling that service only to
25 customers who are grandfathered. (USWC Ex.-5 at 104-105). In any event, Centrex is

26 rate minus the avoided cost. On the other hand, to a large extent, the FCC has left the
27 determination of "the substance and specificity of rules concerning which discount and
28 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 an offering designed and priced for large business customers and TCG should not be
2 permitted to resale the service to other classes of customers.

3 The Arbitrators should not require USWC to offer basic residential service for
4 resale at a wholesale discount. As the Arbitrators are no doubt aware, USWC's current
5 IFR rate of \$13.18 does not cover its cost. Requiring USWC to discount a below-cost
6 service will force USWC to subsidize competitors, such as TCG, with revenues from
7 USWC's retail customers. (USWC Ex.-5 at 111). Basic residential service is priced
8 below cost in order to ensure universal service. It is not therefore appropriate for
9 resellers to obtain this below-cost service at a discount. (Id.) Further, if USWC is
10 required to provide residential service to resellers at a price below cost, it will retard the
11 development of facilities-based competition. New entrants in the market will have no
12 incentive to build facilities if they can purchase USWC services for less than their cost to
13 construct new facilities. (USWC Ex.-5 at 112).

14 The discount price for resale services should be set at USWC's retail rate for the
15 relevant service minus USWC's avoided cost. Act §§ 251(c)(4) and 252(d)(3). While the
16 FCC has set a default range of rates to permit a state commission to set wholesale rates in
17 the absence of an avoided cost study, such default rates should be used only if (1) an
18 avoided cost study meeting the FCC's criteria does not exist, (2) a state commission has
19 not completed its review of such an avoided cost study, or (3) the commission has already
20 set wholesale prices based on a study that does not conform to the FCC standards.
21 Where a conforming avoided cost study is presented to a state commission and the state
22 commission verifies that the study meets the FCC standards, the state commission must
23 set wholesale prices based on the study. (FCC Order ¶¶ 907-910). USWC has submitted
24 in evidence avoided cost studies that comply with the Act and are consistent with the FCC
25 requirements. The Arbitrators should set the resale prices based on USWC's studies at
26 the rates set forth on Exhibit C of Ms. Mason's testimony. (USWC Ex.-5 at 122).

27 If the Arbitrators were to use the FCC proxy discount range to set interim rates
28 subject to true-up following the generic cost proceeding, the Arbitrators should set that

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1 discount at 17% for all resold services. Indeed, TCG agreed that the 17% discount was
2 appropriate for setting interim wholesale prices. (Tr. at 67). Further, USWC's avoided
3 cost studies demonstrate that even a 17% discount is excessive so the Arbitrators should
4 pick no higher figure. (USWC Ex-2 at Appendix 2). Further, even the inherently biased
5 MCI model, which grossly overestimates avoided costs, determined that USWC had the
6 lowest discount of all the RBOCs and GTE. That study produced a rate for USWC at
7 18.80% compared with Ameritech at 25.98%. (FCC Order ¶ 930). For these reasons,
8 the Arbitrators should set the proxy discount price for USWC at 17%.

9 **III. The Arbitrators Should Not Permit Sham Unbundling.**

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11 The FCC Order provides new entrants such as TCG with the opportunity to
12 purchase the equivalent of a "finished" service solely through the purchase of unbundled
13 network elements at "cost-based" rates. Thus, TCG can order USWC to provide a
14 finished retail service but get a cheaper price than the Act's resale price (retail less cost
15 avoided) by utilizing the fiction that TCG is buying unbundled network elements -- when
16 in reality there is no unbundling involved and TCG is not self-provisioning any elements.
17 In this manner, TCG can completely circumvent the resale provisions of the Act --
18 engaging in "sham" unbundling. With sham unbundling, TCG can avoid the purchase of
19 a retail service (e.g., basic exchange service) using the Act's resale provisions (i.e., at the
20 retail price less the avoided cost discount). TCG can obtain the same service by
21 purchasing all of the unbundled network elements (priced at TELRIC plus an allocation of
22 joint and common costs) that comprise the service. Sham unbundling would also allow
23 IXC's to avoid paying switched access charges through the purchase of unbundled network
24 elements. Sham unbundling creates significant opportunities for price arbitrage between
25 resale prices and the prices of unbundled elements.
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TCG itself recognized that sham unbundling creates significant arbitrage opportunities and permits a new entrant "to beat" the wholesale service and price provisions of the Act. (Tr. at 248-249). Mr. Washington characterized these arbitrage opportunities as a "terrible shame." (Tr. at 249).

In effect, as Mr. Washington testified, sham unbundling upsets the balance between resale and unbundling that was established by Congress when it passed the Act. Congress realized that both unbundling and resale are critical to the development of meaningful competition, and crafted a carefully balanced mechanism which would allow new entrants to enter local markets rapidly, through resale, while developing their facilities-based networks in conjunction with the purchase of unbundled network elements from incumbent LECs. Clearly, Congress did not intend to permit sham unbundling when it crafted separate and distinct resale and unbundling provisions. Had Congress intended this result, it would have simply required services to be provided for resale based on cost -- not based on the retail price less costs avoided.

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

Similarly, an interexchange carrier must pay access charges in order to originate and terminate long distance calls on USWC's network at the present time. With sham

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unbundling, an interexchange carrier could simply purchase the unbundled elements necessary to perform the access function, and avoid access charges altogether. While the FCC prescribes a transitional mechanism that allows incumbent LECs to recover the Carrier Common Line Charge (CCLC) and 75% of the Transport Interconnection Charge (TIC) on a temporary basis, this mechanism will be eliminated by June 30, 1997.⁴ The bottom line is that interexchange carriers will be able to save significant costs by purchasing unbundled elements, priced based on TELRIC, in place of access charges. This will result in a significant and immediate loss of revenue for USWC, with no reduction in cost, that was not contemplated by the Act. The effect of this ill-conceived arbitrage can only be to require a total repricing of all USWC's retail services. This repricing would be necessary to avoid the obvious arbitrage that would otherwise occur with competitors using "sham unbundling" whenever retail prices are well above cost (toll, access, business, features) while using traditional resale at retail price less costs avoid when the retail price is below cost (IFR). The Commission, not the FCC, would have to undertake this massive repricing of retail services.

In summary, sham unbundling allows new entrants to arbitrage the resale of local exchange service and violates the objectives of the Act by encouraging new entrants to immediately joint market local and long-distance service and bypass the delay in dialing parity, imposing a severe competitive disadvantage and substantial financial losses on USWC. Hence, the Arbitrators should exercise their jurisdiction to prohibit sham unbundling relying on their jurisdiction to fulfill their state public interest obligations.

IV. The Arbitrators Should Adopt USWC's Proposal For Reciprocal Compensation.

⁴ First Interconnection Order, Para. 720.

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The Act requires that in order for rates to be just and reasonable, reciprocal compensation must "provide for the mutual and reciprocal recovery by each carrier of costs associated with transport and termination." Act § 252(d)(2)(A)(i). The FCC has determined that for shared transmission facilities between tandem switches and end offices, states may establish usage-sensitive or flat-rate charges to recover those costs, and the states may use as a default proxy, the rate derived from the incumbent LEC's interstate direct-trunked transport rates in the same manner that the FCC derives presumptive price caps for tandem switched transport under the interstate price cap rules. (FCC Order ¶ 822). The FCC has also determined that a bill and keep arrangement is appropriate only when rates are symmetrical and traffic is in balance, a situation that is not likely to occur in Arizona. (FCC Order ¶ 1111). See A.A.C. Rule R-2-1304.

Nonetheless, TCG urges the Arbitrators to adopt bill and keep for an interim period lasting until one year after the implementation of permanent number portability. (TCG Ex.-3 at 10). Mr. Montgomery attempted to avoid the clear reach of the FCC Rule permitting bill and keep only where traffic is in balance by urging the Arbitrators to create an effectively irrebutable presumption that TCG traffic terminated on USWC facilities and USWC traffic terminated on TCG facilities are in balance. (TCG Ex.-2 at 26-27). Contrary to Mr. Montgomery's testimony, there is nothing in the FCC Order that permits the Arbitrators to adopt an irrebutable presumption that traffic is in balance. Indeed, the FCC specifically requires that any state imposing bill and keep include "provisions that impose compensation obligations if the traffic becomes significantly out of balance or permitting any party to request the state commission impose such compensation obligations based on a showing that the traffic flows are inconsistent with the threshold adopted by the state." (FCC Order, ¶ 1113. USWC's proposal for measuring call termination and providing for payment only when the traffic is more than 10% out of balance meets this FCC standard. TCG's proposal of bill and keep with no measurement and no obligation for payment if traffic is out of balance does not.

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1 Further, Ms. Mason testified that a presumption that USWC's terminating traffic
2 and TCG's terminating traffic would be in balance is patently unreasonable. (USWC Ex.-
3 5 at 168). Ms. Mason testified that since TCG can choose to target particular types of
4 customers (e.g., businesses), and since different customers have different patterns of
5 originating and terminating traffic, traffic is not likely to be in balance between USWC
6 and TCG.

7 Further, bill and keep is simply inappropriate because it does not permit USWC to
8 recover its costs of terminating TCG's traffic. (Tr. at 362). TCG proposes to
9 interconnect initially at USWC's access tandem and separate trunk groups from the access
10 tandem for direct connection to end offices when the traffic warrants direct connection.
11 (Tr. at 228, 258-59.) The proposal to connect at USWC's access tandem raises both
12 engineering and economic issues that must be resolved and that render bill and keep
13 inappropriate. Further, the significant increase in USWC's interoffice traffic costs that
14 will result from interconnection with TCG compel the conclusion that bill and keep will
15 not fairly compensate USWC for terminating TCG traffic.

16 USWC has proposed that TCG interconnect at USWC's local tandem rather than
17 at its access tandem in the Phoenix LATA. TCG has, on the other hand, insisted on
18 interconnection at the access tandem. As USWC's technical witness, Michael Zulevic
19 made clear, connecting the TCG and other new entrants to USWC's access tandem for the
20 purpose of interexchange of local traffic makes no engineering sense and will impose
21 significant additional burdens on USWC's network. First, as Mr. Zulevic explained,
22 while the access tandem is technically capable of handling both access and local traffic,
23 the local tandem is not engineered to function as an access tandem. (Tr. at 344).
24 Because the access tandem can provide special service requirements and special billing
25 functions which are necessary for access traffic but not local traffic, using the access
26 tandem to switch local traffic is similar to "using your new Cadillac to carry lumber in."
27 (Tr. at 345). Use of the access tandem to carry new entrant's local traffic will also have
28 an adverse impact on the availability of access tandem capacity to carry true access

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1 traffic. (Id.) USWC's existing access tandem to end office trunk groups could not
2 possibly handle the increased traffic caused by carrying new entrant's traffic through the
3 access tandem. Further, TCG's technical witness, Kenneth A. Shulman, testified from
4 TCG's point of view that USWC's "access tandem or the local tandem are equally
5 capable of performing the interconnection of traffic." (Tr. at 112). Thus, in light of the
6 concerns caused by TCG's routing its local traffic through the access tandem and Mr.
7 Shulman's acknowledgment that the local tandem would perform the functions required
8 by TCG equally well as the access tandem, the Arbitrators should reject TCG's request
9 requiring interconnection at the access tandem rather than the local tandem.

10 Whether TCG connects at the access tandem or the local tandem, interconnection
11 will impose additional costs on USWC that will not be recovered by a bill and keep
12 methodology. Ms. Mason testified based on USWC's SLUS studies that 32% of business
13 calls are intraswitch or intraoffice calls and 42% of residence calls are intraswitch or
14 intraoffice calls. (Tr. at 363-364). Both TCG and USWC witnesses testified that
15 conversion of calls between two USWC customers that are now intraswitch or intraoffice
16 calls to interoffice calls, when one of those customers is served by TCG, would increase
17 the need for interoffice transport and/or interoffice switching by USWC, and thus, its cost
18 of terminating the traffic. The conversion of an intraoffice call to an interoffice call was
19 explained by Mr. Shulman. Where USWC has two customers who are served by the
20 same switch, the call is routed internally through the switch and no interoffice transport
21 or switching is involved. (Tr. at 115). When the customer receiving the call has
22 transferred its service to TCG and is connected to TCG's switch, the call would go from
23 the originating customer to the USWC central office that serves that customer, then (1)
24 over interoffice trunks either directly to TCG's switch if TCG is directly connected to
25 that USWC end office or (2) to a USWC tandem switch and over another trunk to the
26 USWC end office if the TCG switch is not directly connected to USWC's end office.
27 (Tr. at 115-117). The need to transfer what would otherwise be an intraswitch call either
28 directly to a different end office or to the tandem and then to a different end office

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1 increases the need for intraoffice trunks and tandem switching capacity. Mr. Shulman
2 testified that to the extent that calls that are currently intraswitch under the current
3 configuration are converted to interoffice calls as TCG interconnects, USWC would face
4 increased requirements to carry that traffic. (Tr. at 120) Mr. Zulevic testified that USWC
5 will spend \$20 million in the Phoenix area to implement interconnection. (Tr. at 337)
6 He indicated that these increased expenses resulted from the change in traffic patterns on
7 the local switched network resulting from interconnection. He indicated that the
8 significant conversion of intraswitch or intraoffice traffic to interoffice traffic resulting
9 from the interconnection of TCG and other new entrants either at a USWC tandem switch
10 or directly to the USWC end offices would require USWC to make significant
11 expenditures for additional trunks and transmission equipment. (Tr. at 341). Mr.
12 Zulevic testified that in Seattle when interconnection was implemented, USWC had to
13 serve an additional 3200 trunk connections at its local tandem. (Tr. at 342). He also
14 testified that for every 480 additional trunks USWC had to spend an additional \$150,000
15 to \$300,000 for new trunk modules. (Id.) The record is clear that USWC will incur
16 significant additional expenditures to configure and operate its network after
17 interconnection both as a result of the conversion of intraoffice calls to interoffice calls
18 and as a result of other changes in the pattern of local exchange traffic on the network.
19 Because bill and keep will prevent USWC from recovering its real costs of terminating
20 TCG's traffic, bill and keep should be rejected by the Arbitrators.

21 The Arbitrators should establish appropriate rates for call termination, call transit
22 and call transport based on USWC's TELRIC studies. While TCG urges the Arbitrators
23 to simply adopt the FCC default proxies, such a course would be inconsistent with the
24 FCC Order that strongly encourages "state commissions, as a general rule, to set
25 arbitrated rates for interconnection and access to unbundled network elements pursuant to
26 the forward-looking, economic cost pricing methodology" adopted by the FCC. In
27 setting interconnection prices, the Arbitrators must consider the evidence presented by the
28 parties and set cost-based rates. The prices for call termination, call transit and call

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1 transport should be set at TELRIC together with a portion of common costs allocated by
2 means of a fixed allocator. USWC's proposed call termination, call transit and call
3 transport rates based on its TSLRIC study are set forth on Exhibit M of Ms. Mason's
4 testimony.

5 If the Arbitrators set prices for call termination, call transit and call transport at
6 the FCC proxies, the Arbitrators should adopt the mid-point of the FCC proxy range of
7 .3 cents per minute for end office switching. The TELRIC studies sponsored by Ms.
8 Santos-Rach support the selection of the mid-point of the FCC range as an interim rate for
9 end office switching. (Tr. at 194; USWC Ex.-4)

10 The most significant issue in applying the reciprocal compensation proxies is
11 whether the parties will charge completely symmetrical rates so that USWC must pay
12 TCG tandem switching rates for the use of its non-tandem switch. In determining if TCG
13 should charge USWC reciprocal rates including a tandem switching rate, the Arbitrators
14 must consider whether (1) TCG's switch performs a function similar to USWC's tandem
15 switch, (2) TCG's and USWC's costs are symmetrical, and (3) TCG's switch serves a
16 geographic area comparable to that served by USWC's tandem switch.

17 USWC's technical witness, Michael Zulevic, testified that TCG's switch will not
18 perform functions similar to USWC's tandem switch. TCG's network is a fiber ring
19 network located predominantly in the central business area of Phoenix, which will not
20 provide ubiquitous service. (Tr. at 335-336). USWC's network is a tree and branch
21 system that provides ubiquitous service throughout the Phoenix calling area. (Id.). Mr.
22 Zulevic testified that TCG's fiber ring and switch do not cover a geographic area
23 comparable with the USWC network. (Tr. at 336). Mr. Shulman testified that when
24 TCG's switch is deployed, it will not be able to handle all switched traffic within the
25 Phoenix metropolitan area. (Tr. at 126). Mr. Washington testified that TCG's fiber ring
26 does not yet occupy the area served by all of USWC's wire centers in the Phoenix
27 metropolitan area. (Tr. at 255). Under these circumstances, the only way that TCG's
28 switch could serve customers throughout the Phoenix metropolitan area as USWC's

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1 tandem switch does is to hook TCG's switch to USWC's tandem or directly trunk to each
2 of USWC's 50 end offices. *Id.* Any claim by TCG that its switch serves a geographic
3 area comparable to that served by USWC's tandem is purely fiction. USWC's position is
4 supported by the FCC order. Paragraph 1090 of the FCC Order recognizes that an
5 incumbent LEC which provides service using a tandem switch incurs greater switching
6 and transport costs than an new entrant which does not employ a tandem switch.

7 Finally, the Arbitrators should limit the required points of interconnection to those
8 set forth in paragraph 212 of the FCC Order, which are: (1) the line side of a local
9 switch, (2) the trunk side of a local switch, (3) the trunk interconnection point for a
10 tandem switch, (4) central office cross-connect points, (5) out of band signaling transfer
11 points and (6) the points of access to unbundled elements. TCG has presented no
12 evidence justifying required interconnection beyond the points listed in the FCC Order.

13
14 **V. TCG Should Be Required To Pay In Advance For Special Construction Requests.**

15 New entrants, such as TCG, who request additional unbundled elements, require
16 the construction of additional facilities for resale, or desire other special construction in
17 connection with collocation or otherwise, should pay for the costs that USWC incurs to
18 provide them -- they should not be allowed to shift these costs to USWC.

19
20 Requiring that any carrier requesting an additional network element pay the cost
21 that USWC incurs to unbundle and provision that element, such as special construction
22 charges, is consistent with the FCC Order, allowing incumbent LECs to recover the costs
23 of unbundling network elements from requesting carriers. In addition, the only way to
24 insure that the benefits of unbundling will exceed the costs is to have the requesting party
25 pay.
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1 Similarly, if USWC must construct new facilities to serve a reseller, USWC
 2 must be permitted to charge the reseller for construction. The cost should be paid in full
 3 by the reseller before the facilities are constructed. In most cases, resale requests will be
 4 received in areas where facilities are available. However, in some cases a reseller may
 5 request new facilities to an area not currently served, or an area with limited existing
 6 facilities. If USWC is to build facilities to such an area, it must be assured that it will be
 7 able to recover the costs of construction. The only way to assure the recovery of these
 8 costs is through the assessment of construction charges to the reseller. Without such an
 9 arrangement, USWC and its customers could be left "holding the bag," with no way to
 10 recover the construction costs. In effect, without a mechanism for up-front cost recovery,
 11 USWC is forced to act as a banker for the new entrants. This would be very unfair to
 12 USWC and its customers, who would be forced to cover any loss and pay the financing
 13 costs of money used for this construction.

16 **VI. The Arbitrators Should Reject TCG's Proposal to Divide Switched
 17 Access Revenues.**

18 TCG has suggested that when it provides tandem switching⁵ and some portion of
 19 the tandem transport, with respect to toll traffic which terminates through a USWC end
 20 office, it receive not only the rate chargeable to the interexchange carrier for tandem
 21 switching and transport but also 30% of the end office charges that are payable by the
 22 IXC to USWC under the applicable interstate or intrastate tariff. There are numerous
 23 defects with TCG's proposal.

24 First, TCG is asking the Arbitrators to alter the compensation for switched access
 25 service in clear violation of the Act. Section 251(G) of the Act provides for the continued

26 _____
 27 ⁵ While as discussed earlier, the evidence establishes that TCG's initial switch will act as
 28 an end office switch and not a tandem switch, TCG has indicated that at some point it will
 provide competitive tandem service by connecting to interexchange carriers and providing
 tandem switching between those carriers and USWC end office switches.

1 enforcement of exchange access and interconnection requirements. That section provides
2 that LECs are to provide exchange access under the same restrictions and obligations,
3 including receipt of compensation, until the restrictions and obligations are explicitly
4 superseded by regulations provided by the FCC. Further, the FCC in its First
5 Interconnection Order expressly states that reciprocal compensation does not apply to
6 transport termination of interstate or intrastate interexchange traffic. (FCC Order, ¶
7 1034). While TCG argues that it is not asking the Arbitrators to act contrary to the Act
8 and the Order (or as will be discussed in the next paragraph the controlling interstate and
9 intrastate tariffs), TCG is doing exactly that.. Through the subterfuge of seeking
10 arbitration on interconnection terms, TCG is requesting the Arbitrators to change the
11 compensation scheme for interstate and intrastate access prior to the issuance of new
12 regulations by the FCC and contrary to the tariffs. This is not within the scope of the
13 Arbitration provided by the Act. TCG's remedy, if it believes that providers of end
14 office access services are overcompensated and providers of tandem switching for access
15 termination are undercompensated, is to seek rate relief before the FCC and the
16 Commission in access restructure dockets.

17 Second, TCG is asking the Arbitrators to overrule the express terms of the
18 interstate tariff and the intrastate tariff concerning charges for provision of access service.
19 (USWC Ex.-6 and USWC Ex.-7). As Ms. Mason explained, both the interstate and the
20 intrastate access tariffs expressly set forth the charges that may be levied on the IXC by
21 the carrier providing tandem switching and transport and the charges that may be levied
22 on the IXC by the carrier providing end office switching and call termination. Under
23 those tariffs when TCG and USWC provide joint switched access service with TCG
24 providing tandem switching and transport and USWC providing end office switching and
25 termination, the tariffs explicitly provide that TCG receives the rates set in the tariffs
26 tandem switching, its portion of tandem transport and any charge it has for the entrance
27 facility and USWC receives the CCLC, the RIC and the local switching rate. TCG's
28 proposal that the CCLC, the RIC and the local switching charge be divided between TCG

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1 and USWC is simply contrary to the controlling tariffs. (See USWC Ex-6 and USWC
2 Ex.-7; Tr. at 369-370). Further, TCG is asking for compensation that the FCC and the
3 Commission have set for functions that are performed by USWC and not TCG. (Tr. at
4 373). Even the RIC, which provides much of the basis for TCG's complaint about the
5 compensation of the end office provider, is intended by the FCC and the Commission to
6 meet USWC's residual revenue requirement resulting from the restructure of switched
7 access charges; this is totally irrelevant to any service provided by TCG. (Tr. at 373).

8 Third, there is no economic justification for TCG's request. As Mr. Washington
9 testified, the rational for TCG's proposal is that it cannot offer competitive tandem
10 service if it receives only the interstate switched tandem rate for performing tandem
11 switching and transport services. (TCG Ex.-3 at 12.). There are several flaws in the
12 argument that TCG should be subsidized by 30% of the end office charges under the
13 interstate and intrastate tariff to compensate it for the real cost of tandem switching.
14 First, Mr. Washington testified that an appropriate cost-based rate for tandem switching
15 for TCG would be .6 cents per minute. (Tr. at 304). However, under the intrastate
16 switched access tariff, TCG as a tandem switched service provider receives a rate of .7
17 cents per minute. (Tr. at 305-306). There is, therefore, no need to give TCG a
18 percentage of the intrastate end office access charges to compensate TCG for its cost of
19 tandem switching. Indeed, Mr. Washington testified that under the Arizona interstate
20 tariff he was recovering his cost of tandem switching without any revenue sharing from
21 USWC. (Tr. at 312). Second, the interstate rate for tandem switching, which TCG
22 condemns as wholly inadequate, is .16 cents per minute. (Tr. at 303). However, the
23 proxy rate for tandem switching, which would be imposed on USWC for switching local
24 traffic, is .15 cents per minute. If tandem switching is undervalued, it is undervalued
25 more for USWC than TCG. There is no reason to require USWC to provide an
26 additional subsidy to TCG. Third, the amounts sought by TCG's revenue sharing
27 proposal are wholly out of line with its costs of tandem switching. While TCG believes
28 that a cost-based rate for such switching would be .6 cents per minute, under TCG's

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proposal, it would receive 1.4 cents per minute from USWC for intrastate switched access in addition to the tandem switching rate. This more than compensates TCG for its costs. On the interstate switched access, TCG is asking for .7 cents per minute in addition to the tandem switching charges it receives to compensate it for switching costs of .6 cents per minute. TCG is simply looking for a subsidy to support its competitive tandem service.⁶

VII. The Arbitrators Should Reject TCG's Requested Performance Standards and Penalties.

TCG has requested that the Arbitrators include in the Contract specific performance standard and penalties. The Arbitrators should reject this proposal as unlawful.

As Ms. Mason testified, USWC is subject to the most rigorous anti-discrimination standards applied to any business. Initially, USWC, as every other company, was required to comply with the anti-trust and other general legal standards governing competition. (Tr. at 376). After the entry of the MFJ, USWC was held to even stricter standards so that it had to treat all customers both its former affiliates and others equally. Now, under the Act, USWC is subject to an even stricter standard, it must treat new entrants not only as well as it treats its other customers, it must treat the new entrants as well as it treats itself. (Tr. at 376). Indeed, TCG's expert witness, William Page Montgomery, testified that the nondiscrimination standards imposed by the Federal Act are much broader than the traditional nondiscrimination standard imposed by law. (Tr. at 55). There simply is no need for the Arbitrators to impose additional performance standards beyond this strict nondiscrimination standard.

Further, nothing in the Federal Act or the FCC Order authorizes state commissions or arbitrators to create a liquidated damages remedy for the parties and there

⁶ 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. TCG is requesting the Arbitrators to impose a significantly more draconian subsidy requirement on USWC than it was able to persuade Pac Bell to pay.

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1 is no authority under Arizona state law for the Commission to do so. Arizona statutes
2 specifically provide for penalties to be imposed on public service corporations, and
3 establish procedures for the imposition of penalties. A.R.S. § 40-421 et. seq. provides
4 for the assessment of penalties against public service corporations for violation of statutes
5 governing utility service, Commission orders and Commission rules and regulations.
6 Further, A.R.S. § 40-423 provides a private right-of-action for parties injured by a
7 violation of a statute or a Commission order. None of these statutes authorizes the
8 Commission or the Arbitrators to impose liquidated damages or any other contractual
9 remedy.

10 In addition, it simply makes no sense for the Arbitrators to impose different
11 performance standards on USWC in each of the interconnection agreements. MFS has
12 requested one set of performance standards, TCG has requested a different set and AT&T
13 has requested still another set. Even if performance standards are appropriate, standards
14 should be uniform and not specific to each interconnector. The Arbitrators should not
15 accept TCG's proposed standards.

16 Finally, if TCG believes that it has been the victim of discrimination, it has more
17 than adequate remedies available in the United States District Court and at the FCC.
18 Similarly, if TCG believes that the interconnection agreement has been violated or that it
19 has received inadequate service, it can file a formal complaint with the Commission or
20 invoke the dispute resolution process under that agreement.

21 **IX. Other Issues For Resolution**

22 **A. MOST FAVORED NATION CLAUSE**

23 A most favored nation clause should not be included in an interconnection
24 agreement; the result is an agreement that binds only USWC to the outcome of this
25 arbitration or to any terms negotiated between TCG and USWC. In effect, TCG could
26 agree to specific provisions with USWC or have specific issues in this arbitration decided
27 adversely to it, but avoid the consequences of the negotiations or arbitrations by selecting
28 better terms in some other USWC interconnection agreement. A most favored nation

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1 clause prevents the parties from ever reaching agreement by mutual compromise since
2 only one of the parties is bound by the resulting bargain. The FCC Order entitles all
3 carriers with interconnection agreements to a "most favored nation" status as to any term
4 resulting from the arbitration. (FCC Order ¶ 1316). USWC has challenged that
5 provision of the Order on appeal as being illegal and unconstitutional. USWC submits
6 that a decision from the Arbitrators to put such a clause in an arbitration agreement is
7 also illegal under Arizona state law. In any event, because the FCC has ordered most
8 favored nation treatment, a contractual most favored nation clause is at best redundant
9 and will, at worst, create endless wrangling over whether the contractual clause should be
10 interpreted differently from the FCC Order.

11 **B.. NUMBER PORTABILITY**

12
13 USWC and TCG appear to be in substantial agreement that interim number
14 portability should be offered pursuant to remote call forwarding. The parties agree on
15 the price of the service, but disagree on who should pay for the service. TCG argues
16 the service should be offered to it at no charge with the cost borne by USWC's retail
17 customers, while USWC believes the cost of interim number portability should be borne
18 by the cost causer, TCG.
19

20 The FCC has adopted specific rules concerning the recovery of interim number
21 portability costs from carriers based on the number of lines served. In addition, the
22 FCC requires USWC to share with TCG switched access charges received from
23 interexchange carriers on calls interexchange carriers deliver to USWC to numbers that
24 are 'ported' to TCG. There are four charges that USWC assesses to interexchange
25 carriers for terminating traffic -- the local transport, local switching, interconnection,
26 and carrier common line charges.
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The Arbitrators should reject these unreasonable provisions of the FCC Order. USWC should be allowed to retain the local switching and local transport charges it receives from interexchange carriers when calls are forwarded to TCG as a result of interim number portability. USWC does not incur any less expense for the local switching or local transport services it offers to an interexchange carrier when USWC forwards an incoming call to TCG. Sharing the revenues for these services with TCG would amount to an unwarranted subsidy to TCG.

In the interest of compromise, however, USWC is prepared to 'forward' carrier common line charges to TCG. But, rather than incurring the expense of identifying, 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.

USWC has additional substantial concerns with the FCC's cost recovery rules for interim number portability, since they will require USWC to bear almost all of the costs of interim number portability. Moreover, the FCC has not established any mechanism for USWC to recover the portion of the costs that are allocated to it -- it authorizes no new interstate or intrastate rate element, nor authorizes any rate increase on general subscribers, nor any increase in the rates for services offered to other carriers.

USWC has proposed non-recurring and recurring charges that apply to USWC's proposed interim number portability service based on the TELRIC studies submitted into evidence. The proposed charges for interim number portability are described in

1 Exhibit A to Ms. Mason testimony. The Arbitrators should adopt these TELRIC-based
2 rates for interim number portability.

3
4 **C. COLLOCATION**

5 USWC believes that the Agreement must contain some limitation on the amount of
6 floor space in a central office which is made available to TCG for physical collocation.
7 USWC will be obligated to provide physical collocation to a number of new local
8 exchange companies, and there will be limits on the available amount of floor space.
9 USWC has proposed that TCG and each other new entrant be limited to 400 feet in any
10 single central office. TCG has offered no reasonable alternative suggestion to the
11 Arbitrators.

12 Another issue with respect to collocation is the premises at which collocation
13 should be offered. While the FCC Order states that USWC should offer collocation at its
14 "premises", broadly defined, USWC has proposed that the presumptive point of
15 collocation be in USWC's central offices, with other arrangements to be made on an as
16 needed basis. Because the most efficient form of interconnection would be for TCG to
17 interconnect at USWC's end office or tandem switches, it makes sense for collocation to
18 occur in the central offices. TCG has not requested collocation at any "premise" other
19 than a USWC central office, nor has it given an example about what such a request might
20 possibly be.

21 USWC believes that the rates for physical and virtual collocation should be those
22 set forth on Exhibit A to Ms. Mason's testimony which are based on USWC's TELRIC
23 studies. If the Arbitrators choose to employ the FCC proxy rates, the FCC requires that
24 the proxy rates be set at USWC's interstate collocation tariff. USWC has an interstate
25 virtual collocation tariff but does not have an interstate physical collocation tariff. The
26 Arbitrators can use these rates as interim proxies for virtual collocation and use these
27 rates as proxies for the identical physical collocation elements. Since no other physical
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1 collocation rates have been proposed, the Arbitrators should use the USWC proposed
2 rates as proxies for elements that are not contained in the interstate tariff.

3 **D. TRUE-UP**

4 TCG suggested at the hearing that the Procedural Order entered by the Arbitrators
5 in the Generic Costing Proceeding was in error in suggesting that the Arbitrators would
6 enter interim rates in these and the other arbitrations subject to a true-up following the
7 generic hearing. While the Arbitrators requested that TCG and USWC address this issue
8 in these briefs, USWC respectfully suggests that this is an issue of interest to many
9 persons and companies who are not parties to this proceedings but are parties to the
10 generic proceeding. For that reason, the appropriate forum for briefing argument and
11 resolution of this issue is in the generic proceeding, not in this proceeding.

12 If the Arbitrators reach the issue of a true-up, they should reject TCG's position as
13 wholly without merit. Under Article 15, section 3 of the Arizona Constitution, the
14 Arizona Corporation Commission has plenary jurisdiction over rates for intrastate
15 services. Included within that authority is the authority to order a refund or surcharge of
16 amounts collected pursuant to interim rates on the setting of permanent rates. See
17 Mountain States Tel. & Tel. Co. v. Arizona Corporation Comm'n. 124 Ariz. 433, 604
18 P.2d 1144 (App. 1979); Scates v. Arizona Corporation Comm'n. 118 Ariz. 531 , 578
19 P.2d 612 (App. 1978); Opp. Atty. Gen. No. 71-17. Nothing in the Act precludes the
20 Arbitrators from imposing interim rates and then providing for e a true-up upon the
21 establishment of permanent rates.

22 **CONCLUSION**

23 The Arbitrators should adopt a resolution to the disputed issues that fairly balances
24 the interests of USWC and its ratepayers with the interests of TCG and the other new
25 entrants. TCG should not be allowed to avoid paying for the use of USWC's tandem
26 switch and interoffice network by charging USWC a rate equal to USWC's rate for traffic
27 terminating at its tandem - thereby completely offsetting the revenues for use of USWC's
28 tandem to which it is entitled. The FCC Order, with its uneconomic and unrealistic

1 proxy prices and its authorization of price arbitrage through sham unbundling, unfairly
2 sacrifices the interests of incumbent LBCs and their customers and usurps the proper
3 authority of state regulatory commissions. USWC has offered into evidence TELRIC
4 studies that are consistent with the FCC requirements and form a just, reasonable and fair
5 basis on which to establish prices. Interim rates should be set on the basis of those
6 studies. If the Arbitrators feel compelled to adopt the FCC proxy prices, they should, in
7 light of the wholly unrealistic nature of the proxies, adopt the lowest proxy discount for
8 resale and set interim loop prices at the levels proposed by USWC.

9 RESPECTFULLY SUBMITTED this ~~30th~~ day of September, 1996.

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12
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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission
DOCKETED

SEP 28 1996

DOCKETED BY **PT**

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

**POST ARBITRATION BRIEF OF
TELEPORT COMMUNICATIONS GROUP**

Dated: September 30, 1996

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I. INTRODUCTION

A. General Overview

Pursuant to the direction of the Arbitrator, Teleport Communications Group ("TCG") hereby submits its post-arbitration brief in this proceeding. Although the hearing process was quite short, the issues presented in this arbitration are extensive and complex. TCG offers the following summary of its overall position in this proceeding.

TCG presented the interconnection agreement that it had reached with Pacific Bell in California as a model for this proceeding. It recognizes, of course, that there are issues specific to Arizona that are not addressed in that agreement, and in its last best offer, attached to this Brief as Attachment A, it has made the appropriate clarifications. They are described in detail in this Brief.

This Commission should recognize, however, that the TCG/Pacific Bell agreement has become the model for interconnection agreements in California under the Telecommunications Act of 1996 ("Telecommunications Act"). Three additional agreements have subsequently been signed with Pacific Bell (by Cox Communications, Electric Lightwave and Brooks Fiber), and each of them is essentially identical in form and substance to the TCG/Pacific Bell agreement. Moreover, TCG has been able to separately negotiate interconnection agreements with BellSouth and with Nynex.

By way of contrast, U S WEST has not entered into any interconnection agreements under the Telecommunications in any of its 14 states. This contrast demonstrates that it is TCG that is acting as the reasonable party. In short, TCG's proposal will allow competition to work in

Arizona. U S WEST's proposal has not been adopted by anyone anywhere, because U S WEST's proposal will not allow competition to work.

In evaluating these proposals, the Commission must take into account a significant difference in perspective as between the two parties here. A critical issue that arises with respect to interconnection of new carriers to U S WEST's network is the obligation for payment of the costs incurred in undertaking such interconnection. U S WEST would have the Commission believe that it should not bear any of these costs, instead, U S WEST would be pleased to interconnect with new carriers so long as other parties bear the costs of such interconnection, their own as well as those of U S WEST. (See, e.g., Transcript, pp 361-362.) Indeed, U S WEST wants this financial consideration to be the entire focus of the proceeding. According to Ms. Mason

Let me just close by saying this arbitration is about money. It's about how we compensate each other. I firmly believe almost all of the other issues can be worked out if it were not this issue of U S WEST having to forego revenues in order for TCG's business plan to work.

(Transcript, pp 376 - 377)

TCG, by way of contrast to U S WEST, is willing to bear its own costs. (See, e.g., Transcript, pp 288-289) Moreover, TCG does not consider the financial issues to be of overriding concern. What matters to TCG is achieving interconnection with U S WEST in a fair, equitable, and economically rational manner. If each of these tests are met, TCG will be able to fully compete with U S WEST in Arizona's telecommunications market.

The Commission cannot allow itself to be misled by this one-track focus on money advocated by U S WEST. There are undoubtedly costs that are going to be incurred by both

parties in connection with interconnection arrangements. The simple paradigm that the Commission should follow is that the parties should each bear their own costs associated with interconnection.¹ The FCC considered and adopted this very paradigm when it stated that the incumbent LECs would not be made whole, in the context of interconnection arrangements, for the costs they have incurred in the past.

Incumbent LECs contend generally that, in order to ensure they will recover their total investment costs and earn a profit, they must recover embedded costs. These costs, they argue, were incurred under federal and regulatory oversight and therefore should be recoverable. Even if the incumbent LECs' contention is correct, increasing the rates for interconnection and unbundled elements offered to competitors would interfere with the development of efficient competition, and is not the proper remedy for any past under-depreciation.

(FCC Order, ¶ 706)

Accordingly, TCG recommends that the Commission direct each of the parties to bear its own costs associated with the interconnection arrangements between them. Only where there is a policy basis for spreading these costs more broadly should this rule not be followed, and in that case the costs should be recovered on a competitively-neutral basis. The Commission should be working, at all times, to ensure that the interconnection ordered here is fair and economically justified.

¹ There are limited exceptions to this, of course. For example, the FCC's recent Number Portability Order makes it clear that the costs of providing interim number portability should not be borne by either of the parties to a particular agreement, but rather should be borne on a competitively-neutral basis by the industry as a whole. To the extent that there are exceptions, the recovery of costs on a competitively-neutral basis should be the guidepost.

B. Format of Brief

TCG will use this brief to organize the issues that must be resolved so as to be of the most use to the Commission. In doing so, it will use the following format:

- a) First, a listing of those issues that have been resolved by TCG and U S WEST.
- b) Second, a short discussion of each of the matters that remains unresolved, with the evidentiary basis for adopting TCG's positions on the unresolved matters.
- c) Third, a description of TCG's last best offer for an interconnection agreement, including a discussion of how the TCG/Pacific Bell interconnection agreement can be used as a model in this proceeding, and
- d) Fourth, a discussion of proxy rates (including the issue of a potential true-up) and of rates for those items that have no proxy in the FCC's First Report and Order ("FCC Order")².

The discussion of category (b), unresolved issues, will be broken down into three parts:

- 1) those unresolved issues that are most critical and for which a detailed evidentiary record was made;
- (2) those additional unresolved issues that are necessary to an interconnection agreement between TCG and U S WEST; and
- (3) certain unresolved issues that focus on disputes over language.

II. ISSUES THAT HAVE BEEN RESOLVED

On September 11, TCG and U S WEST filed a Joint Position Statement. That document consisted primarily of a partial interconnection agreement, showing the language on which the two parties had reached closure for a significant amount of the agreement. This document, which

² FCC First Report and Order, Docket No. 96-98, Aug. 8, 1996

draws upon the TCG/Pacific Bell interconnection agreement, should be used by the Commission as the basic model for the interconnection agreement to be issued here.

Both TCG and U S WEST stated at that time of filing the joint position statement that the language found in the agreed-upon sections of the joint position statement should be used by the Commission in resolving this proceeding:

Accordingly, in order to narrow the issue being arbitrated, TCG and USWC hereby stipulate to adoption of the language in the attached document by the arbitrator and by the Commission.

The agreed-upon sections consist of the following sections from a complete interconnection agreement

RECITALS

- I NETWORK INTERCONNECTION
 - A. Interconnection Within Each LATA
 - B. Fixed Points of Interconnection
 - E. Common Channel Signaling and Signaling Protocol
 - F. Local Interconnection Trunk Arrangements
 - I. Control Office Functions
 - J. Testing and Trouble Responsibilities
 - L. Interconnection Forecasting
 - M. Interconnection Grade Of Service
 - N. Interconnection Deployment
 - O. Interconnection Trunk Servicing
 - P. Network Management
 - Q. Tariffed Services
 - R. End User Repair Calls
 - S. Referral Services
- IV EMERGENCY SERVICES, DIRECTORY ASSISTANCE AND OPERATOR CALL COMPLETION SERVICES (E9-1-1, O-)
 - A. Emergency Services
 - B. Directory Assistance Listings and White Pages
 - C. Operator Call Completion
- VI NONDISCRIMINATORY ACCESS TO NUMBER RESOURCES
- VII NUMBER PORTABILITY
 - A. Interim Number Portability

- B Permanent Number Portability
- VIII LOCAL DIALING PARITY
 - XIV LOCAL INTERCONNECTION DATA EXCHANGE FOR BILLING
 - XV AUDIT PROCESS
 - XVI AUDIOTEXT AND MASS ANNOUNCEMENT SERVICES
 - XVIII DISPUTE RESOLUTION AND BINDING ARBITRATION
 - XIX FORCE MAJEURE
 - XX COMMISSION DECISION
 - XXIV EFFECTIVE DATE
 - XXV AMENDMENT OF AGREEMENT
 - XXVI LIMITATION OF LIABILITY
 - XXVIII ASSIGNMENT³
 - XXIX CONTROLLING LAW
 - XXX DEFAULT
 - XXXI NONDISCLOSURE
 - XXXII EXECUTION IN DUPLICATE
 - XXXIV NOTICES

Therefore, with a few minor exceptions, all of the language found in these sections of the joint position statement are agreed upon and should be included by the Commission in the final arbitrated agreement ³

³ The issue of assignment of the interconnection agreement was unresolved until the day of the arbitration hearing, when U S WEST's counsel stated that U S WEST accepted TCG's position on assignment.

MR. BERG: I think we have good news. We just talked -- we don't really have an objection to an assignment clause.

(Transcript, p. 94) Accordingly, this issue should be included in the final arbitrated interconnection agreement using the language set forth in the TCG proposed agreement (Attachment 1 to Ex. 3, Testimony of Jim Washington).

⁴ The exceptions are found in Sections I.F.8.a (BLV/BLVI), VII.A (interim number portability), XVIII.C (dispute resolution and binding arbitration), and XXIV (limitation of liability). In these cases TCG and U S WEST reached agreement on the language to be used, but could not agree on a particular item addressed by that language. They are each discussed below in Section III.D.

III. UNRESOLVED ISSUES

A. Complete Listing of Unresolved Issues

Having set forth their agreement on a number of issues, the parties chose to arbitrate the remaining, unresolved issues. These issues consist of certain sections from the TCG/Pacific Bell agreement, as shown in the parties' September 11 Joint Position Statement. In order to simplify matters for the Commission, TCG sets forth here a listing of each of the unresolved issues as they appear in the agreement:

DEFINITIONS

I. NETWORK INTERCONNECTION

- C. Sizing and Structure of Interconnection Facilities**
- D. Trunking Directionality**
- G. Meet Point Trunking Arrangements**
- H. Combination Interconnection Trunk Groups**
- K. Bilateral Agreements (Performance Standards and Remedies)**

II. NONDISCRIMINATORY ACCESS TO NETWORK ELEMENTS

A. Links.

- 1. Description of Link Service**
- 2. Use and Suitability of Link Service**
- 3. Availability of Link Service**
- 4. Interconnection to Service at Central Office POI**
- 5. Link Service Prices**
- 6. Link Service Volumes**
- 7. Assigned Telephone Number**
- 8. Billing and Payment**
- 9. Ordering**
- 10. Provisioning Intervals**
- 11. Service Coordination**
- 12. Maintenance and Testing**
- 13. Responsibilities of the Parties**

B. Transport

C. Ports/Local Switching

D. Cross Connects

E. Multiplexing

F. Nondiscriminatory Access to Databases and Associated Signaling

G. Forecasts for Certain Unbundled Network Elements

- H Bona Fide Request Process
- III NONDISCRIMINATORY ACCESS TO POLES, DUCTS, CONDUITS AND RIGHTS OF WAY
- V CUSTOMER GUIDE IN WHITE PAGES/BILLING FOR ADVERTISING
- IX RECIPROCAL COMPENSATION ARRANGEMENTS
- X TELECOMMUNICATIONS SERVICES AVAILABLE FOR RESALE
- XI COLLOCATION AND MID SPAN MEETS
 - A Physical Collocation
 - 1 Rates
 - 2 Terms
 - B Shared Space Collocation
 - C Microwave Collocation
 - D POT Bay Engineering
 - E Virtual Collocation
 - F Mid-Span Meet Arrangements
- XII JOINT PROVISION OF WSP ACCESS
- XIII MEET POINT BILLING ARRANGEMENTS
- XVII MOST FAVORABLE TERMS AND TREATMENT
- XXVII INDEMNITY

The language that TCG proposes be adopted for each of these sections is found in Attachment A to this Post-Arbitration Brief

B. Discussion of Critical Unresolved Issues

Although all of the unresolved issues in the list set forth above are essential to the establishment of an interconnection agreement between TCG and U S WEST, certain of them are of critical significance to TCG's ability to effectively compete in Arizona's telecommunications market. TCG focused its evidentiary presentation on six key issues and will focus its brief on them as well. The six key issues are as follows:

- 1 Physical interconnection at U S WEST's access tandems,
- 2 Physical collocation at U S WEST premises,
- 3 Bill and keep compensation for local traffic,
- 4 The sharing of revenues for jointly-provided switched access;

5. Access to unbundled elements; and
6. Performance standards and remedies.

They are addressed in turn below

1. **Physical interconnection at U S WEST's access tandems (Section I)**

The first key issue that the parties were not able to resolve involves the question of where the interconnection between their networks will take place. This issue, of course, is dealt with explicitly by the Telecommunications Act, which provides that incumbent LECs must provide interconnection "at any technically feasible point within the carrier's network." (See Section 251(c)(2)(B), emphasis added.) The FCC Order, interpreting this requirement, specifically provides that one point of interconnection with incumbent LECs shall be at the trunk side of the tandem switch. (See ¶ 212.)

Thus, TCG has requested interconnection at U S WEST's access tandems. U S WEST, however, asserts that it has in operation both local tandems and access tandems, and that TCG must deliver local traffic to the local tandems and toll traffic to the access tandems. While this seems on the surface to be a simple request by U S WEST, it is in fact directly contrary to the Telecommunications Act, which allows TCG to interconnect at any technically feasible point of interconnection. Moreover, U S WEST's suggestion that TCG must deliver local traffic to the local tandems creates significant operational problems, including routing problems, a lack of capacity at the local tandems in the Phoenix area, and incomplete call completion capability.

Mr. Washington addressed these issues in some depth during the hearing. As he explained, U S WEST has access tandems that are interconnected to every end office in the LATA. By way of contrast, the local tandem only interconnects to certain end offices (Transcript, pp. 223-224). He then described certain of the problems with U S WEST's insistence that TCG deliver local traffic to the local tandem, rather than the access tandem.

First, he explained that routing to the local tandem is problematic for TCG because these tandems are not found in the Local Exchange Routing Guide ("LERG").

The rules of engagement that we've operated under for years as an industry is a guide of the local exchange routing guide, and in it, the subtending arrangement that the access tandem has, the relationship it has to end offices and to calling the NXXs where they sit and where they subtend, that's published, it's an industry accessible guide.

The local tandem is a secret. It's a secret because it doesn't have to be published. It's strictly a device that was put into the network for U S WEST's convenience. It's a device that I'm not aware of another RBOC deploying, but I can't certify that none other does. None other that I deal with does.

But then we found out we didn't have available to us information that told us the subtending arrangement, so just because I got to a local tandem, I still didn't know what I had, whether I had this particular end office or not. They've tried to provide information, and I hope now, several months later, it's actually reasonably accurate. We've started to overcome a hurdle.

(Transcript, p. 224). Yet the hurdle remains, as TCG has no real means of knowing which end office is associated with which local tandem, so it cannot know to which local tandem a particular call should be routed.

Second, Mr. Washington described the problem with U S WEST's lack of capacity at the local tandem.

Then the next hurdle came up. They don't have any capacity. They've got capacity at the access tandem, there's no capacity at the local tandem. When I asked them what my option was, I kind of gathered one option would be very agreeable is don't go in business, or perhaps another option is to just interconnect at every single end office. And I simply don't have the financial capability to do that today. It also doesn't make engineering good sense.

I suggested an option was to do it at the access tandem, since it's publicly available information, there appears to be capacity, the subtending arrangement already exists, and I was told no. That was difficult for them because it didn't meet their existing billing circumstances, and I do acknowledge that they would have to make some adjustments in their processes for me to do that.

(Transcript, pp. 225-226)⁵ This lack of capacity means, in short, that U S WEST is trying to require TCG to deliver calls to tandems that have no capacity to handle those calls. The unreasonableness of this position is apparent.

Thus Mr. Washington identified two key problems with U S WEST's insistence on the delivery of local traffic to the local tandem: an inability to route calls via the LERG and a lack of capacity at the local tandems. There is a third problem he discussed as well, having to do with the completion of 64Kbps Clear Channel calls (essentially full ISDN). This issue is addressed below in the discussion of "Sizing and Structure of Interconnection Facilities." As shown in that section, U S WEST has this full ISDN capability at its access tandems, though it does not have the capability at its local tandems. By requiring TCG to complete local calls through the local tandem, U S WEST is depriving TCG of its ability to compete in providing full ISDN service.

U S WEST admits that it is technically feasible to route local traffic through the access tandem -- it simply objects on the ground that such interconnection is too expensive.

⁵ In a separate declaration filed on September 26, 1996, TCG witness Joseph Goodhart further explained this problem of U S WEST's lack of capacity at its local tandems.

And to put your local traffic into the access tandem would be kind of like using your new Cadillac to carry lumber in. You know, it's just not something that's really feasible.

(Transcript, p 345) Unfortunately for U S WEST, the Telecommunications Act and the FCC Order do not permit economic concerns to come into play in determining whether a particular method of or location for interconnection is technically feasible (See FCC Order, ¶¶ 198 - 201 ("We conclude that the term 'technically feasible' refers solely to technical or operational concerns, rather than economic, space or site considerations ")) Thus U S WEST's Cadillac and lumber explanation has been rejected by the FCC

TCG agrees there are times when trunking that avoids the tandem is appropriate U S WEST has recommend a standard of 512 Economic Centum Call Seconds ("ECCS") for the determination of when direct end-office trunking is appropriate TCG accepts this standard; when this level of traffic is reached, TCG agrees to groom its trunks by separating out local traffic and delivering it on separate trunks to the wire center housing U S WEST's tandem U S WEST can then connect these trunks directly to its end offices and avoid the need to put this traffic through its tandem.

This result, of course, is the most economic one for U S WEST as well as for TCG Indeed, this is the very meaning of ECCS -- the separation of local traffic onto direct end-office trunks is appropriate only when the ECCS standard has been met.

The combination of all of these problems with the local tandem demonstrates conclusively that TCG must be allowed to interconnect at U S WEST's access tandems, for the delivery of both local and toll traffic. Of course, as explained above, the Telecommunications Act imposes

"As a facility-based carrier, one who holds ourselves to standards of service performance, we feel that we're only secure when we have the physical collocation arrangement available, and that's not being disputed. But the implementation of physical collocation has a few subtleties, not a million, that are very much important to us.

If this is a simplistic floorplan of the wire center in a U S WEST office, and they designate somewhere in the middle here's your collocation space, and I have to come to the front door and knock, may I go work on my equipment, and be escorted, that's physical collocation in it's simplest form, but it's not of near the value of what Pacific Bell and we, we didn't -- it's what Pacific Bell just tariffed on their own, they offered this, and what we certainly agree is the proper way to do it. But they create a separate access that's card swiped keyed, with collocation cages built out, the little chain link fences that I'm sure we all imagine.

But I have seven days a week, 24 hours a day access to this space. So in the middle of the night, if one of my OC488s, it's the piece of transmission equipment that I would typically install, carries 32,000 simultaneous phone calls, it's important that I keep those running.

If it goes to the protect side on the equipment, meaning I've had a failure, I've got an issue, I dispatch in the middle of the night, even though service is up and running, but I'm now in simplex, I now have no failsafe.

I dispatch. I can't rely on U S WEST also choosing to desire to meet me there to open up so that I can get access to my equipment to assure the reliability of my network. This is important to me, to provide the service that I need to provide.

(Transcript, pp 238-240)

Accordingly, it is not enough to require that U S WEST allow for physical collocation at all of its premises. It must also allow TCG to have 24 hour a day, 7 day a week unescorted access to its collocation facilities. Anything short of this will prevent TCG from controlling its own operations and will put its network at the mercy of U S WEST's availability.

One further issue remains with respect to collocation. The original TCG proposed agreement did not provide for cross-connects between TCG's collocated facilities and those of other carriers also collocated at U S WEST's premises, although Mr. Washington did discuss this in his pre-filed testimony (Ex 3, pp 17-18). The FCC Order specifically allows for this (See §§ 594-595). The final arbitrated interconnection agreement must allow for this type of cross-connection at collocation sites.

3. Bill and keep compensation for local traffic (Section IX)

The parties disagree on the method of compensation for the transport and termination of local calls. TCG requests that the Commission order bill and keep compensation, where there is no mutual exchange of compensation for such transport and termination. This order would be consistent with the Commission's prior finding that bill and keep compensation is appropriate for local traffic. It would also be consistent with the FCC Order, which states:

States may, however, also apply a general presumption that traffic between carriers is balanced and is likely to remain so. In that case, a party asserting imbalanced traffic arrangements must prove to the state commission that such imbalance exists. Under such a presumption, bill-and-keep arrangements would be justified unless a carrier seeking to rebut this presumption satisfies its burden of proof. We also find that states that have adopted bill-and-keep arrangements prior to the date that this order becomes effective, either in arbitration or rulemaking proceedings, may retain such arrangements, unless a party proves to the state commission that traffic is not roughly balanced.

(FCC Order, ¶ 1113)

Of course, U S WEST was not able to rebut a presumption of balanced traffic here, since TCG is not yet interconnected with U S WEST in Arizona. Thus, in accordance with the FCC

Order, this Commission can and should adopt bill and keep for the arbitrated agreement between TCG and U S WEST.

Such an order for bill and keep compensation is entirely justified based on the record presented at the hearing. TCG presented the testimony of William Page Montgomery and Jim Washington on this subject. (Exhibits 2 and Exhibit 3) In that testimony, both witnesses offered substantial evidence as to why bill and keep is appropriate under the circumstances present in Arizona. (See Ex. 2, pp 21-36; Ex. 3, pp. 11-12.) Mr. Washington explained as well how harmful it would be to TCG if the Commission did not adopt bill and keep for local termination

Q. And isn't it -- is it your testimony that if the arbitrators were to adopt reciprocal compensation instead of bill and keep, that puts you out of business, or would prevent you from effectively competing? I'll use the language in the testimony

A. That could put me out of business

Q. Reciprocal compensation by itself, instead of bill and keep, would put you out of business, is that your testimony?

A. Reciprocal compensation could damage me in the short-term, while we're building volumes. It most likely would not put me out of business, but "could" is a very broad word. That would be damaging, very damaging to my business.

(Transcript, p. 323.)

U S WEST's position on bill and keep was a moving target. First it argued solely for reciprocal compensation for all local transport and termination. At the hearings, however, it proposed a range of percentages for balanced traffic, where compensation would not be made:

Q. I just want to clarify something you said in your summary this afternoon. Am I to understand that for local traffic, U S WEST is proposing that there be basically a bill and keep arrangement within a 10 percent range between 45 and 55 percent balance?

A. What I discussed is for the local switching portion, what we have said is that if the traffic is within balance, one company provides 45 to 55 percent, and the other provides 55 to 45 percent, anyway, the flip side to make 100 percent. Then you wouldn't exchange payment. If it's outside of that range, then you should use the local switching rates.

(Transcript, pp 387-388) Given these fluctuations, it is difficult to determine where U S WEST stands on this issue

The simple answer to bill and keep is that TCG wants to and intends to become a broad-based, full-service competitor of U S WEST in the Arizona telecommunications market. If per-minute compensation were to be imposed, this would create perverse incentives to TCG not to become a broad-based provider, but rather to focus its customers on those with high volumes of inbound traffic, such as Internet service providers. Instead, with the adoption of bill and keep, traffic is likely to be in balance precisely because of the incentive that will be created to serve a broad range of customers.

U S WEST also takes the unreasonable position that traffic to Internet Service Providers should be excluded from the calculation of balance of local traffic (Ex. 5, pp 169 - 170) This makes no sense, unless U S WEST is planning a strategy of focusing entirely on outbound traffic and wants to avoid shifting the balance of traffic in TCG's favor.⁷ In essence, by proposing to exclude this traffic, U S WEST is recommending that Internet traffic be provided on a bill and keep basis. U S WEST is at least correct on this point, though for the wrong reasons. All local traffic should be terminated as bill and keep.

⁷ In fact, U S WEST expressly states a concern that such a shift might occur. (Ex. 5, p 169)

For these reasons, the Commission should follow the dictates of the FCC Order and presume that traffic will be in balance. It should therefore provide in the final arbitrated interconnection agreement for bill and keep compensation for the transport and termination of local traffic⁸

4. The sharing of revenues for jointly-provided switched access (Section XIII)

As a matter of law, TCG has the right to compete with U S WEST for the provision of tandem switching and tandem switched transport, and thus to jointly provide with U S WEST switched access services. The FCC, in its Expanded Interconnection Order, made this quite clear

The steps we now take will enable interconnectors, as well as other parties, to provide tandem switching functions. . . . These measures will open the door to third parties to provide tandem-switching services.

(Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II, CC Docket No 91-141, 9 FCC Rcd 2718 (1994).) Despite this clear legal right, however, U S WEST continues to refuse to acknowledge TCG's right to interconnect at U S WEST's access tandems to provide this service. It does so even in the face of Section 251(c)(2)(A), which obligates incumbent LECS to interconnect "for the transmission and routing of telephone

⁸ If the Commission chooses, however, not to adopt bill and keep, the compensation rate should be set at \$ 02/minute, at the lower range of the FCC Order. (Ex. 2, p. 36.)

exchange service and exchange access" (Emphasis added.) U S WEST is simply wrong in refusing such interconnection.⁹

However, even a legal right is useless if TCG does not have sufficient economic conditions to support the exercise of this right. Yet these economic conditions do not exist today under U S WEST's tariffs, whereby U S WEST uses the Residual Interconnection Charge ("RIC"), an end-office rate element, to recover its costs of providing tandem services. Where TCG is the party providing the tandem service in a competitive environment, this rate structure precludes it from recovering its costs. It is thereby uneconomic for TCG to compete and the legal right given it by the FCC becomes meaningless.

The issue of sharing revenues for jointly-provided switched access turns solely on an understanding of the RIC found in U S WEST's interstate and intrastate access tariffs. The RIC, which is one element of the end-office charge for termination of switched access traffic, was primarily implemented by the FCC as a means of allowing LECs to recover, through end-office charges, the costs of their tandem switches. This is a critical fact to understand -- the end-office RIC recovers 80% of the cost of tandem switching and transport, with only 20% of those costs recovered in the tandem switching charge. (Ex 2, p 58.)

U S WEST's tandem rates do not presently recover its tandem costs. Thus, when TCG and U S WEST jointly provide switched access, and TCG is the tandem party, its tandem rates will not recover the cost of providing tandem services. If, in that circumstance, U S WEST were

⁹ TCG has properly proposed a meet point trunking arrangement that allows for such interconnection, whereas U S WEST has contended that it should always be the tandem provider for switched access services. This issue is addressed in Section III.C.4, below.

allowed to bill the RIC to the access customer as part of its end-office charges and keep all of those revenues, U S WEST would be receiving amounts for which it did not provide any service. Conversely, TCG would not be properly compensated for the services that it was providing to the access customer.

TCG's solution is to permit it, where it is the tandem provider, to bill the access customer for both the end-office and tandem charges, and then to remit to U S WEST 70% of the end-office charges, keeping 30% for itself. This would have the effect of returning to TCG the lion's share of the RIC, thereby properly allowing it to recover its tandem costs. In essence, 30% of the end-office charges is equal to 100% of the RIC. The RIC is thus moved to the tandem, where it belongs.

It is not an answer to say that TCG can simply charge a higher tandem rate so as to recover its costs, for this will preclude competition. The complete recovery of tandem costs is essential to TCG's ability to compete for the provision of tandem services. If U S WEST's tandem rate is based on the recovery of its tandem costs through the end-office RIC element, but TCG is not allowed any portion of the RIC when TCG is the tandem provider, then TCG's tandem rates will necessarily be much higher than U S WEST's tandem rates. The result will be that TCG will not be able to compete with U S WEST. Mr. Montgomery described the unfairness of proceeding in such a manner.

It's really a cockamamie circumstance. The way it would work, under U S WEST's offer, is TCG would contribute to the excess contribution represented by the RIC, and then have to compete against the very rates that they just don't subsidize.

You know, either one of those alone would be uneconomic. Together, they're not only uneconomic, they're nonsense. So that's the nature of the jointly provided switched access issue that I've testified to. And as I say, it's fundamental for TCG to be able to compete for this business, the fourth leg of the table, so to speak, to have this issue resolved in TCG's favor.

(Transcript, pp 157-158)

Moreover, as Mr. Montgomery made clear, this revenue-sharing proposal, whereby TCG receives a portion of U S WEST's end-office charges, cannot in any way be considered to be switched access reform. (Transcript, p. 158.) As he stated:

There won't be a single element or provision in U S WEST's intrastate or interstate access tariffs that have to be changed, because there is a negotiated or arbitrated agreement between TCG and U S WEST that puts them on the basis -- on a co-carrier basis, and doesn't involve tariffed rates or changes in tariff rates.

(Transcript, p. 158.) It is simply a revenue-sharing mechanism that allows TCG to compete on a fair and equal footing. The Commission need not fear that it is engaging in switched access reform.

As a legal matter, the Commission must consider the recent decision by the United States Court of Appeals for the D C Circuit in Comptel v. FCC¹⁰. There the Court of Appeals held that the RIC is not a proper end-office element because it is not cost-based. It ordered the FCC to "expeditiously" correct this problem through switched access reform. (See FCC Order, ¶ 727.) The FCC announced that it would deal with this issue in its "forthcoming access reform proceeding," it did not correct the RIC problem in the August 8 interconnection Order. (Id.) Thus, the RIC problem is going to be corrected by the FCC only at some point in the future.

¹⁰ No. 96-1168 (D C Cir., July 5, 1996)

In the meantime, however, the interconnection agreement between TCG and U S WEST requires an adjustment so that TCG can compete in the provision of tandem services. A failure to do so would be to ignore the impropriety of the RIC as an end-office rate element, as was found by the Court of Appeals. This Commission has a legal obligation to make certain that TCG is given a fair chance to compete in the provision of those services made possible by its interconnection with U S WEST.

U S WEST tried to demonstrate, through an incredibly convoluted and at times unintelligible cross-examination of Mr. Washington, that TCG was asking for too much. In short, U S WEST contended that by asking for recovery of its tandem revenues, plus a share of the end-office revenues (i.e., the RIC), TCG would receive an unfair share of the total revenues for jointly-provided switched access. (Transcript, pp. 301-312.) Mr. Washington, however, put this argument to rest by explaining the competitive nature of the market.

Q. You had a discussion with Mr. Berg about the TCG proposal for the joint provisioning of switched access and the compensation for that. And in it, you acknowledged that under the proposal, you would get .7 at the tandem, under the proposal, if you had the same rates as U S WEST, you would get .7 at the tandem, and then another share of the RIC costs that are tandem costs that are recovered at the end office.

Can you explain why it is that ending up -- let me restate that. Given that discussion, is it likely that you will end up with the 1.4 cents that Mr. Berg discussed?

A. I think it's not likely that I'll end up with the full 1.4. The whole point of competitive services is to bring price pressures, and so when I enter the market and compete for the provisioning of the piece of the switched access service that I can provide, if it were more like the interstate piece, where -- or if it were a paired, where there's a .7 rate out there, and I could afford to do a .6 rate to convince clients to do business with me, that may be what I have to do. So I try to move some business to me.

When the RIC still sits with U S WEST at their end office, if the proposal isn't accepted, then U S WEST can easily make tandem switching zero, because they still have 7 sitting in the RIC. I think, by dividing the RIC or pushing -- we functionally push the RIC to the tandem provider by doing 33 percent¹¹ of the end office charges. I don't want their end office switching and I don't want their CCL. That's theirs as the end office provider. But when we push the RIC to the tandem provider, then we allow competition, and if it's priced too high at 1-4, then competition will very quickly drive it to the 5 or 6 or 7 whatever it is. But I can't be arbitrated out of the market because they can give that away, because they're fully recovering at the end office, and so it's the illusion of competition I'm still fighting in this area. It's real competition that I'm trying to achieve.

(Transcript, pp. 327-329.) The assertion by U S WEST of over-recovery by TCG is nothing more than an illusion, as Mr. Washington testified, an illusion that will be dispelled if TCG is allowed to fairly compete in the market for tandem services.

For these reasons, the arbitrated agreement should provide that TCG may retain 30% of the end-office revenues when it is the tandem provider for jointly-provided switched access. It will thereby receive the benefit of the RIC for having provided the tandem service, the very result mandated by the Court of Appeals in the Comptel decision.

5. Access to unbundled elements (Section II)

TCG and U S WEST agree that U S WEST should provide nondiscriminatory access to unbundled elements. In fact, this issue is not contentious at all; the Telecommunications Act of 1996 and the FCC Order both make it clear that this type of unbundling must occur. The key dispute here focuses on the price for unbundled elements, particularly for unbundled loops.

¹¹ The transcript uses the number "33 percent" only because TCG has not had an opportunity to submit corrections. What Mr. Washington actually said, consistent with TCG's proposal, was "30 percent."

U S WEST wants to charge a rate that it asserts is in line with its TELRIC studies TCG had offered, in its proposed agreement, particular prices for unbundled loops However, with the Arbitrator's ruling that cost studies would not be considered here, the Commission is left with the proxy rates in the FCC Order (Transcript, pp 21-22) Thus, it should be a simple matter to order that the arbitrated agreement contain unbundled loops at a rate no higher than \$12.85 (See 47 CFR § 51.511(c))¹² Other rates for unbundled elements should similarly be set consistent with the FCC Order.¹³

However, U S WEST points out that it does not offer "basic" and "assured" links as those terms are defined in the TCG/Pacific Bell interconnection agreement The use of the terms "basic" and "assured" relate solely to the amount of decibel loss on the line -- "assured" links have less of a decibel loss U S WEST asserts that it provides conditioning on its lines in order to reduce decibel loss, but suggests that there should be an additional charge However, U S WEST did not put any evidence in the record as to what this conditioning charge might be Although the FCC Order provides that the requesting carrier bear the cost of conditioning (¶ 382), U S WEST has failed to identify any such cost Accordingly, the adopted rate of \$12.85 should include conditioning sufficient to render the U S WEST unbundled loop equivalent to the Pacific Bell "assured" link

¹² In the TCG/Pacific Bell agreement, the parties provided rates for "basic," "assured," and "ISDN" links. As with basic and assured, there is no FCC proxy for ISDN links. The rate should therefore be the same -- \$12.85.

¹³ Rates for items for which there is no proxy rate in the FCC Order, such as nonrecurring charges for local loops, are addressed below.

6. Performance standards and remedies (Section I.K)

In order for an interconnection agreement to have any value, it is essential that the parties be held to certain performance standards with respect to obligations imposed under the agreement. And in order for performance standards to have any meaning, they must be enforceable through some form of remedies. Thus, TCG proposed that the Commission include in the arbitrated interconnection agreement a set of performance standards and remedies.

In his testimony, Mr. Montgomery explained the need for these types of standards. (Ex 2, pp 67-76) He pointed out, among other things, that these types of provisions were a standard part of traditional contracts and that they were justified in this case by TCG's prior experiences with U S WEST. (Id., pp 72-73) He also explained that TCG would be severely harmed if such standards and remedies were not included, particularly given the size and sophistication of the customers with which it will be dealing and its own inability to impose monopoly-based limitations of liability. (Id., pp 74-75)

The Telecommunications Act imposes an obligation on U S WEST not to provide service that in any way discriminates against other carriers, nor that is inferior in quality to that provided to itself. (See Sections 251(c)(2)(C) and 251(c)(2)(D).) In implementing this provision, the FCC stated:

We conclude that the equal in quality standard of section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party. We agree with MFS that this duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks.

(FCC Order, ¶ 224, emphasis added) This could not be clearer -- the FCC has required, under the Telecommunications Act, that incumbent LECs meet performance standards

Moreover, the FCC provided a simple explanation as to why such performance standards should be required

We agree that to achieve the procompetitive goals of the 1996 Act, it is necessary to establish rules that define the obligations of incumbent LECs to provide nondiscriminatory access to unbundled network elements, and to provide such elements on terms and conditions that are just, reasonable and nondiscriminatory. [W]e believe that incumbent LECs have little incentive to facilitate the ability of new entrants, including small entities, to compete against them, and thus, have little incentive to provision unbundled elements in a manner that would provide efficient competitors with a meaningful opportunity to compete. We are also cognizant of the fact that incumbent LECs have the incentive and the ability to engage in many kinds of discrimination. For example, incumbent LECs could potentially delay providing access to unbundled network elements, or they could provide them to new entrants at a degraded level of quality.

(FCC Order, ¶ 307)

The FCC recognizes the need to ensure that performance standards are met by the incumbent LECs so that they do not discriminate against new entrants. Such performance standards should be embodied in the arbitrated interconnection agreement. Along with specific performance standards, there must be means of monitoring to determine if the standards are being met. TCG recommends inclusion of the performance standards and monitoring procedures set forth in Attachment B to this Post-Arbitration Brief. With respect to the remedies for failure to meet performance standards, TCG has also included proposed language in Attachment B to this Brief.

C. Other Unresolved Issues

Beyond these six critical unresolved issues, the remaining unresolved issues found in the TCG proposed agreement should also be decided in accordance with the record presented by TCG.¹⁴ These issues are as follows:

1. Definitions

The definitions to be used in the arbitrated agreement are an important part of the agreement, because it will use a number of technical terms. By defining those terms from the start, there will not be any dispute over the meaning of language during the time the interconnection agreement is in operation. Unfortunately, due to the need to resolve other issues before definitions could be agreed upon, the parties never reached an agreement on the definitions to be used.

Nevertheless, there is no dispute about the need to include definitions in the arbitrated interconnection agreement, and there is little dispute about what those definitions should say. In fact, many of the definitions found in the TCG proposed agreement are also found in U S WEST's proposed agreement. Since both parties have focused, through the Joint Position Statement, on the TCG proposed agreement, the Commission should adopt the definitions found in the TCG proposed agreement as the definitions to be used in the final arbitrated agreement.

¹⁴ Excluded from this section are issues involving disputes over language. They are discussed in Section III.D, below.

2. Sizing and Structure of Interconnection Facilities (Section I.C)

TCG's proposed agreement provides for the availability of Binary 8 Zero Sum Extended Super Frame ("B8ZS ESF") two-way trunks, in order to allow TCG to offer 64Kbps Clear Channel Capability data calls. This is, essentially, full service ISDN service, a necessary element of any telecommunications offering in this age of increasing demand for high speed data transmission. Pacific Bell understood this need and agreed to provide this capability "where technically feasible."

U S WEST objects to this provision of the agreement, contending that it does not have B8ZS ESF capability at its local tandems. Yet Pacific Bell's agreement demonstrates that the capability is a technically available one, so long as the proper equipment is installed at the tandem switch. Mr. Washington explained this problem, and the need for a solution, in some detail:

The next one was when a client of either of ours wants to place a basic rate ISDN call, a high speed data call, they really would honestly prefer to have available to them also 64 kilobytes of the channel rather than just 56 kilobytes of the channel, just get a lot more traffic through.

And when we interconnect, if we interconnect under one protocol, it's just how you set up the trunks. If you set up the trunks so that the signaling is in band, and the monitoring and the health of the trunk is in band, it consumes some of the bandwidth. And for voice calls it doesn't matter, it's fine, you get 56 kilobytes, it's more than enough to handle the fidelity of a voice call.

When you're trying to push a lot of data through, we can set up the call differently, build the trunk differently. And that different building of the trunking is B8ZS extended super frame. I've seen that in all the testimony. All it does is it moves with the monitoring of the health of that standard and circuit out of the band, puts it in somewhere else, I'm not technical enough to know, but it creates all 64 kilobytes of bandwidth available to the user.

So we said boy, we'd really like to be able to have some of this resource built between us. We'll offer to separate out the calls. So when, in the call setup,

if it says it's a data call, we would like to have some of that available. If it's a voice call, we'll put it through the normal interconnection and, you know, 56 kilobytes, fine.

They said well, we've got that at the access tandem, but we don't have it at the local tandem. Oh. Well, how do you do your clients? There was some confusion. And we don't let our clients do that if it's a local call. We let them do it if it's an access call, toll call.

Then just in happenstance, in the State of Washington, I hired an engineer who was formerly with U S WEST. In the course of the conversation, he goes no, no, no. I built the network, if one of our local clients wants to place one of those calls, we put it through the access tandem, because that is where we have the B8ZS [extended] super frame capability. That's very enlightening. It's also very troubling.

So I guess our proposal is, for those reasons, we'd simply like to interconnect to the access tandem so we know the ground rules, we have capacity, and we have the capability of offering calls connected between our clients and their clients, the same level of service of calls they connected among their own clients for data setup calls.

(Transcript, pp 226-228)

U S WEST's position on this issue is, as Mr. Washington stated, very troubling. It insists that TCG deliver local traffic to the local tandem, where it does not have B8ZS ESF capability. By way of contrast, it puts the 64Kbps CCC calls of its own customers through its access tandem. It then asserts that TCG, if it wants this capability at the local tandem, should make a request through the Bona Fide Request process and pay the cost of its installation. This position, however, is directly contrary to the requirements under the Telecommunications Act and the FCC Order that U S WEST provide the same level of service to TCG as it provides to itself. (See Section 251(c)(2), FCC Order, ¶¶ 26, 224 - 225.)

TCG already provides B8ZS ESF capability at its own switch and has incurred the cost of doing so, without trying to pass this cost on to anyone else. TCG customers, with this capability, can place and receive 64Kbps CCC calls over the TCG network, but they cannot place these calls to, nor receive such calls from, U S WEST customers unless U S WEST also offers the B8ZS ESF capability to TCG. Otherwise, U S WEST would provide this full capability to its own customers, but would provide inferior quality when calls were placed to TCG customers. Such a result clearly violates the "equal in quality" standard of the Telecommunications Act.

Mr. Washington stated this issue very clearly. TCG wants to receive, and is entitled to receive under Federal law, the same type of interconnection capabilities that U S WEST provides to itself and its customers. The final arbitrated agreement should include TCG's proposed language on B8ZS ESF capability at U S WEST's tandems, and must allow TCG to interconnect at the access tandem for the exchange of local calls where this capability exists.

3. Trunking Directionality (Section 1.D)

In this section of TCG's proposed agreement, the option is provided to TCG to use either one-way trunks or two-way trunks for the delivery of local exchange traffic. TCG is not certain whether U S WEST agrees to this position. However, the FCC Order makes it clear that TCG is entitled to use two-way trunks for interconnection if it chooses, where one-way trunks are not economically justified:

We conclude, here, however, that where a carrier requesting interconnection pursuant to Section 251(c)(2) does not carry a sufficient amount of traffic to justify separate one-way trunks, an incumbent LEC must accommodate two-way trunking upon request where technically feasible.

(See ¶ 219) Thus, the FCC has mandated that an interconnecting carrier may select whether to use one-way or two-way trunking. By giving the option of either one-way or two-way trunks to TCG, this Commission would be in compliance with the FCC's requirements

4. Meet Point Trunking Arrangements (Section I.G)

Meet point trunking involves the physical interconnection arrangements for the delivery of jointly-provided switched access. TCG provided a detailed discussion, in its proposed agreement, of the technical arrangements that the parties should enter into for meet point trunking. During the discussions with U S WEST, it became apparent that U S WEST agreed with most of these technical terms. However, TCG understands U S WEST's proposal to require that U S WEST remain the tandem provider in all circumstances for the provision of switched access.

This is an unreasonable and unacceptable position. As discussed above, the provision of tandem services is a competitive business. TCG must have the right to fairly compete in this market. Accordingly, TCG recommends that its section on meet point trunking arrangements be included in the final arbitrated interconnection agreement.

5. Combination Interconnection Trunk Groups (Section I.H)

In its proposed agreement, TCG recommended use of an extremely reasonable trunking arrangement, focusing on the capability of combining on a single trunk all functionalities of the local and meet point trunks. U S WEST objected to this, asserting that TCG was "demanding" that U S WEST agree to the use of these combined trunks. (Mason, Ex. 5, pp. 136-137) On

cross-examination, however, U S WEST backed down somewhat from this position, admitting that TCG had made no such demand. (Transcript, pp 381-383)

The language proposed by TCG simply calls for the parties to work together cooperatively on a technically feasible method of interconnection, if and when it becomes available. Mr Washington explained the technical basis for this request.

Just historically, we interconnect, and present recording for AMA automated message count recording capabilities and billing systems, require separation of traffic for interexchange and intraLATA toll away from local.

Our request is that in the future, as certainly the regulatory environment evolves and minutes may take -- well, as things change and if there isn't a need to separate traffic in the future, we wanted a provision that the parties would agree that the most efficient interconnection is one very large trunk for exchanging all minutes as kind of the perfect paradigm with all the billing and accounting taking place in billing and accounting systems. That when technology supported that, that we would merge the various trunk groups that our systems require that we separate now, that we merge them into a single large trunk group at all of the points of interconnection.

That's not to say we go to a single point of interconnection, but at all the access tandems, local tandems, or end offices, various points we choose to meet, build just the one very large trunk or at least minimize the number to as few as possible.

(Transcript, pp 96-97)

This is a very reasonable request, not a "demand" as contended by U S WEST. There is no justifiable reason why the parties should not be required to work together in the manner described. This requirement for cooperation should be included in the arbitrated interconnection agreement.

6. Nondiscriminatory access to poles, ducts, conduits and rights of way (Section III)

TCG did not recommend a specific pole and conduit agreement, but rather proposed language from the Pacific Bell agreement on this issue. This language set forth the obligation of the parties to negotiate such an agreement. It specifically included, however, a number of key points that had to be included in any negotiated agreement.

- A. Neither Party will terminate the other Party's occupancy without cause. Should the conduit owner require the use of the occupied space, the Parties agree to jointly construct additional facilities as necessary to accommodate such needed additional capacity.
- B. Since multiple parties may occupy different innerducts within a conduit, the conduit owner will place innerduct at its expense to prepare the conduit for occupancy and proportionately recover such costs through its conduit charges.
- C. The Parties agree that egress from the conduit system should be at the location of the manhole, vault or handhole (collectively "manhole") nearest to the desired point of egress. If such egress is not feasible, the conduit owner will inform the other Party. Upon that other Party's request:
 - 1. the Parties will agree to suitable egress at a nearby manhole, or
 - 2. the conduit owner will provide a quote, accepted by the other Party, for construction of suitable egress, and the conduit owner will construct such egress, or
 - 3. the other Party will construct, under the conduit owner's supervision, suitable egress, with all costs paid by the other Party, including the reasonable cost of the conduit owner's supervision.

TCG recommends that the Commission include in the arbitrated interconnection agreement a requirement for a pole and conduit agreement that includes all of these key terms.

The issue of pricing for conduit, which is not addressed in the proxy rates set forth by the CPUC, is discussed in Section IV B 1, below

7. Customer guide in white pages/billing for advertising (Section V)

The Customer Guide pages issue is a fairly simple one. U S WEST has an obligation not to discriminate against TCG. In that context, TCG proposed, in Mr Washington's testimony, that the arbitration agreement allow TCG to have the same number of Customer Guide pages in the White Pages as U S WEST provides for itself

TCG believes that U S WEST should not discriminate against any competing carrier with respect to listings in the White Pages of the U S WEST telephone directory. That obligation is imposed under Section 251(b)(3) of the Telecommunications Act of 1996. This extends to the Customer Guide pages in the directory, in which customer information is provided with respect to competing local exchange carriers.

The TCG/Pacific Agreement provides, in Section V C, that TCG will receive two pages in the Customer Guide section free of charge. This is another matter that was negotiated by Pacific Bell, but it is not a necessary part of the U S WEST agreement and TCG does not propose to agree to it as part of its "best and final" offer to U S WEST. Instead, U S WEST should be prohibited from discriminating by requiring that it provide free of charge to TCG the same number of Customer Guide pages in its White Pages directory that it provides for U S WEST itself. This would be fair and nondiscriminatory.

(Ex. 3, p 21)

In response, U S WEST has told TCG that it has to discuss this issue with a separate company, U S WEST Direct. This is entirely unreasonable and, more important, U S WEST's failure to treat itself and TCG the same constitutes discriminatory treatment that violates the terms of the Telecommunications Act. The Commission should equalize the treatment as between

these two companies by requiring that each receive an equivalent number of Customer Guide pages in the White Pages directory

Moreover, U S WEST has been totally nonresponsive on the availability of these pages or what they might look like. TCG was promised a mockup of the Customer Guide pages, but it was never received

We have been told we'll be happy with the arrangement. We asked to see mocked up layouts of the new structure that was referenced in the phone call. We've seen nothing and I believe it's time to order it, if you will

(Transcript, p. 246) This conduct by U S WEST, asserting that the directory is handled by a different subsidiary and that U S WEST has no control, demonstrates the type of problems that a new entrant has in dealing with a monopoly like U S WEST. The only way to resolve this issue is for the Commission to order U S WEST to provide to TCG the same number of Customer Guide pages that it provides to itself

A similar concern exists with respect to billing for advertising in the U S WEST directory. TCG will establish relationships with its customers, and as part of those relationships, it wants to be able to provide a full range of services to the customers. One service that business customers obviously need is directory advertising. TCG recommends in its proposed agreement that it be allowed to directly bill its own customers for advertising in the U S WEST directory and that it then remit the appropriate payments to U S WEST. There is no reason why U S WEST cannot bill TCG, rather than the end-user customer, so long as TCG is responsible for the payment. U S WEST's only motivation to preclude this would be to enable it to maintain a direct relationship with the customer, something to which it is not entitled if the customer has transferred its service to TCG

Accordingly, the final arbitrated interconnection agreement should provide that TCG may bill its customers for directory advertising and that TCG will in turn be responsible to U S WEST for payment of all advertising charges

8. Telecommunications services available for resale (Section X)

The issue of resale discounts is a fairly easy one to resolve. The FCC Order provides that the discount for resale of incumbent LEC services shall be set in the range of 17% to 25% until TELRIC studies are approved. The Commission has already decided here to use proxy rates from the FCC Order, pending the completion of a proceeding on TELRIC studies. Accordingly, TCG recommends use of the rate from the low end of that range, 17%, for the discount to be applied to resold services.

However, the parties disagree on the availability of certain services for resale. In particular, U S WEST contends that there should be no discount on special access/private line services, on residential services, and on services offered at a volume discount. (Ex. 5, pp. 102-114.) Yet the Telecommunications Act does not permit these type of restrictions. It states, in Section 251(c)(4), that incumbent LECs must offer for resale at wholesale rates any service the carrier provides to retail customers. U S WEST offers each of these services to its end user customers; it must offer them at wholesale rates as well.

Special access/private line services present an interesting problem. It is true that the FCC stated that there need not be any wholesale discount on special access services. (FCC Order, ¶¶ 873 - 874) However, U S WEST has merged its special access and private line tariffs into a

single tariff and treats the two services as the same. Certainly it offers its private line services to end user customers and they must be available for resale at a wholesale discount. The FCC Order says nothing that would preclude this discount, in fact, it specifically states that the services that must be sold at a wholesale discount can be determined "by examining the LEC's retail tariffs " (See ¶ 872). The mere fact that U S WEST has merged these special access and private line services does not entitle it to avoid discounted resale of its private line services, which are offered in its retail tariff.

Mr. Washington elaborated on the issue of resale of private line services in a question put to him by Arbitrator Behun during the hearings:

Q (BY ARBITRATOR BEHUN) I have a question regarding the private-line service. My understanding is U S WEST does not want to offer it with any additional discount, stating it should be included in special access service. Do you have a position regarding that?

A. The position is -- and I'm not familiar with their cost studies and rates and what their margins are and all that. The position is, in reading the order, the order calls for a wholesale rate to be applicable to all retail services sold to end-user clients, and I should just call high CAP service or private-line service, where you buy a point-to-point DS-1, T-1 or DS-3, that's commonly provisioned to end, provisioned for, and they're the customer of record, to end-user clients.

So it seems to fit exactly what the Commission has anticipated, that it's a retail service sold to an end-user client.

(Transcript, pp. 250-251.)

Residential services are also, of course, sold to end users. U S WEST argues here that it need not be required to offer these services at a discount because they are priced below cost. Yet the FCC explicitly rejected this argument, stating:

Subject to the cross-class restrictions discussed below, we believe that below-cost services are subject to the wholesale rate obligation under Section 251(c)(4).

(FCC Order, ¶ 956.) U S WEST must, under the terms of this Order, provide its residential services at a wholesale discount.

The use of volume discounts on retail services must also be dealt with in the wholesale context. While the FCC did state that promotional offers do not have to be discounted, it limited this to offers for less than 90 days (FCC Order, ¶ 950.) A volume discount is offered for more than 90 days, so this exemption does not apply. Moreover, there certainly are avoided costs associated with the resale of retail services, even at a volume discount, so the same rationale for allowing a wholesale discount generally applies equally as well to services offered at a volume discount.

Finally, U S WEST proposes to impose a "Customer Transfer Charge" that applies to the transfer of a U S WEST customer account to a reseller or to the transfer of an account from one reseller to another. (Ex. 5, p. 128.) This charge, allegedly based on costs that U S WEST incurs in making such a change, is not appropriate and should be rejected. It imposes a burden on resellers that U S WEST does not have to bear for itself if it is providing service to that customer. As such, it violates the "equal in quality" standard imposed by Section 251(c)(2)(C).

Accordingly, the final arbitrated agreement should require that U S WEST offer all of its retail services at a wholesale discount of 17%, including the services discussed above, until approved TELRIC studies establish the proper avoided cost discounts.

9. Collocation and mid span meets (Sections XI.B - XI.F)

Wholly apart from the issue of physical collocation, which is discussed in detail above.

TCG's proposed agreement contained language related to other types of collocation and interconnection arrangements:

- Shared space collocation
- Microwave collocation
- POT bay engineering
- Virtual collocation
- Mid-span meet arrangements

These provisions are found in Section XI of the proposed agreement, attached to Exhibit 3. The FCC Order requires collocation and TCG has simply proposed several types of collocation that will be of particular value in allowing to compete with U S WEST. Indeed, one of these types of collocation, for microwave facilities, is specifically required by the FCC Order (See ¶ 582.) The final arbitrated agreement should provide for all of these types of collocation.

10. Joint provision of wireless service provider access (Section XII)

This issue does not actually appear to be in dispute. TCG's understanding is that U S WEST is prepared to treat wireless service provider traffic as transit traffic, pursuant to the arrangements for reciprocal compensation. TCG is willing to operate under this methodology, so the final arbitrated agreement should simply identify wireless service provider traffic as one type of transiting traffic for purposes of reciprocal compensation. Moreover, because this traffic will be treated as transit traffic, there is no reason to require that it be delivered on separate trunk groups from any other types of traffic.

11. Most favorable terms and treatment (Section XVII)

The Telecommunications Act provides, in Section 252(i) that an LEC must make available to all carriers "any interconnection, service or network element" that it has agreed to provide in an interconnection agreement with one particular carrier. The FCC has correctly interpreted this section to mean that every carrier is entitled to "most favored nation" status, whereby each carrier can select particular items out of signed interconnection agreements for its own agreement. (FCC Order, ¶ 1316.)

Consistent with this requirement, TCG requested that the arbitrated agreement contain this most favored nation language. Although TCG plainly has the right under the Act and the FCC Order to select terms from other agreements, it is essential that the most favored nation status be expressly included in the terms of the arbitrated interconnection agreement. This is necessary so that U S WEST cannot later contend that its absence precludes TCG from modifying the agreement with terms to which U S WEST had agreed with another carrier.

U S WEST's response to this request is perhaps the most absurd of all its responses. It argues that the arbitrated agreement cannot contain this language because U S WEST asserts the FCC is wrong. If that were the standard, however, U S WEST could avoid any of the interconnection agreement terms that are based on portions of the FCC Order with which it disagrees. Certainly this is not the law; indeed, the law is the very opposite.

U S WEST has even asked the FCC to stay its Order, but the request was refused. This Commission should not refuse to follow the clear requirements of the FCC Order simply because

U S WEST does not like what the Order says. The final arbitrated agreement should include language regarding TCG's most favored nation status.

12. Term of Agreement (Section XXI)

The parties have agreed on language for the term of the agreement; they simply disagree on the number of years. TCG recommends a three year agreement, as it reached with Pacific Bell, so that the agreement will have a reasonable time to operate before it has to be renegotiated. Mr. Washington stated the concern clearly:

Our position is the term of the agreement, with the effort and resources put into this. There's also the probable outcome of substantial investment in network, to bring the network in compliance with whatever agreement we end up with, in whatever form it takes, that anything shorter than a three- to five-year term puts a small company like ours at risk in having to make an investment that could potentially be negotiated away into a short period of time.

(Transcript, pp. 88-89.)

Thus, the Commission should order that the agreement is effective for three years.

13. Indemnity (Section XXVII)

TCG included in its proposed agreement a fairly straightforward section on indemnity, providing that the parties will indemnify each other for claims made due to their own negligence or misconduct. This issue could not be resolved, but TCG urges adoption of its language as the simpler and clearer of the two proposals.

D. Unresolved Issues on Language

Finally, there were certain items in the joint position statement of TCG and U S WEST that reflected close agreement on language, but a slight difference on a substantive issue. These items are as follows:

1. BLV/BLVI (Sections I.F.8.a)

TCG offered specific language on this issue, relating to Busy Line Verification and Busy Line Verification and Interrupt. Among the recommended items was a requirement that each party pay the other's tariffed rates for these services. TCG recommends inclusion of its proposed language in the arbitrated interconnection agreement.

Unfortunately, TCG cannot comment on U S WEST's proposal, since it has no idea as to the substance of that proposal. U S WEST was unable to explain to TCG what it was proposing. The language in U S WEST's proposed agreement makes no sense. Absent some clearer understanding, TCG cannot discuss the U S WEST proposal, much less consider whether to accept it. The Commission is undoubtedly just as confused, so it should decline to consider the language U S WEST has included in its agreement.

2. Interim Number Portability (Section VII.A)

The parties have only a minor disagreement on interim number portability. In their joint position statement, they submitted language that they agreed could be used with respect to interim number portability. U S WEST contended, however, that the language should not be used at

present because U S WEST believes that the FCC's interim Number Portability Order, issued on July 2, is wrong.¹⁵

This is an argument without merit, both substantively and procedurally. The FCC's Number Portability Order is both correct and in effect. Unless and until U S WEST succeeds in having the order stayed or reversed, the language found in the parties' joint position statement should be used in the final arbitrated agreement.¹⁶

3. Dispute Resolution and Binding Arbitration (Section XVIII.C)

The parties have a small disagreement in this section on the issue of the costs of arbitration, if such arbitration becomes necessary under the terms of the dispute resolution process. In Section XVIII.C, TCG proposes that the party who loses the arbitration should bear the costs, including attorneys' fees, of the arbitration. It also proposes that if one party refuses to arbitrate and is required to do so, it should bear all costs of the arbitration, even if it is the victor. U S WEST, by way of contrast, purports to rely on the "American rule," whereby each party bears its own costs and attorneys' fees. (Transcript, p. 91.)

U S WEST seems not to understand that the "American rule" applies only in the case of an the award of attorneys' fees by a court, after the fact, in the absence of a contract. By way of contrast, it is common for parties entering into a contract to allocate the risk of dispute resolution

¹⁵ Of course, this is the same bogus argument that U S WEST raised with respect to the most favored nation status language.

¹⁶ TCG is not even aware that U S WEST has filed a legal challenge to the July 2 Number Portability Order issued by the FCC.

by providing that one party shall pay the other party's costs and attorneys' fees. That is all TCG seeks here -- a contractual obligation, on a going-forward basis, that establishes who will be responsible in the event of a dispute. Such a provision has the laudable purpose of causing a party to consider long and hard before filing a frivolous or unlikely claim, since it will no longer have the capacity to wear down its opponent by the sheer cost of engaging in the dispute resolution process.

Accordingly, the TCG language should be adopted in the section on dispute resolution.

4. Limitation of Liability (Section XXIV)

Again, the parties agreed on language for the section on limitation of liability. U S WEST contends, however, that this section should also exclude any liability for punitive damages. This is an outrageous request that should be rejected by the Commission. If a party engages in conduct so egregious that it would otherwise be liable for punitive damages, it should not be able to simply avoid that liability by contract. U S WEST's efforts to avoid any responsibility for misconduct that would lead to punitive damages should be rejected.

IV. TCG'S LAST BEST OFFER

At the close of the hearings, the Arbitrator requested that the Parties include with their Post-Arbitration Brief their last best offer for an interconnection agreement. Of course, TCG agrees that the interconnection agreement between it and U S WEST should include all of the language found in their September 11 Joint Position Statement.

As is discussed above, however, there are a number of sections in the interconnection agreement that were unresolved. TCG has explained in detail in the preceding sections how those matters should be resolved. Attached to this Brief as Attachment A is the language that TCG proposes for all of these sections of the interconnection agreement. These sections are similar to those found in the attachment to Mr. Washington's testimony, but they have been modified to conform to TCG's presentation in this proceeding and with the discussion of issues set forth above.

TCG proposes, as its last best offer, the combination of the language found in the Joint Position Statement and the language found in Attachment A.

V. ESTABLISHMENT OF RATES

The Arbitrator has asked two specific questions about rates, one having to do with the issue of a "true-up" and the other having to do with the setting of rates where there is no FCC proxy. These issues are addressed in turn.

A. No True-Up From FCC Proxy Rates to Cost-Based Rates Is Allowed Under the FCC Order

During the course of the arbitration, it was suggested that most rates for services provided under the interconnection agreement would be set at the FCC's proxy rates, and that these rates would remain in place until the Commission established cost-based rates in a TELRIC proceeding. A legal question was raised as to whether there should be a "true-up" for the period during which

the proxy rates were in place, presumably to compensate the parties as if the cost-based rates had been in effect from the beginning

The FCC made clear, as a legal matter, that no such true-up should occur. Instead, the cost-based rates were to be established on a going-forward basis only

States that set prices based upon the default proxies must also require the parties to update the prices in the interconnection agreement on a going-forward basis, either after the state conducts or approves an economic study according to the cost-based pricing methodology or pursuant to any revision of the default proxy

(FCC Order, ¶ 769, emphasis added.) In addition, in determining that the rates would be set at the proxy levels at first, the FCC stated:

Once a state sets prices according to an economic cost study conducted pursuant to the cost-based pricing methodology we outline, the defaults cease to apply.

(FCC Order, ¶ 619, emphasis added.)

Accordingly, proxy rates are to be used until the TELRIC proceeding is concluded. At that time rates will be adjusted to their cost-based levels. There may not, however, be any true-up from the proxy rates to the cost-based rates.

B. Rates for Services Where the FCC Did Not Set a Proxy Rate

There are a few minor instances where the FCC did not establish a proxy rate for a particular service. In such cases, this Commission must set the rate. TCG offers comments on three particular services in this category:

1. Rates for conduit

The FCC did not set a proxy rate for conduit provided by one carrier to the other in a right-of-way. TCG was the only party to offer any evidence on the appropriate rate. Not only did U S WEST not offer any rate for this service at the hearings, it has never offered any rate to TCG at all.¹⁷ In his written testimony, Mr. Washington proposed a rate of \$.60/foot per year.

(Ex. 3, p. 20.) On cross-examination, he elaborated:

Access to poles and conduits. I actually think we have conceptual agreement, which isn't worth much until it's -- because the devil's in the details -- until it's committed to writing. And I don't have rates so conceptual agreement that I have access but no rates to look at has done me no good.

I've suggested in my written testimony that 60 cents was a reasonable interim, 60 cents per foot per year was a reasonable interim rate. There was actually a case somewhere back east recently, the Kansas City, I think it was that came out with 30 cents a foot a year. But I don't have rates, we can't go anywhere.

(Transcript, pp. 245-246.)

Based on this evidentiary record, the Commission should set the rate for the provision of conduit at \$.60/foot per year.

2. Rates for nonrecurring charges associated with unbundled loops

The FCC Order does not provide for a rate for nonrecurring charges associated with the provision of unbundled loops. TCG proposes that the nonrecurring charge be the retail

¹⁷ During cross-examination, U S WEST asked Mr. Washington would go out of business if the rate was set at \$.65/foot per year. (Transcript, pp. 323-324.) He properly asked if this was an offer from U S WEST, since it was the first time that it had offered any rate to TCG.

nonrecurring charge that U S WEST charges to its retail customers, less a wholesale discount.

This rate would be consistent with Section 251(c)(4) of the Telecommunications Act.

By way of contrast, U S WEST suggests that the nonrecurring charge should be based on its TELRIC studies. This position is meritless, given that the studies have not been approved and the Commission intends to consider them in a proceeding separate from this arbitration.

Accordingly, the nonrecurring charge for unbundled loops should be U S WEST's retail rate less the wholesale discount.

3. Rates for collocation

Finally, there is an issue related to the rates for collocation. TCG recommended specific discounts for various collocation services. The FCC Order creates a default proxy of "the rates the LEC has in effect in its federal expanded interconnection tariff for the equivalent services." (FCC Order, ¶ 826.) Thus, most of U S WEST's federal tariff for collocation is applicable here. Note, however, that the costs of collocation should not be borne entirely by the first party to collocate at a U S WEST premise. TCG's proposed language in Attachment A includes a refund schedule, to be used as additional LECs collocate at the same premise.

However, U S WEST does not have rates in its FCC tariff for the floor space for physical collocation, nor for the infrastructure charges associated with building collocation space at its premises, but rather provides that such rates shall be set on an Individual Case Basis. Moreover, U S WEST did not propose any rates for floor space in the proceeding, as shown on cross-examination:

Q. Ms. Mason, does U S WEST have at least a ballpark figure for the floor rental space for physical collocation?

A. Yes, we do have a ballpark figure.

Q. And could you tell me what that is?

A. My recollection, I don't have the numbers with me, we were prepared to talk about those last night when you all didn't want to talk, is in the two to three dollars per square foot.

Q. Is that the first time you've given us that figure?

A. Yes, it is.

(Transcript, p. 387.)

Accordingly, TCG recommends that the rate be set at U S WEST's proposed high end, at a rate of \$3.00 per square foot, which is high by any measure of retail rental space but represents a reasonable rate to U S WEST for the use of its floor space. The rate for infrastructure expenditures should be \$40,000 per office, which is the rate that TCG agreed to with Pacific Bell under its tariffs.

VI. CONCLUSION

For all of the foregoing reasons, TCG recommends adoption of the language in the Joint Position Statement filed September 11 and the language for the remaining sections, as discussed in this Brief and as set forth in Attachment A. It should also adopt the performance standards and remedies set forth in Attachment B.

Dated: September 30, 1996

Respectfully submitted,



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ATTACHMENT A

**PROPOSED LANGUAGE FOR UNRESOLVED
SECTIONS OF INTERCONNECTION AGREEMENT**

Attachment A

TCG Proposed Language for Interconnection Agreement

DEFINITIONS

1. "Assured Links" are 2-wire analog voice grade Links that support analog transmission of 300-3000 Hz with loss no greater than 5.5db, dial repeat loop start, loop reverse battery, or ground start seizure and disconnect in one direction (toward the End Office Switch), and repeat ringing in the other direction (toward the end user). This Link is commonly used for local dial tone service for business customers only.
2. "Automatic Number Identification" or "ANI" is a Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling party.
3. "Basic Links" are 2-wire analog voice grade Links that support analog transmission of 300-3000 Hz with loss no greater than 8db, dial repeat loop start, loop reverse battery, or ground start seizure and disconnect in one direction (toward the End Office Switch), and repeat ringing in the other direction (toward the end user). This Link is commonly used for local dial tone service for residence and business customers.
4. "Basic Rate ISDN capable Links" are 2-wire ISDN digital grade Links that support digital transmission of two 64 Kbps bearer channels and one 16 Kbps data channel with a loss no greater than 40db.
5. "Busy Line Verification" or "BLV" refers to a service in which an end user requests an operator to confirm the busy status of a line.
6. "Busy Line Verification and Interrupt" or "BLVI" refers to a service in which an end user requests an operator to confirm the busy status of a line and requests an interruption of the call.

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7. "Calling Party Number" or "CPN" is a CCS parameter which refers to the number transmitted through the network identifying the calling party.
8. "Central Office Switch" or "Central Office" means a switching entity within the public switched telecommunications network, including but not limited to:
- "End Office Switches" which are switches from which end user Exchange Services are directly connected and offered.
 - "Tandem Switches" which are switches that are used to connect and switch trunk circuits between and among Central Office Switches and IXC switches.
- Central Office Switches may be employed as combination End Office/Tandem Switches.
9. "Centralized Message Distribution System" ("CMDS") is the transport system that LECs use to exchange outcollect and Carrier Access Billing System ("CABS") access messages among each other and other parties connected to CMDS.
10. "Charge Number" is a CCS parameter which refers to the number transmitted through the network identifying the billing number of the calling party.
11. "CLASS Features" mean certain CCS-based features available to end users. CLASS features include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller ID and Related Blocking Features; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.
12. "Combination Interconnection Trunk Group" means a trunk group that combines local interconnection traffic and traffic from jointly provided Switched Access service.
13. "Commission" means the Arizona Corporation Commission.

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14. "Common Channel Signaling" or "CCS" means a method of digitally transmitting call set-up and network control data over a special network fully separate from the public switched network elements that carry the actual call. Signaling System 7 ("SS7") is the CCS network presently used by telecommunications carriers.
15. "Control Office" is an exchange carrier center or office designated as its company's single point of contact for the provisioning and maintenance of its portion of interconnection arrangements.
16. "Cross Connect" means an intra-wire center channel connecting separate pieces of telecommunications equipment
17. "DSX Panel" is a cross-connect bay/panel used for the termination of equipment and facilities operating at digital rates.
18. "DS-1" is a digital signal rate of 1.544 Megabits Per Second ("Mbps").
19. "DS-3" is a digital signal rate of 44.736 Mbps.
20. "EISCC" refers to the connection between the collocation point of termination ("POT Bay") and the unbundled Network Element or interconnection point to a switched or dedicated arrangement or service in USWC's network.
21. "Electronic File Transfer" refers to any system/process which utilizes an electronic format and protocol to send/receive data files.
22. "Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information among LECs for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Bellcore document which defines industry standards for exchange message records.
23. "Exchange Service" means a service offered to end users which provides the end user with a telephonic connection to the public switched telecommunications

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network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Exchange Service includes but may not be limited to basic residence and business line service, PBX trunk line service, pay phone line service, Centrex line service and ISDN line services. Exchange Service does not include Private Line, Switched and Special Access services.

24. "FCC" means the Federal Communications Commission.
25. "Interconnection" means the connection of separate pieces of equipment, transmission facilities, etc., between or among networks.
26. "Interexchange Carrier" or "IXC" means a provider of interexchange telecommunications services.
27. "Interim Number Portability" or "INP" means the delivery of SPNP capabilities through the use of switch-based call routing. INP arrangements cannot support certain CLASS features.
28. "ISDN" means Integrated Services Digital Network, which is a digital switched network service. "Basic Rate ISDN" provides for channelized (2 bearer and 1 data) end-to-end digital connectivity for the transmission of voice and/or data on either or both bearer channels and packet data on the data channel. "Primary Rate ISDN" provides for 24 bearer and 1 data channels.
29. "LATA" means Local Access Transport Area, which denotes a geographical area established for the provision and administration of communications services. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes (based on the Modification of Final Judgment).
30. "Link" is a component of an Exchange Service. For purposes of general illustration, the Link is the transmission facility (or channel or group of channels on such facility) which extends from a Main Distribution Frame. DSX-

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panel, or functionally comparable piece of equipment in a USWC Wire Center, to a demarcation or connector block in/at a customer's premises.

31. "Local Exchange Carrier" or "LEC" shall have the meaning set forth in TA 1996.
32. "Local Exchange Routing Guide" or "LERG" is a Bellcore Reference Document used by LECs and IXCs to identify NPA-NXX routing and homing information as well as network element and equipment designations.
33. "Local Exchange Traffic" means traffic originated on the network of a LEC in a LATA and completed directly between that LEC's network and the network of another LEC in that same LATA, including intraLATA toll traffic and traffic originated to or terminated from LECs not party to this Agreement. Local Exchange Traffic does not include traffic that is routed to or terminated from the network of an IXC.
34. "Local Traffic" means traffic originated on the network of a LEC in a LATA and completed directly between that LEC's network and the network of another LEC in that same LATA, within the same local calling area as is provided by the incumbent LEC for local calls. in that LATA.
35. "Local Interconnection Trunks/Trunk Groups" are used for the termination of Local Traffic, using the Bellcore Technical Reference GR-317, as well as WSP traffic, using the appropriate technical references. Local Interconnection Trunk Groups are also used for the termination of intraLATA toll traffic and traffic originated to or terminated from LECs not party to this Agreement.
36. "MECAB" refers to the Multiple Exchange Carrier Access Billing document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more LECs or by one LEC in two or more states within a single LATA.

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37. "MECOD" refers to the Multiple Exchange Carriers Ordering and Design Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering/Provisioning Committee under the auspices of the OBF, which functions under the auspices of the Carrier Liaison Committee of the ATIS. The MECOD document, published by Bellcore as Special Report SR STS-002643, establishes methods for processing orders for access service which is to be provided by two or more LECs.
38. "Meet Point Billing" refers to a billing arrangement used when two LECs jointly provide a Switched Access service over Meet Point Trunks, with each LEC receiving an appropriate share of the revenues. The access services will be billed using Switched Access rate structures, and the LECs will decide whether a single bill or multiple bill will be sent.
39. "Meet Point Trunks/Trunk Groups" are used for the joint provision of Switched Access services, utilizing the Bellcore Technical Reference GR-394.
40. "Mid Span Meet" is an interconnection between two LECs whereby each provides its own cable and equipment up to the meet point of the cable facilities. The meet point is the demarcation establishing ownership of and responsibility for its portion of the transmission facility.
41. "NANP" means the "North American Numbering Plan," the system of telephone numbering employed in the United States, Canada, and certain Caribbean countries.
42. "Network Element" is a facility or item of equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service.
43. "Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. This is the three digit indicator which is defined by the "A", "B" and "C"

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digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX codes. There are two general categories of NPA.

"Geographic NPA" is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A "Non-Geographic NPA," also known as a "Service Access Code" ("SAC Code") is typically associated with a specialized telecommunications service which may be provided across multiple geographic NPA areas; 500, Toll Free Service NPAs, 900, and 700 are examples of Non-Geographic NPAs.

44. "NXX", "NXX Code" or "Central Office Code" is the three digit switch entity indicator which is defined by the "D", "E" and "F" digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers.
45. "Percent Local Usage" or "PLU" is a calculation which represents the ratio of the local minutes to the sum of local and intraLATA toll minutes sent between the Parties over Local Interconnection Trunks. Directory Assistance, BLV/BLVI, 900, 976, transiting calls from other LECs, WSP traffic and interLATA Switched Access calls are not included in the calculation of PLU.
46. "Permanent Number Portability" or "PNP" means the delivery of SPNP capabilities through the use of call routing and addressing capabilities using new database queries, without impairment of quality, reliability, or convenience. PNP arrangements will be designed to support all CLASS features.
47. "Point of Interconnection" or "POI" means the physical location(s) at which the Parties' networks meet for the purpose of establishing interconnection. POIs may include a number of different technologies and/or technical interfaces based on the Parties' mutual agreement.
48. "Physical Collocation" means the physical placement of equipment of one LEC, necessary for interconnection or access to unbundled Network Elements, at the Wire Center of the other LEC. It is an interconnection architecture in which the collocated carrier extends network transmission facilities to a collocation space.

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with access on a seven days a week, 24 hours a day basis, within a Wire Center in the network of a second carrier.

49. "Port" means a component of an Exchange Service; for purposes of general illustration, the Port includes a line card and associated peripheral equipment on an end office switch which serves as the hardware termination for the customer's exchange service on that switch and generates dial tone and provides the customer a pathway into the public switched telecommunications network. Each Port is typically associated with one (or more) telephone number(s) which serves as the customer's network address.
50. "Rate Center" means the specific geographic point and corresponding geographic area which have been identified by a given LEC as being associated with a particular NPA-NXX code which has been assigned to the LEC for its provision of Exchange Services.
51. "Rating Point" is the V&H coordinates associated with a particular telephone number for rating purposes.
52. "Routing Point" means a location which a LEC has designated on its own network as the homing (routing) point for traffic inbound to Exchange Services provided by the LEC which bear a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access services. The Routing Point need not be the same as the Rating Point, nor must it be located within the rate center area, but must be in the same LATA as the NPA-NXX.
53. "Service Control Point" or "SCP" is the node in the CCS network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a Service Switching Point ("SSP"), performs subscriber or application-specific service logic and then sends instructions back to the SSP on how to continue call processing.

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54. "Service Provider Number Portability" or "SPNP" means the ability of users of telecommunications services to retain existing telephone numbers when switching from one LEC to another but remaining in the same geographic area.
55. "Signal Transfer Point" or "STP" performs a packet switching function that routes signaling messages among SSPs, SCPs, Signaling Points ("SPs"), and other STPs in order to set up calls and to query databases for advanced services.
56. "Switched Access" service means an offering of facilities for the purpose of the origination or termination of traffic from or to Exchange Service customers in a given area pursuant to a Switched Access tariff. Switched Access services include: Feature Group A, Feature Group B, Feature Group D, Toll Free Service, and 900 access. Switched Access does not include traffic exchanged between LECs for purpose of local exchange interconnection.
57. "T-1/DS1 (4-Wire) Capable Links" are Links that will support full duplex transmission of isochronous serial data at 1.544 Mbps.
58. "Toll Free Service" means service provided with any dialing sequence that invokes toll-free (i.e., 800-like) service processing. Toll Free Service includes calls to the Toll Free Service 800/888 NPA SAC codes.
59. "Trunk-Side" refers to a Central Office switch connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example, another Central Office switch. Trunk-Side connections offer those transmission and signaling features appropriate for the connection of switching entities, and cannot be used for the direct connection of ordinary telephone station sets.
60. "Virtual Collocation" means a collocation arrangement in which the collocator's facilities are terminated into a Wire Center of a LEC and are connected to LEC facilities that are provided and maintained by the LEC on behalf of the collocator for the primary purpose of interconnecting the collocator's facilities to the facilities of the LEC.

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61. "Wholesale Prices" are prices determined based on retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the LEC, and including any additional costs that will be incurred to provide wholesale services to telecommunications providers.
62. "Wire Center" denotes a building or space within a building which serves as an aggregation point on a given carrier's network, where transmission facilities and circuits are connected or switched. Wire Center can also denote a building in which one or more Central Offices, used for the provision of Exchange Services and access services, are located. However, for purposes of collocation, Wire Center shall mean those points eligible for such connections as specified in the FCC Docket No. 91-141, and rules adopted pursuant thereto.
63. "Wireless Service Provider" or "WSP" means a provider of Commercial Mobile Radio Services ("CMRS") (e.g., cellular service provider, Personal Communications Services provider or paging service provider).

I. NETWORK INTERCONNECTION

C. Sizing and Structure of Interconnection Facilities

The Parties will mutually agree on the appropriate sizing for facilities based on the standards set forth below. The interconnection facilities provided by each Party shall be Alternate Mark Inversion Line Code and Superframe Format Framing ("AMI") at either the DS-1 or DS-3 level, except as modified below.

When interconnecting at USWC's tandems, the Parties agree to establish Binary 8 Zero Sum Extended Super Frame ("B8ZS ESF") two-way trunks where technically feasible for the sole purpose of transmitting 64Kbps Clear Channel Capability ("CCC") data calls between them. In no case will these trunks be used for calls for which the User Service Information parameter

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(also referred to as "Bearer Capability") is set for "speech." Where additional equipment is required, such equipment would be obtained, engineered, and installed on the same basis and with the same intervals as any similar growth job for IXC, LEC, or USWC internal customer demand for 64K CCC trunks.

When interconnecting at USWC's digital End Offices, the Parties have a preference for use of B8ZS ESF trunks for all traffic between their networks. Where available, such trunk equipment will be used for these Local Interconnection Trunk Groups and Meet Point Trunk Groups. Where AMI trunks are used, either Party may request upgrade to B8ZS ESF when such equipment is available.

All interconnection facilities between the Parties will be sized according to mutual forecasts and sound engineering practice, as mutually agreed to by the Parties during planning - forecasting meetings.

Tandem Interconnection:

- 1 TCG will separate its local traffic to U S WEST onto two-way trunk groups and its toll traffic to U S WEST onto one-way trunk groups. Both types of traffic will be delivered by TCG to the wire center where U S WEST houses its access tandem.
- 2 The local trunk groups may be terminated through U S WEST's local tandem, so long as U S WEST has capacity at its local tandem and so long as U S WEST provides B8ZS ESF capability at its local tandem to be used in accordance with the other provisions of this Agreement. In the absence of such capacity or capability, TCG may require termination of local trunk groups through U S WEST's access tandem, but such traffic shall be treated as local traffic for the purposes of reciprocal compensation under this Agreement.
- 3 All toll trunk groups will be terminated through U S WEST's access tandem or end office.

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4. Whenever local traffic sent by TCG to U S WEST's tandem achieves a standard of 512 ECCS, TCG will deliver such local traffic on a separate trunk group to the wire center where U S WEST houses its access tandem. U S WEST may then route such traffic directly to its end office, without putting such traffic through either its access tandem or its local tandem.

D. Trunking Directionality.

Local Interconnection Trunk Groups and Meet Point Trunk Groups, or Combined Interconnection Trunk Groups, will be installed as two-way trunk groups. Separate two-way trunks will be established for Switched Access traffic where one of the Parties is operating as an IXC. Interconnection will be provided via two-way trunks or one-way trunks at the option of TCG.

G. Meet Point Trunking Arrangements

1. In meet point trunking arrangements, either Party can provide the tandem transport and switching functions and either Party may use Meet Point Trunks to send and receive Feature Group B and D ("FGB" and "FGD") calls from Switched Access customers who are connected to the other Party's access tandem. Switched Access customers will direct which Party will provide each function based on Access Service Requests ("ASRs") placed with both Parties.
2. Two-way trunks will be established to enable TCG and USWC to jointly provide FGB and FGD Switched Access services.
3. The Parties will use facilities and two-way trunk groups separate from the Local Interconnection Trunk Groups for Meet Point Trunks (unless Combination Interconnection Trunk Groups are used as described below). Where separate facilities are used for Meet Point Trunks, neither Party will charge the other Party for these facilities, including multiplexing and Cross Connects.

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4. In the case of Switched Access services provided through either Party's access tandem, neither Party will offer blocking capability for Switched Access customer traffic delivered to the other Party's tandem for completion on that Party's network. Neither Party shall have any responsibility to ensure that any Switched Access customer will accept traffic the other Party directs to the Switched Access customer.
5. The tandem Party in meet point trunking arrangements shall direct traffic received from Switched Access customers directly to the other Party's end office where such connection exists and is available. Where no end office connection exists or is available, traffic received from Switched Access customers shall in all cases be sent to the other Party's tandem under which the end office is homed.

Traffic sent to Switched Access customers shall in all cases be routed from the end office through only one tandem of either Party to the Switched Access customer. The Parties understand and agree that the Switched Access customer may select which Party's access tandem is used for traffic sent to the Switched Access customer. Proof of such selection shall be in the form of ASRs from the Switched Access customer.

The Parties agree to cooperate in determining the future technical feasibility of a switch vendor supported method of routing originating meet point traffic via a tandem of one Party and a tandem of the other Party for the purpose of delivering such traffic to the Switched Access customer. If such an arrangement is found to be technically feasible, the Parties will cooperate in implementing the arrangement, including the adoption of appropriate compensation terms. USWC agrees that it will make any necessary modifications of its tariffs to implement any of the items in this subsection. Such modifications will be made within 30 days of a determination by the Parties of the feasibility and availability of such an arrangement.

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6. The Parties will provide CCS to one another, where and as available, in conjunction with two-way Meet Point Trunk Groups. The Parties will provide all CCS signaling including Charge Number, originating line information ("OLI"), etc. For terminating FGD, either Party will pass CPN if it receives CPN from FGD carriers. All privacy indicators will be honored. Where available, network signaling information such as Transit Network Selection ("TNS") parameter (CCS environment) and CIC/OZZ information (non-CCS environment) will be provided by the end office Party wherever such information is needed for call routing or billing. Where CIC/OZZ or TNS information has not been provided to the end office Party, the tandem Party will route originating Switched Access traffic to the IXC using available translations. The Parties will make reasonable efforts to obtain any necessary CIC/OZZ codes directly from Switched Access customers who use such codes. The Parties will follow all OBF adopted guidelines pertaining to TNS and CIC/OZZ codes.
7. CCS shall be used in conjunction with Meet Point Trunks, except multifrequency ("MF") signaling must be used on a separate Meet Point Trunk Group for originating FGD access to Switched Access customers that use MF FGD signaling protocol. For terminating FGD access from Switched Access customers that use MF FGD, the tandem Party will, as a first choice, complete those calls to the end office provider over the CCS Meet Point Trunk Group.
8. All originating Toll Free Service calls for which the end office Party requests that the tandem Party perform the SSP function (e.g., perform the database query) shall be delivered to the tandem Party using GR-394 format over the Meet Point Trunk Group. Carrier Code "0110" and Circuit Code of "08" shall be used for all such calls.
9. All originating Toll Free Service calls for which the end office Party performs the SSP function, if delivered to the tandem Party, shall be

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delivered by the end office Party using GR-394 format over the Meet Point Trunk Group for calls destined to IXCs, or shall be delivered by the end office Party using GR-317 format over the Local Interconnection Trunk Group for calls destined to end offices that directly subtend the tandem or the designated LATA-wide tandem to which the calls are delivered.

10. Originating Feature Group B calls delivered to either Party's tandem shall use GR-317 signaling format unless the associated FGB carrier employs GR-394 signaling for its FGB traffic at the serving access tandem.

H. Combination Interconnection Trunk Groups

1. The Parties agree to work cooperatively to combine all functionalities of Local Interconnection Trunk Groups and Meet Point Trunk Groups on a single Combination Interconnection Trunk Group at any feasible point of interconnection where either Party desires, except in connection with the LATA-wide terminating option.
2. The initial decision as to whether the use of Combination Interconnection Trunk Groups is feasible, including a determination of switched software compatibility, ordering procedures and billing procedures, will be made no later than four months from the effective date of this Agreement.
3. If the use of Combination Interconnection Trunk Groups is found to be not feasible at that time, a review of such feasibility and a further decision on the use of Combination Interconnection Trunk Groups will occur at six month intervals at either Party's option through the term of the Agreement.
4. At the time that the use of Combination Interconnection Trunk Groups is determined to be feasible, and ordering and billing procedures have been established:

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- a) any new trunk groups may be ordered using the Combination Interconnection Trunk Group option; and
- b) the Parties will work together in good faith to complete the conversion from the use of separate Local Interconnection Trunks and Meet Point Trunk Groups to the use of Combination Interconnection Trunk Groups within 6 months from that time. There shall be no charges by either Party for this conversion.

K. Bilateral Agreements

The Parties shall adhere to performance standards and remedies as separately set forth in an agreement, pursuant to the direction of the Commission.

II. NONDISCRIMINATORY ACCESS TO NETWORK ELEMENTS

USWC shall provide TCG access to the following unbundled Network Elements for the provision of telecommunications services by TCG. TCG, at its option, may combine such Network Elements from USWC with elements of its own network to provide such services. USWC's prices charged to TCG will be no greater than the cost of providing the Network Element, including a reasonable profit.

A. Links

USWC will make the following unbundled Links available as set forth below:

- Basic Links (or their equivalent).
- Assured Links (or their equivalent).
- Basic Rate ISDN capable Links.

In addition, upon receipt of a Bona Fide Request, USWC will provide to TCG the following Link types:

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- **ADSL/HDSL capable Links**
 - **T-1/DS1 (4-wire) capable Links**
1. **Description of Link Service.** Link Service consists of transport between the minimum point of entry ("MPOE") at an end user premises and a POI in the USWC Wire Center from which the transport is extended. At its sole discretion, USWC will provide Link Service over technology that meets the defined parameters for each Link type.
 2. **Use and Suitability of Link Service.** Link Service may not be used to provide any service that would degrade or otherwise adversely affect USWC's network services.
 3. **Availability of Link Service.** Link Service is available to TCG from all USWC Wire Centers on a first-come, first-served basis (applicable to all carriers, including USWC) and subject to the availability of facilities at the MPOE at the premise of the TCG end user customer. Certain of USWC's geographical areas are served solely via Digital Loop Carrier. In such areas, ISDN-capable Links will not be provided unless the Digital Loop Carrier has the technological capability to provide ISDN to end-users.
 4. **Interconnection to Service at Central Office POI.** TCG must connect Link Service either:
 - a. via cross connect to a TCG collocated transport facility in the USWC central office from which Link Service is extended; or
 - b. by means of USWC Special Access Service that terminates at a TCG Point of Presence ("POP") or to a TCG collocated transport facility (via EISCC) in another USWC Wire Center; or

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- c. via cross connect to a third party's collocated transport facility in the USWC central office from which Link Service is extended.

5. Link Service Prices.

USWC will provide Link Service at the prices set forth below. However, the Parties agree that with respect to all charges for Links, TCG will have the option of paying:

- a. the rates set forth below;
- b. the rates determined by the Commission in its TELRIC proceeding; or
- c. the rates set forth in any agreement entered into by USWC with any other LEC.

The prices set forth herein do not include Commission or FCC mandated surcharges or applicable taxes. For partial months, USWC will prorate the monthly charge on a per day rate.

USWC shall charge nonrecurring and monthly recurring rates as set forth below for each Link (which nonrecurring and recurring rates include the cross connect), plus applicable multiplexing, if requested. All Link prices include any applicable End User Common Line and Carrier Common Line flat rate equivalent charges.

(a) Basic and Assured Links:

Recurring Rates: \$12.85

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Nonrecurring rates: The nonrecurring charge for each Link is equal to USWC's retail nonrecurring charge for retail local service.

(b) ISDN Links:

Recurring Rates: \$12.85

Nonrecurring rates: The nonrecurring charge for each Link is equal to USWC's retail nonrecurring charge for retail local service.

(c) ADSL/HDSL Capable Links:

TCG may submit a request for ADSL/HDSL capable Links using the Bona Fide Request Process set forth in this Agreement when TCG desires to obtain such Links. Dates for the availability of this Link type shall be established during the Bona Fide Request Process. Upon request, USWC agrees to develop this Link type pursuant to option (c)(1) of the Bona Fide Request Process, below.

(d) T-1/DS1 (4-Wire) Capable Links:

TCG may submit a request for T-1/DS1 (4-Wire Capable Links using the Bona Fide Request Process set forth in this Agreement when TCG desires to obtain such Links. Dates for the availability of this Link type shall be established during the Bona Fide Request Process. Upon request, USWC agrees to develop this Link type pursuant to option (c)(1) of the Bona Fide Request Process, below.

A cancellation charge may apply if TCG cancels an order for any type of Link after provisioning has begun and prior to completion.

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6. **Assigned Telephone Number.** TCG is responsible for assigning any telephone numbers necessary to provide its end users with Exchange Service.
7. **Billing and Payment.** USWC will bill and TCG will pay Link Service bills in accordance with USWC's billing, bill dispute resolution, late payment charges and disconnection for nonpayment requirements as set forth in applicable tariff.
8. **Ordering.** TCG must order Link Service via ISR forms using USWC's appropriate system. USWC will provide TCG access to this system at no charge and initial training in its use for ordering Link Service.
9. **Provisioning Intervals.** Basic, Assured and ISDN Links are provided within the same period of time USWC provisions its like exchange service at that time in the same area using similar facilities requiring field work (wiring). ADSL, HDSL and T-1/DS1 Links will have intervals identical to the intervals for USWC's provisioning of its own hi-cap services. Intervals for a project (20 or more lines to a single end user MPOE on a request at the same time) are established on a negotiated interval basis between TCG and USWC's Interconnection Services Center ("ISC").
10. **Service Coordination.** Link Service will be provided on the due date and, if requested, will be provided during a 4-hour window (either 8 a.m. to 12 p.m. or 1 p.m. to 5 p.m.). Additional service coordination is charged as additional labor billing per USWC's tariff.

The following coordination procedures apply only to Business Basic Links ordered as a project (20 or more lines to a single end user MPOE on a request at the same time): On each Link order in a Wire Center, TCG will contact USWC and the Parties will agree on a cutover time at least two business days before that cutover time. The cutover time will be defined as a 60 minute window within which

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both the TCG and USWC personnel will make telephone contact to begin the cutover activity. Coordination for Business Basic Links meeting the definition of a project (in this paragraph) will be provided by the Parties at no charge.

Within the appointed 60 minute cutover time, the TCG person will call the ISC and when the ISC is reached in that interval such work will be promptly performed. If the TCG person fails to call or is not ready within the appointed interval and if TCG had not called to reschedule the work at least two hours prior to the start of the interval, TCG and USWC will reschedule the work order and TCG will pay the nonrecurring charge for the Link or Links scheduled for the missed appointment. In addition, nonrecurring charges for the rescheduled appointment will apply.

If the ISC is not available or not ready at any time during the 60 minute interval, TCG and USWC will reschedule and USWC will waive the nonrecurring charge for the Link or Links scheduled for that interval and the rescheduled installation. If the ISC is available but the work is not begun promptly (within 15 minutes of the ISC contact), USWC will waive the nonrecurring charge for the Link or Links scheduled for that interval. The standard time expected from disconnection of service on a line to the connection of the Link to the TCG collocation arrangement or transport is 5 minutes. If USWC is solely responsible for a line being out of service for more than 30 minutes, USWC will waive the nonrecurring charge for that Link. If unusual or unexpected circumstances prolong or extend the time required to accomplish the coordinated cut-over, the Party responsible for such circumstances is responsible for the reasonable labor charges of the other Party. Delays caused by the customer are the responsibility of TCG.

In addition, if TCG has ordered INP as part of the Link installation, USWC will implement the INP service coincident with the Link installation; provided, separate INP nonrecurring charges will apply.

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11. **Maintenance and Testing.** TCG is responsible for receiving and coordinating resolution of all end user trouble reports involving Link Service. TCG will isolate any trouble to the Link portion of the service before contacting USWC's ISC to report the trouble. USWC will charge TCG additional labor billing charges when the trouble is referred to USWC and the trouble is found to be either on the customer side of the MPOE or on the TCG side of the POI or collocation POT Bay.

12. **Responsibilities of the Parties.**
 - a. Thirty days prior to submitting any Link Service orders (except for orders for July and August, 1996), TCG shall provide to USWC forecasts of number of Links at a Wire Center level. This includes associated additional line ("ADL") requirements when USWC's primary residential POTS service is not to be disconnected in the establishment of Link Service. TCG shall provide such forecasts on a semi-annual basis.

 - b. The Parties agree that TCG will be the single point of contact for its end user customers.

 - c. USWC will not provide repair or other assistance to TCG end user customers except to refer such persons who call USWC to TCG. TCG will provide USWC with TCG's toll-free service referral number.

 - d. If, and only if, TCG's end user customer controls access to the MPOE, TCG must ensure that USWC has access to the MPOE at the TCG end user customer's premises.

 - e. TCG warrants that for each end user for whom TCG orders disconnection of USWC exchange service, TCG has received proper authorization from that end user to order such disconnection. TCG shall obtain and verify such authorization

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using standard industry practices, such as in certain circumstances third-party verification.

- f. The Parties agree to abide by existing and future Commission rules that address slamming of local exchange customers by LECs.
- g. TCG is responsible for providing end user customer listing information to obtain E9-1-1 Service, Directory Assistance (411) and/or Directory listings. Such listing information will be submitted to USWC via electronic transfer whenever practicable. These services are provided pursuant to USWC's tariffs, except as modified by this Agreement, and are subject to Commission requirements.
- h. If USWC terminates or TCG disconnects any Link Service, USWC will have no obligation to have any communication with TCG's customer in connection with such termination or disconnection.

B. Transport.

USWC will make available dedicated local transport at standard digital signal transmission rates (e.g., DS-1, DS-3, etc.) unbundled from local switching or other services.

C. Ports/Local Switching.

USWC will make the following unbundled line side Ports available:

Basic Port
Customer Owned Pay Telephone ("COPT") Port

USWC will make available end office trunk side Ports for Switched Access or interconnection to USWC's end office(s).

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In addition, the Parties agree that if a technically feasible unbundled local switching Network Element separate from a Port can be defined and developed, USWC will make this Network Element available to TCG within a reasonable time after such development, pursuant to the Bona Fide Request Process.

USWC will make available the Network Interface Device (for use with Links) and the full features, functions and capabilities of its switches on an unbundled basis, pursuant to the direction of the FCC.

D. Cross Connects.

USWC will make available unbundled Cross Connects between TCG's collocation arrangements and any interconnection to USWC's unbundled Network Elements.

E. Multiplexing.

USWC will make available multiplexing services in connection with USWC's unbundled transport or other USWC services or USWC's unbundled Network Elements.

F. Nondiscriminatory Access to Databases and Associated Signaling

USWC will make available, as described elsewhere in this Agreement, interconnection to its SS7 signaling network to enable signaling necessary for call routing and completion between the Parties. USWC will also make available unbundled SS7 signaling links (i.e., A, B, and D links) for connection to USWC's STPs.

USWC will make available access to Toll Free Service and LIDB databases through its STPs on a per query basis. If any additional databases are determined to be required under TA 1996 as necessary for call routing and completion, USWC will make such databases and associated signaling available to TCG.

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necessary to process the Bona Fide Request. Thereafter, USWC shall promptly advise TCG of the need for any additional information that will facilitate the analysis of the Bona Fide Request.

4. Except under extraordinary circumstances, within thirty (30) calendar days of its receipt of the Bona Fide Request and all information necessary to process it, USWC shall provide to TCG a preliminary analysis of the Bona Fide Request. The preliminary analysis shall specify whether or not the requested interconnection or access to an unbundled Network Element is technically feasible and otherwise qualifies as a Network Element or interconnection as defined under TA 1996.
 - a. If USWC determines during the thirty day period that a Bona Fide Request is not technically feasible or that the Bona Fide Request otherwise does not qualify as a Network Element or interconnection that is required to be provided under TA 1996, USWC shall advise TCG as soon as reasonably possible of that fact, and promptly provide a written report setting forth the basis for its conclusion, but in no case later than ten days after making such determination.
 - b. If USWC determines during the thirty day period that the Bona Fide Request is technically feasible and otherwise qualifies under TA 1996, it shall notify TCG in writing of such determination but in no case later than ten days after making such determination.
 - c. As soon as feasible, but not more than one hundred and twenty (120) days after USWC notifies TCG that the Bona Fide Request is technically feasible, USWC shall provide to TCG a Bona Fide Request quote which will include, at a minimum, a description of each interconnection and Network Element, the quantity to be provided, the installation intervals, and either:

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- (1) the applicable rates (recurring and nonrecurring) including the amortized development costs of the interconnection or the network elements; or
- (2) the development costs of the interconnection or Network Element and the applicable rates (recurring and nonrecurring) excluding the development costs.

The choice of using option c(1) or c(2) shall be at USWC's sole discretion.

For the purposes of this section, the development costs shall be limited to the actual direct costs incurred in the development of the Network Element. The applicable rates (recurring and nonrecurring) for each Network Element shall be limited to the actual costs incurred plus reasonable shared and common costs and a reasonable profit, as determined by appropriate regulatory bodies or by agreement of the Parties.

5. If USWC has used option c(1) in its Bona Fide Request quote, then within thirty (30) days of its receipt of the Bona Fide Request quote, TCG must indicate its nonbinding interest in purchasing the interconnection or Network Element at the stated quantities and rates, cancel its Bona Fide Request, or seek arbitration.
6. If USWC has used option c(2) in its Bona Fide Request quote, then within thirty (30) days of its receipt of the Bona Fide Request quote, TCG must either agree to pay the development costs of the interconnection or Network Element, cancel its Bona Fide Request, or seek arbitration.

If TCG agrees to pay the development costs and requests USWC to proceed:

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- a. USWC will additionally charge those development costs, on a prorated basis (set forth in (c) below), to the next nine parties who place an initial order after TCG for the interconnection or Network Element;
 - b. As each additional party places its initial order for the interconnection or Network Element, USWC will refund the appropriate prorated portion of the development costs to parties who have previously paid development costs (as set forth in (c) below); and
 - c. The charges and refunds will be made using the proration chart set forth in this Agreement with respect to collocation, except that the period of proration for charges and refunds shall be 36 months from when USWC first makes the interconnection or Network Element available.
7. If USWC has used option c(2) in its Bona Fide Request quote and TCG has accepted the quote, TCG may cancel the Bona Fide Request at any time, but will pay USWC's reasonable development costs of the interconnection or Network Element up to the date of cancellation.
 8. Additionally, if USWC has used option c(2) in its Bona Fide Request quote and USWC later determines that the interconnection or Network Element requested in the Bona Fide Request is not technically feasible or otherwise does not qualify under TA 1996, USWC shall notify TCG within ten business days of making such determination and TCG shall not owe any compensation to USWC in connection with the Bona Fide Request. Any development costs paid by TCG to that point shall be refunded by USWC.
 9. If either Party believes that the other Party is not requesting, negotiating or processing any Bona Fide Request in good faith, or

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disputes a determination, or price or cost quote, it may seek mediation or arbitration.

III. NONDISCRIMINATORY ACCESS TO POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY

- A. Each Party will provide to the other Party access to its poles, ducts, conduits in, on or under public and private rights-of-ways and property and to the rights-of-way themselves on rates, terms and conditions that are consistent with 47 U.S.C. § 224 and that are no less favorable than the rates, terms and conditions available to any competing provider of telecommunications services. USWC shall impute to its own costs of providing telecommunications services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an amount equal to the pole attachment rate for which USWC (or such affiliate, subsidiary, or associate company) would be liable under 47 U.S.C. § 224.
- B. Whenever either Party inquires of the other in writing whether it intends to construct new poles, duct, or conduit or to acquire additional right-of-way, the other Party shall respond within 30 days of receipt of such inquiry to the other Party of such intention. Any entity, including the Parties to this Agreement, that adds an attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such new pole, duct, conduit, or right-of-way accessible.
- C. Whenever either Party intends to modify or alter its pole, duct, conduit, or right-of-way in or on which the other Party shares or has an existing attachment, it shall provide written notification of such action to the other Party so that the other Party may have a reasonable opportunity to add to or modify its existing attachment. The notified Party, if it adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the other Party in making such pole, duct, conduit, or right-of-way accessible.

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- D. Whenever either USWC or TCG obtains an attachment to a pole, duct, conduit or right-of-way of the other Party, it shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit or right-of-way).
- E. The Parties agree to negotiate and execute a separate agreement for pole attachment and conduit usage within 30 days of the execution of this Agreement. Such agreement shall include among its provisions, for the occupancy of conduit, the following:
1. Neither Party will terminate the other Party's occupancy without cause. Should the conduit owner require the use of the occupied space, the Parties agree to jointly construct additional facilities as necessary to accommodate such needed additional capacity;
 2. Since multiple parties may occupy different innerducts within a conduit, the conduit owner will place innerduct at its expense to prepare the conduit for occupancy and proportionately recover such costs through its conduit charges;
 3. The Parties agree that egress from the conduit system should be at the location of the manhole, vault or handhole (collectively "manhole") nearest to the desired point of egress. If such egress is not feasible, the conduit owner will inform the other Party. Upon that other Party's request:
 - a. the Parties will agree to suitable egress at a nearby manhole; or
 - b. the conduit owner will provide a quote, accepted by the other Party, for construction of suitable egress, and the conduit owner will construct such egress; or

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- c. the other Party will construct, under the conduit owner's supervision, suitable egress, with all costs paid by the other Party, including the reasonable cost of the conduit owner's supervision.
- F. The Parties agree to support each other in achieving entry and membership into industry groups which manage pole attachments, ducts and conduits.
- G. If state law requires a franchise agreement with a municipality, the Parties will indemnify and hold each other harmless for any damages one Party suffers as a result of the other Party not obtaining necessary approvals. Each Party will use reasonable efforts to obtain all necessary right-of-way authority, approvals and authority.

V. CUSTOMER GUIDE IN WHITE PAGES/BILLING FOR ADVERTISING

- A. The Parties agree that TCG shall have the opportunity to have customer service pages published in the White Pages sections of directories published by U S WEST Direct in those areas where TCG provides Exchange Service. These pages are found in the Customer Guide section of the Directory and provide TCG's customer service information, including phone numbers. TCG shall receive, at no charge, the same number of Customer Guide pages as U S WEST provides to itself.
- B. The Parties further agree that the provision of customer information to USWC and U S WEST Direct is for the sale of advertising services, inclusion in the Directory Assistance database and/or White Pages, and for the purpose of directory delivery. This information shall be given only to those employees of USWC and U S WEST Direct who are involved in the sale of these services, and shall in no way be shared with the sales and marketing employees of USWC's telephone operations.

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- C. The Parties agree that, upon TCG's request, the NXX codes of all LECs shall be commingled in the section of the Customer Service Pages where calling areas are defined. No differentiation or segregation of TCG's codes shall occur.
- D. US WEST Direct will permit TCG to bill and collect from its own customers for Yellow Pages advertising purchased by TCG's customers. TCG shall be responsible to U S WEST Direct for the payment of all charges associated with such advertising.

IX. RECIPROCAL COMPENSATION ARRANGEMENTS

- A. The following describes the arrangement between the Parties for compensation for facilities established to transport Local Exchange Traffic between the Parties. The Parties agree to the following terms based on consideration of the generally balanced use of the Parties' respective facilities for interconnection. Such consideration is based on relative facility length and capacity provided to each other, determined by the comparison of facility deployment behind the POIs associated with TCG's collocation arrangements and USWC's network.
 - 1. Where the POI for the Local Interconnection Trunk Group is at a collocation arrangement in the same USWC Wire Center as the USWC switch where the Local Interconnection Trunk Group terminates, USWC will pay a monthly charge for the facility, cross connect, and multiplexing, if any, equal to one point of termination at DS-1 rates (per DS-1 used for Local Interconnection Trunks) or DS-3 rates (per DS-3 used for Local Interconnection Trunks) according to TCG's tariff, in addition to the Switched Access elements, if any, below. USWC may, at its option, choose to pay either the applicable tariffed DS-1 rates for those DS-1(s) used for Local Interconnection Trunks in a DS-3 facility, or pay the applicable tariffed DS-3 rate for each DS-3 facility used for Local Interconnection Trunks between the Parties.

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2. Where the POI for the Local Interconnection Trunk Group is at a collocation arrangement other than in the same USWC Wire Center as the USWC switch where the Local Interconnection Trunk Group terminates, TCG will pay a monthly charge to USWC for the facility, cross connect, and multiplexing, if any, equal to one point of termination at DS-1 rates (per DS-1 used for Local Interconnection Trunks) or DS-3 rates (per DS-3 used for Local Interconnection Trunks) according to USWC's tariff, in addition to the Switched Access elements, if any, above. TCG may, at its option, choose to pay either the applicable tariffed DS-1 rates for those DS-1(s) used for Local Interconnection Trunks in a DS-3 facility, or pay the applicable tariffed DS-3 rate for each DS-3 facility used for Local Interconnection Trunks between the Parties.
 3. Where the POI for the Local Interconnection Trunk Group is at a Mid Span Meet, there shall be no compensation between the Parties for the local interconnection facilities used.
- B. The Parties agree that the LERG in its present form is not capable of displaying all subtending arrangements in a competitive LEC environment. Therefore, TCG may determine that certain of its switch Routing Points will be designated as either end offices or tandems for purposes of compensation in this Section. A TCG switch Routing Point will be designated as a tandem with respect to any situation where USWC and TCG interconnect directly from a USWC tandem to a TCG switch Routing Point. The number of TCG Routing Points designated as tandems shall be no more than the number of access tandems operated by USWC in the LATA. A TCG switch Routing Point will be designated as an end office with respect to any situation where USWC and TCG interconnect directly from a USWC end office to a TCG switch Routing Point.
- C. The following describes the compensation arrangements for transport and termination of Local Exchange Traffic between the Parties:

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1. The following compensation rates shall apply for traffic carried from TCG to USWC:

a. Local calls

For all Local Traffic, the Parties agree to mutual traffic exchange without explicit compensation.

This rate structure shall remain in place until one year after PNP is implemented throughout those LATAs in which the Parties both operate. The Parties agree to renegotiate this rate structure in that time frame in accordance with the compensation structure set forth in Section 252(d) of TA 1996, provided that such negotiations will be completed by the end of one year after PNP is implemented throughout those LATAs in which the Parties both operate. During the renegotiation process, either Party may seek arbitration.

b. Toll Calls

Applicable to intraLATA toll calls based on intrastate Switched Access rates as described below.

For all toll calls, the following rate elements shall apply:

- (1) Local switching - per minute of use with the following sub-elements:
 - Set-up (per call); and
 - Minutes of use;
- (2) Network Interconnection Charge - per minute of use.

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Additionally, where such calls are routed through USWC's tandem, the following elements shall apply:

- (3) Tandem switched transport as listed in USWC's Tariff.
- Fixed - per minute of use.
 - Variable - per mile per minute of use. Mileage is calculated based on the airline miles between the Vertical and Horizontal ("V&H") coordinates of the POI where the Local Interconnection Trunk Group terminates and the USWC end office.
- (4) Tandem switching - per minute of use

Additionally, when the LATA-wide terminating option is selected, an additional tandem switching and tandem switched transport-fixed per minute of use rate element shall apply to all calls terminated through this arrangement. Tandem switched transport-variable mileage will be calculated as set forth in subsection C.1.b(3), above.

- c. TCG shall pay a transit rate of \$.006 per minute when TCG uses a USWC access tandem to originate a call to another LEC, a WSP or another TCG end office. If USWC enters into an interconnection agreement with another LEC that provides for a transit rate lower than \$.006, that transit rate will be substituted for the rate set in this paragraph upon the effective date of that agreement. If TCG receives a call through USWC's access tandem that originates from another LEC, TCG will not charge USWC any rate elements for this call, regardless of whether the call is local or toll. TCG will establish an appropriate billing relationship directly with the other LEC.

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2. The following compensation rates shall apply for traffic carried from USWC to TCG:

a. Local calls

For all Local Traffic, the Parties agree to mutual traffic exchange without explicit compensation.

This rate structure shall remain in place until one year after PNP is implemented throughout those LATAs in which the Parties both operate. The Parties agree to renegotiate this rate structure in that time frame in accordance with the compensation structure set forth in Section 252(d) of TA 1996, provided that such negotiations will be completed by the end of one year after PNP is implemented throughout those LATAs in which the Parties both operate. During the renegotiation process, either Party may seek arbitration.

b. Toll Rate

Applicable to intraLATA toll calls based on intrastate Switched Access rates as described below.

For all toll calls, the following rate elements shall apply:

- (1) Local switching - including associated sub-elements (e.g., set-up (per call) and minutes of use);

Additionally, where such calls are routed through TCG's tandem, the following elements shall apply:

- (2) Tandem switched transport (e.g., fixed - per minute of use and variable - per mile per minute of use). Mileage is calculated based on the airline miles between the Vertical and Horizontal ("V&H")

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coordinates of the POI where the Local Interconnection Trunk Group terminates and the TCG end office; and

- (3) Tandem switching - per minute of use.
- c. USWC shall pay a transit rate equal to the rates set in the first two sentences of subsection C.1.c., above, when USWC uses a TCG switch to originate a call to another LEC, a WSP or another USWC Central Office.
- D. For intraLATA Toll Free Service calls where such service is provided by one of the Parties, the compensation set forth in subsection C, above, as well as any applicable database query charge set forth in that Party's tariff, shall be charged by the Party originating the call rather than the Party terminating the call. The Parties agree to exchange originating EMR records for intraLATA Toll Free Service calls provided by one of the Parties.
- E. The Parties agree to use reasonable efforts to establish the capability to measure and bill tandem terminating interconnection minutes of use based on usage records made within each Party's network by June 1997. The Parties agree that end-office terminated interconnection may require exchange of originating EMR records. The Parties agree to exchange EMR records where such terminating records are not available. These records, whether developed within each Party's network or exchanged between the Parties, shall form the sole basis for each Party to generate bills to the other Party. The Parties agree to exchange these records at no charge.
- F. Measurement of minutes of use over Local Interconnection Trunk groups shall be in actual conversation seconds. The total conversation seconds over each individual Local Interconnection Trunk Group will be totaled for the entire monthly bill-round and then rounded to the next whole minute.
- G. Each Party will provide to the other, within 15 calendar days after the end of each quarter, a usage report with the following information regarding traffic terminated over the Local Interconnection Trunk arrangements:

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1. Total traffic volume described in terms of minutes and messages and by call type (local, toll and other) terminated to each other over the Local Interconnection Trunk Groups, and
 2. PLU.
- H. Late payment charges for interconnection charges will be assessed.
- I. CCS interconnection charges will be applied based on the option for CCS interconnection TCG selects, as follows:
1. If CCS interconnection is from USWC's STPs to TCG' STPs solely for the purpose of exchanging signaling for each Party's Local Exchange Traffic and jointly provided Switched Access traffic, then no charges will apply for such SS7 links, STP ports or SS7 messages.
 2. If TCG uses a third party CCS provider to connect to USWC's STPs, then charges will apply to such SS7 links, to the third party, or as otherwise contracted between USWC and that third party.
 3. If TCG connects its end office(s) directly to USWC's STPs, then USWC will apply 50% (one half) of the charges set forth in its tariff.
- J. If TCG elects to use Local Interconnection signaling arrangement option J(1) or J(3), above, in the future for its own Switched Access calls (e.g., FGB or FGD), the Parties agree to renegotiate the rates, terms and conditions prior to such use.
- K. Each Party shall charge the other Party for BLV and BLVI at the rates contained in their respective tariffs.
- L. If either Party terminates Directory Assistance calls over the Local Interconnection Trunk Groups to the other Party, the terminating Party shall charge the other Party for such Directory Assistance calls at the rates contained in its tariff or pursuant to a separately negotiated contract.

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M. A Maintenance of Service charge applies whenever either Party requests the dispatch of the either Party's personnel for the purpose of performing maintenance activity on the interconnection trunks, and any of the following conditions exist:

1. No trouble is found in the interconnection trunks; or
2. The trouble condition results from equipment, facilities or systems not provided by the Party whose personnel were dispatched; or
3. Trouble clearance did not otherwise require a dispatch, and upon dispatch requested for repair verification, the interconnection trunk does not exceed maintenance limits.

If a Maintenance of Service initial charge has been applied and trouble is subsequently found in the facilities of the Party whose personnel were dispatched, the charge will be canceled.

Billing for Maintenance of Service is based on each half-hour or fraction thereof expended to perform the work requested. The time worked is categorized and billed at one of the following three rates:

1. basic time;
2. overtime; or
3. premium time

as defined for billing by USWC in its tariff and by TCG in its tariff.

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X. TELECOMMUNICATIONS SERVICES AVAILABLE FOR RESALE

The Parties shall provide for wholesale purchase of all retail services sold to end users at a discount of 17% off of the retail rate, until the Commission determines the appropriate avoided cost discount in its TELRIC proceeding.

XI. COLLOCATION AND MID SPAN MEETS

A. Physical Collocation.

USWC will provide for physical collocation of transport and termination equipment necessary for interconnection of TCG's network facilities to USWC's network or access to unbundled network elements at its premises.

Listed below are the rates that TCG shall pay for physical collocation at USWC's Wire Center premises, along with other terms and conditions that will apply with respect to such physical collocation, beginning with the effective date of this Agreement:

1. Rates

- a. All monthly rates and nonrecurring charges shall be those set forth in U S WEST's federal expanded interconnection service tariff, except that floor space shall be charged at the rate of \$3.00 per square foot and infrastructure charges shall be \$40,000.00 per U S WEST premise.
- b. Infrastructure charges will be prorated and the prorated share refunded to previous collocator(s) as additional collocators use collocated services at that location within 60 months of when the billing for the first collocation space at that location begins, using the following schedule:

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<u>Collocator</u>	<u>Nonrecurring Charge</u>	<u>Refund</u>
1st	100%	NA%
2nd	50%	50%
3rd	33.33%	16.67%
4th	25%	8.33%
5th	20%	5%
6th	16.67%	3.33%
7th	14.29%	2.38%
8th	12.5%	1.79%
9th	11.11%	1.39%
10th	10%	1.11%
11th and beyond	0%	

2. Terms

- a. USWC agrees that it shall continue to make physical collocation available under the terms of this Agreement. Any requirement for relocation or eviction of collocated facilities must allow for reasonable due process including, but not limited to, either Party seeking Commission approval if the Parties cannot reach mutual agreement.
- b. USWC will permit TCG to cross-connect TCG's collocated facilities with the facilities of any other LEC collocated at the same USWC premises.
- c. TCG may place Digital Loop Carrier equipment of its choosing in its collocation space, including shared space collocations described below, for connection of TCG's network to USWC's network.
- d. USWC agrees to provide TCG with reasonable advance notice, under the Notice provisions of this Agreement, of any proposed modifications to USWC's tariff regarding physical

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collocation, except for the addition of Wire Centers and new types of EISCCs.

B. Shared Space Collocation

Where sufficient space exists, and upon request, USWC will provide for collocation on a shared space basis with each collocator's area defined within the shared space. However, shared space collocation will not be made available in Wire Centers where at least one conventional physical collocation installation has already been installed. Such defined space shall, at a minimum, be sized to permit the placement of up to two (2) bays of collocator-provided fiber optic facilities and transmission equipment. Access to the collocation space will be via a common entry point and it shall be the sole responsibility of the collocator to provide for any additional security measures to protect its equipment. Such security measures shall be limited to covers or lockable cabinet doors placed directly on the equipment bays of the collocator.

The following charges shall apply for shared space collocation:

1. The recurring charge for two (2) bays in a shared space collocation shall be \$265.00 per month.
2. The nonrecurring charge for two (2) bays in a shared space collocation shall be \$5,300.00.
3. The infrastructure charge for shared space collocation shall be \$25,000.00 and will be refunded on a prorated basis to the first five shared space collocators as additional shared space collocators utilize shared space collocation at that location within 60 months of when the billing for the first shared space collocation space at that location begins, based on the proration schedule set forth above for physical collocation.

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If TCG requests and USWC provides a shared collocation arrangement as described above, and no other collocator orders and places its equipment in such shared space arrangement within two (2) years after TCG collocates in such space, USWC reserves the right to reconfigure such space into a suitable single-occupant collocation space. Upon request by USWC, TCG will reasonably agree to such reconfiguration after one year has elapsed from the time TCG has collocated in such space. The reconfigured space shall only be large enough to enclose the two bays of equipment placed by TCG, along with adequate space for access to the cage, and any other safety standards normally applied to physical collocation facilities by USWC. TCG will be charged a pro-rated monthly collocation space charge based on the square footage of the reconfigured space in proportion to a standard 10 foot by 10 foot collocation space. TCG will not be charged for the cost of reconfiguring the space. If, after two years from the first placement of a shared space collocation arrangement at TCG's request, such arrangements are on average no more than one-third occupied, the Parties agree to renegotiate USWC's obligation to continue to offer shared space collocation arrangements.

C. Microwave Collocation

Where technically feasible, USWC will provide for physical collocation of microwave equipment, necessary for interconnection of TCG's network facilities to USWC's network or access to unbundled network elements on the roofs of USWC's Wire Centers. Such collocation shall be provided in accordance with the rates, terms and conditions set forth above with respect to physical collocation, plus reasonable recurring and nonrecurring rates for placement of the microwave equipment.

D. POT Bay Engineering

The Parties agree that TCG will engineer and pre-provision its side of the POT Bay in physical (including shared space) collocation arrangements.

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E. Virtual Collocation.

USWC will provide for virtual collocation only where and if USWC has demonstrated and the Commission has determined that physical collocation is not practical for technical reasons or because of space limitations.

Rates and terms for virtual collocation will be made available on a reasonable and non-discriminatory basis. Rates for virtual collocation will be approximately the same as physical collocation. The Parties agree to cooperate in selecting equipment and establishing installation and operating procedures for virtual collocation in the event that the use of virtual collocation becomes necessary.

The Parties agree that the equipment used in a virtual collocation space shall be purchased by TCG and then sold to USWC for one dollar (\$1.00). TCG shall retain the right to repurchase the equipment from USWC for one dollar (\$1.00).

F. Mid-Span Meet Arrangements

The Parties may also choose to interconnect via a Mid Span Meet. Such interconnection shall be limited to facilities provided for the interconnection of any local exchange or jointly provided switched access traffic between the Parties.

1. **Physical Arrangements of Mid Span Meets:** In a Mid Span Meet, each Party extends its facilities to meet the other Party. The point where the facilities meet is the Mid Span point. Each Party bears its own costs to establish and maintain a Mid Span Meet arrangement. However, the Parties also agree that a technical arrangement for a Mid Span Meet may involve one Party placing and extending its fiber facilities to the Wire Center of the other Party, with sufficient additional length on the fiber to permit the receiving Party to terminate the fiber without requiring splicing of the fiber facilities prior to the terminal equipment in the receiving Party's Wire Center.

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In this situation, the Parties will negotiate reasonable compensation to be paid to the Party extending the facilities for the associated labor, materials, and conduit space used in extending its facilities beyond a negotiated Mid Span point.

2. **Engineering Specifications:** The Parties agree to establish technical interface specifications for Mid Span Meet arrangements that permit the successful interconnection and completion of traffic routed over the facilities that interconnect at the Mid Span Meet. The technical specifications will be designed so that each Party may, as far as is technically feasible, independently select the transmission, multiplexing, and fiber terminating equipment to be used on its side of the Mid Span Meet. Requirements for such interconnection specifications will be defined in joint engineering planning sessions between the Parties. The Parties will use good faith efforts to develop and agree on these specifications within 90 days of the determination by the Parties that such specifications shall be implemented, and in any case, prior to the establishment of any Mid Span Meet arrangements between them. In the event the Parties cannot agree on the technical specifications required, the Parties will, after discussion at the Vice Presidential level, interconnect with each other using one of the other interconnection arrangements defined elsewhere in this Agreement.
3. **Maintenance Responsibilities:** Each Party will be responsible for maintaining its network on its side of the Mid Span point. In the case where a maintenance problem must be resolved in the fiber span between the Parties, the Party with access to the manholes, vaults or conduit space will dispatch maintenance personnel to perform any necessary trouble isolation and repair activities. The Party performing the maintenance activity in the fiber span may bill the other Party for such activity at one-half the hourly labor rate specified in the Maintenance of Service section of this Agreement. Should both Parties have maintenance access to some portions of the manholes, vaults or conduit space on the Mid Span Meet facility arrangement,

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they will cooperatively determine which Party will perform any trouble isolation or maintenance activities during the initial contact between them when a maintenance problem has occurred.

Prior to the establishment of any Mid Span Meet arrangement, the Parties agree to jointly develop all additional necessary requirements for such interconnection, including but not limited to such items as control and assignment of facilities within the fiber Mid Span Meet arrangement, network management requirements, and operational testing and acceptance requirements for installation of Mid Span Meets.

XIII. MEET POINT BILLING ARRANGEMENTS

A. For the purposes of this Section, the Parties agree that tandem and end office subtending arrangements shall be according to LERG with respect to interconnection between the Parties for jointly-provided Switched Access arrangements, except as mutually amended by the Parties. The Parties agree that where they jointly provide Switched Access services to third parties, they will share revenues received for such services in the following manner:

1. The tandem Party will bill the Switched Access customer on behalf of both Parties, based on the respective Switched Access rates of the Parties (single bill, multiple tariff). The Parties will cooperate in establishing the methodology for use of the single bill, multiple tariff option. The Parties agree that good faith efforts shall be used to implement the single bill, multiple tariff option within 90 days of execution of this Agreement.

When USWC is the tandem Party, it will bill on a single bill, single tariff based on TCG's concurrence in USWC's tariffs, until the single bill, multiple tariff option is implemented by USWC.

2. The rate elements from the end office Party's tariffs that are included in the single bill will be:

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- 10000 - 0000 - 0000 - 0000
- a. Local Switching;
 - b. Carrier Common Line (if applicable);
 - c. Residual Interconnection Charge/Network Interconnection Charge (if applicable);
 - d. Tandem Switched Transport (per mile) as appropriate, in proportion to the amount of transport provided;
 - e. Tandem Switched Transport (fixed), 0 or 50%, as appropriate;
 - f. And any other approved local switching rate elements from its tariffs;
3. The rate elements from the tandem Party's tariffs included in the single bill will be:
- a. Tandem Switching (per minute);
 - b. Tandem Switched Transport (per mile) as appropriate, in proportion to the amount of transport provided;
 - c. Tandem Switched Transport (fixed), 50% or 100%, as appropriate;
 - d. And any other approved tandem rate elements from its tariffs;
- Billing of the Entrance Facility rate element, if applicable, will be included on the Switched Access customer's normal facility bill.
4. Where the tandem Party switches directly to the end office Party's end office, the tandem Party will remit to the end office Party 70% of the revenues for intrastate calls and 70% of the revenues for interstate calls the end office Party would have received for end office functions

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had the end office Party provided the Switched Access service entirely over its own network, based on its approved access tariffs. Where the tandem Party switches to the end office Party's tandem, the tandem Party will remit to the end office Party 100% of the revenues the end office Party would have received for all tandem and end office functions had the end office Party provided the Switched Access service entirely over its own network, based on its approved access tariffs. This arrangement was reached in order to create economic conditions that will allow for the competitive provision of tandem services.

In the event that the Commission or the FCC modifies the current Switched Access rate structures, redirects the allocation of cost recovery between rate elements under the current structure, or allows USWC to change its Switched Access rates in any way, the Parties will renegotiate the percentage of the revenues to be received by the end office Party under this Section, with the objective to be to ensure that the ratio of revenues retained by the tandem Party, per minute of use, is no less than the ratio of revenues that would be retained when applying the percentages in this subsection to USWC's Switched Access tariffs in effect on the date this Agreement is signed. In such negotiations, the Parties shall consider division of all Switched Access revenues (exclusive of entrance facilities), whether billed on a "bulk" basis or on a MOU basis.

The Parties expect that the Commission and the FCC will expeditiously realign cost recovery so that rates for Switched Access elements are more closely related to the costs for providing those elements. In the interim, the Parties have agreed to the revenue arrangement described in this paragraph 4.

5. Where the tandem Party switches directly to the end office Party's end office and the POI for the Meet Point Trunk Group:

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- a. is in the Wire Center where the end office is located, the tandem Party receives 100% of the mileage-sensitive portion of tandem-switched transport; and
- b. is in a Wire Center other than where the end office is located, the end office Party receives a proportionate share of the mileage-sensitive portion of tandem-switched transport, to be reviewed annually.

The Parties agree to file billing percentages in the National Exchange Carrier Association (NECA). TCG will file the initial data, and USWC will concur in the percentages within 30 days.

- B. The Parties will bill Switched Access customers in accordance with the MECAB and MECOD guidelines, except that the Parties will divide revenues received with respect to Meet Point Billing in the manner described above. The Parties agree to work cooperatively to support the work of the OBF and to implement OBF changes to MECAB and MECOD in accordance with the OBF guidelines.
- C. The IXC receiving the single bill will send a single check to the tandem Party as the Party rendering the bill. The tandem Party will remit to the end office Party its portion of the access revenue as described above.
- D. The Parties will use reasonable efforts to create the ability to provide to each other, when requested, the Switched Access Detail Usage Data and/or the Switched Access Summary Usage Data required for the billing and/or validation of the jointly provided Switched Access such as Switched Access FGB and FGD. The Parties agree to provide this data to each other at no charge.

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E. Data Format and Data Transfer.

1. The tandem Party shall provide to the end office Party, where requested, the billing name and billing address of all IXCs originating or terminating traffic at the end office Party's end office.
2. Based on the individual call flows that can occur, certain types of records will have to be exchanged for billing purposes or the verification of billing. The Parties agree that the exchange of billing records will utilize the Bellcore standard EMR 01, 11, 50, and 20 formats. These records will be exchanged on magnetic tape or via electronic data transfer (when available).
3. When TCG and USWC bill for jointly provided Switched Access service, the Parties will mutually agree to the format, time frame, and settlement terms that will be utilized. The Parties agree to work cooperatively in the industry fora to establish an industry format to be used by all carriers.
4. The end office Party shall provide to the tandem Party the Switched Access Detail Usage Data (category 1101XX records) for originating access usage on magnetic tape or via NDM, on a monthly basis, within fourteen (14) days of the last day of the billing period.
5. Upon request, when the tandem Party records terminating access usage or IXC Toll Free Service usage on behalf of the end office Party, the tandem Party will send the end office Party Switched Access Summary Usage Data (category 1150XX records) for usage validation.

- F. Errors may be discovered by TCG, the IXC or USWC. Each Party agrees to provide the other Party with notification of any discovered errors within two (2) business days of the discovery.

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- G. In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data based upon three (3) to twelve (12) months of prior usage data.
- H. All data associated with the processing and settlement of messages under this Agreement shall be maintained by the Parties for the period currently used by each Party for such information in compliance with legal and/or regulatory rulings. Different data retention periods require the agreement of the Parties.
- I. The tandem Party agrees to bill and collect all amounts due from the IXCs under this Section in accordance with the tandem Party's existing billing, collection, treatment and denial of service procedures.
- J. The tandem Party shall send one monthly check to the end office Party remitting the appropriate portion of the revenue received from the IXCs the prior month.
- K. The Parties will mutually agree on revenue reports that the tandem Party will provide to the end office Party on a monthly basis. These reports reflect the data used to calculate billing.

XVII. MOST FAVORABLE TERMS AND TREATMENT

USWC agrees that it shall make available to TCG any interconnection, service or Network Element provided under an agreement approved under Section 252 of TA 1996 to which it is a party upon the same rates, terms and conditions as provided in that agreement.

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XXV. INDEMNITY

Each Party shall indemnify and hold the other harmless from any liabilities, claims or demands (including the costs, expenses and reasonable attorney's fees on account thereof) that may be made by third parties for:

- a) personal injuries, including death, or
- b) damage to tangible property

resulting from the sole negligence and/or sole wilful misconduct of that Party, its employees or agents in the performance of this Agreement. Each Party shall defend the other at the other's request against any such liability, claim or demand. Each Party shall notify the other promptly of written claims or demands against such Party of which the other Party is solely responsible hereunder.

XXVI. ASSIGNMENT

This Agreement may be assigned by either Party upon sixty (60) days advance written notice to the other Party.

ATTACHMENT B

**PROPOSED PERFORMANCE STANDARDS
AND REMEDIES**

Performance Reports

The Parties agree to provide each other with performance reports on the measures above on a monthly basis. The Parties shall provide such reports not later than 28 calendar days after the completion of the monthly reporting period.

Analysis of persistent failure to meet the above objectives will be jointly reviewed on a monthly basis between the Parties' management representatives until performance improves to the Objective level.

Penalties

The following penalties shall apply when default has occurred as defined. Payment of penalties shall be in the nature of liquidated damages to the non-defaulting Party. Where more than one performance category is subject to the penalty, a penalty payment for each category will be made by the defaulting Party to the non-defaulting Party.

Penalty 1:

\$5,000.00 per measurement category based on a full month's reporting.

Penalty 2:

\$10,000.00 per measurement category based on a full month's reporting.

Penalty 3:

\$25,000.00 per occurrence. For interconnection trunks, this Penalty shall only apply when either Party can demonstrate that the failure to meet the Objective resulted in the unplanned blocking of traffic on one or more final trunk routes for which the trunk order(s) were not completed by the confirmed due date.

PERFORMANCE STANDARDS AND PENALTIES

Notwithstanding the Limitations of Liability provisions set forth in the Agreement, the Parties agree that the following Performance Standards shall apply to the provision of network interconnection and unbundled Network Elements provided to each other this Agreement. The parties further agree that failure to meet such Performance Standards would give rise to damages which would be impractical or extremely difficult to determine. In such an event, the non-defaulting Part shall provide the defaulting Party written notice of the default no later than 30 days following receipt of the measurement report identifying missed objective.

Penalties, if any, shall be applied when performance to the Objective by one of the Parties fails to meet any of the criteria below:

- a) The performance Objective is not met for any three (3) consecutive calendar months;
- b) The performance Objective is not met for five (5) or more calendar months in any calendar year, or
- c) The performance measure falls below the Penalty Limit, if any, established below for any calendar month.

The objectives related to orders and completion of orders established below (other than for Orders placed correctly) are based on receipt of complete and correct orders from the ordering Party by the other Party. The Firm Order Confirmation date ("FOC" date) will establish the due date for any orders in this section. Revisions or supplemental changes to already confirmed orders may generate a new due date, which will then become the date for tracking performance under this category. Link orders failing to meet one or more of the Objectives below, due to the ordering Party (or the ordering Party's customer) not being ready or prepared to meet the confirmed due date or any preceding test or other order interim dates required to establish the interconnection, will result in exclusion of that order from measurement to the Objective or application of penalties, except when new or revised due dates have been requested by the ordering Party and confirmed by the receiving Party. For interconnection trunk orders, the defaulting Party in failing to meet trunk installations may be either the ordering Party or the receiving Party. Determination of default will be made by identification of which Party caused the past due performance on any individual trunk order.

Local Interconnection Trunks

Because the Parties have chosen to interconnect their networks via one-way Switched Access trunks for intraLATA toll traffic, two-way local interconnection trunks for local traffic and two-way Meet-Point Switched Access trunk groups, the Parties have mutual and reciprocal interest in maintaining the engineering and operations standards established in the Agreement.

MEASUREMENT	OBJECTIVE	PENALTY LIMIT	PENALTY
Order are confirmed.	98% of orders confirmed by the end of the seventh (7th) business day following receipt of the order.	Less than 95% of the average of all such orders.	Penalty number 1 below.
Order intervals are established.	95% of orders are confirmed with due dates meeting the standard intervals for USWC's switched access services.	Less than 95% of the average of all such intervals.	Penalty number 2 below.
Trunk installations are completed.	95% of trunk orders are completed on or before the agreed upon due date.	Less than 95% of the average of all such installations.	Penalty number 3 below.

Unbundled Links

Unbundled Links are provided under the terms as described in the Agreement. Additionally, performance standards for coordinated Link provisioning are defined in the Agreement. The Parties agree to the unbundled Link performance standards and penalties below:

MEASUREMENT	OBJECTIVE	PENALTY LIMIT	PENALTY
Orders are confirmed.	98% of orders confirmed by the end of the business day following receipt of the order.	Less than 95% of the average of the 10 largest Link purchasers for all such orders.	Penalty number 1 below.
Order intervals are established.	95% of orders are confirmed with due dates meeting the intervals defined in Section II A. 10 of the Agreement.	Less than 95% of the average of the 10 largest Link purchasers for all such intervals.	Penalty number 2 below.
Link installations are completed.	98% of Link orders are completed on or before the agreed upon due date.	Less than 95% of the average of the 10 largest Link purchasers for all such installations.	Penalty number 2 below.
Link repairs meet standards	Link repairs (where the fault is in USWC's network) are repaired in same average interval as USWC's equivalent exchange service (e.g. IMB, ISDN) in the same Wire Center locations in the same measurement month.	More than 105% or the average Link repair interval of the 10 largest purchasers of Links.	Penalty number 3 below.

Dedicated Access

The Parties agree to the Dedicated Access standards and penalties below:

MEASUREMENT	OBJECTIVE	PENALTY LIMIT	PENALTY
Orders are confirmed.	98% of orders confirmed by the end of the business day following receipt of the order.	Less than 98% of the average of the 10 largest Dedicated Access purchasers for all such orders.	Penalty number 1 below.
Order intervals are established.	95% of orders are confirmed with due dates meeting the intervals defined in Section II A. 10 of the Agreement.	Less than 95% of the average of the 10 largest Dedicated Access purchasers for all such intervals.	Penalty number 2 below.
Dedicated Access installations are completed.	98% of Dedicated Access orders are completed on or before the agreed upon due date.	Less than 95% of the average of the 10 largest Dedicated Access purchasers for all such installations.	Penalty number 2 below.
Dedicated Access repairs meet standards	Dedicated Access repairs (where the fault is in USWC's network) will be repaired in two (2) hours or less.	More than 105% of the average Dedicated Access repair interval of the 10 largest purchasers of Dedicated Access.	Penalty number 3 below.