

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF PROPOSED RULES )  
REGARDING IMPLEMENTAION OF )  
40-15-101 *ET. SEQ.*--REQUIRE- ) DOCKET NO. 95R-556T  
MENTS RELATING TO INTERCONNEC- )  
TION AND UNBUNDLING. )

COMMISSION DECISION ADOPTING RULES

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Mailed Date: April 1, 1996  
Adopted Date: March 29, 1996  
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I. BY THE COMMISSION:

A. Procedural History

1. This matter comes before the Commission to consider adoption of rules relating to interconnection<sup>1</sup> and unbundling<sup>2</sup> of the networks of regulated telecommunications providers. As discussed herein, we adopt the rules appended to this decision as Attachment A in accordance with the legislative directives set forth in 40-15-503(2)(b)(I), C.R.S.

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<sup>1</sup> As defined in the rules attached to this decision, "Interconnection" is the process of providing a connecting link between the networks of competing telecommunications providers for the purpose of completing local calls originating on the network of one provider and terminating on the network of another provider.

<sup>2</sup> "Unbundling", as defined in the adopted rules, is the disaggregation of facilities and functions into multiple network products or services, enabling those facilities and functions to be offered separately to other telecommunications providers in a manner that allows those providers to utilize such elements in the provision of their own services.

2. We initiated the present proceeding by issuing a Notice of Proposed Rulemaking on November 29, 1995. See Decision No. C95-1173. Additionally, we issued a Supplemental Notice of Proposed Rulemaking in this docket on December 22, 1995. See Decision No. C95-1302. As explained in those decisions, the general intent of this proceeding is to comply with the provisions of the recently enacted House Bill 1335 ("HB 1335"), 40-15-501 *et seq.*, C.R.S. The General Assembly adopted HB 1335 in the 1995 legislative session, determining that competition in the market for basic local exchange service is in the public interest. See 40-15-101, C.R.S. Consistent with that determination, HB 1335 directs the Commission to encourage competition in the basic local exchange market by adoption and implementation of appropriate regulatory mechanisms to replace the existing regulatory framework. HB 1335 further mandates that the Commission adopt rules implement-ing cost-based, non-discriminatory, and unbundled methods of pricing for carrier interconnection to essential facilities or functions. See 40-15-503(2)(b)(I), C.R.S.

3. In 40-15-503 and 504 the Legislature established a Working Group comprised of providers and consumers of telecommunications services, representatives from the Governor's Office, Commission Staff, Legislative Staff, and other interested persons. The Working Group was directed to recommend proposed rules for consideration by the Commission in this docket as well as in related proceedings. On November

30 and December 20, 1995, the Working Group submitted its reports to the Commission. In addition to considering the written and oral comments submitted in this case, we have taken administrative notice of the reports filed by the Working Group. Those reports have been filed in Docket No. 95M-560T, the repository docket regarding implementation of HB 1335.

4. Commission Staff conducted a number of public outreach meetings throughout the state in September and October 1995 to solicit public comment regarding local telephone service. A report summarizing public comment as a result of those meetings has also been submitted in Docket No. 95M-560T.<sup>3</sup> We take administrative notice of that report for purposes of the present proceeding.

5. In accordance with our notices of proposed rulemaking, we conducted hearings in this matter on February 2 and 8, 1996. A number of parties submitted written and oral comments regarding proposed interconnection and unbundling

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<sup>3</sup> This report summarizes the comments (both oral and written) received during 16 public outings held throughout the state in September and October, 1995, to solicit input on competition wide local telephone service and on a proposed "Telecommunications Consumers Bill of Rights" drafted by the Commission. Meetings were held in Breckenridge, Steamboat Springs, Glenwood Springs, Colorado Springs, Trinidad, La Junta, Lamar, Pueblo, Grand Junction, Montrose, Cortez, Durango, Fort Collins, Denver, and Fort Morgan. Participants represented a diverse cross-section of the public.

As stated in the report,

An overriding concern expressed at the meetings was the question of whether statewide competition in the local telephone market is a realistic expectation, how long will it take competition to reach less densely-populated areas of the state, and how will the PUC manage the transition period?

reach Report at 4.

rules, including: AT&T Communications of the Mountain States, Inc. ("AT&T"); AT&T Wireless Services; Colorado Independent Telephone Association ("CITA"); the Competitive Telecommunications Association ("Comptel"); ICG Access Services, Inc., and Teleport Denver Ltd. ("ICG"); MCI Telecommunications Corporation ("MCI"); MFS Intelenet of Colorado, Inc. ("MFS"); the Colorado Office of Consumer Counsel ("OCC"); Staff of the Commission ("Staff"); TCI Communications, Inc., Teleport Communications Group Inc., Sprint Telecommunications Venture, and Sprint Communications Company L.P. ("TCI et al."); and U S WEST Communications, Inc. ("USWC").

#### **B. Consensus and "Substantial Deference"**

1. Subsections 40-15-503(1) and (2)(a), C.R.S., require that we accord "substantial deference" to the proposals submitted by the Working Group with respect to issues on which the Working Group has reached consensus on or before January 1, 1996. The statute does not define "substantial deference." In this case, while members of the Working Group disagreed upon many of issues relating to interconnection and unbundling, nevertheless consensus was reached upon a number of the proposed rules. Thus, we must develop and apply our understanding of the term "substantial deference." To do so, we have examined the concept within the context of the public policies articulated by the General Assembly, as well as in the context of the Commission's

constitutional and statutory authorities and responsibilities.

2. In implementing our understanding of "substantial deference," we take the following into consideration:<sup>4</sup> our overarching obligation to protect the public interest, even as we shepherd the transition into a fully competitive telecommunications marketplace; the consistency of the proposed consensus rules with all provisions of 40-15-501 *et seq.*, C.R.S., and other applicable statutes; the consistency of the proposed consensus rule with existing Commission rules; the ability of the public and of regulated entities to understand the proposed consensus rule and the processes described therein; the ability of the Commission to enforce the proposed consensus rule; the ability of the proposed consensus rule to accomplish or to assist in the transition to a fully competitive telecommunications environment while assuring the availability of basic service at just, reasonable, and affordable rates to all people of Colorado; and the fairness of the proposed consensus rule to all telecommunications service providers, existing and prospective.

3. We are of the opinion that we may make changes to a proposed consensus rule where, after full consideration of the record and the factors outlined above, we deem it necessary. Because the General Assembly has required us to attach significant weight to the opinions of the Working Group, where we rejected a consensus rule the rationale supporting our

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<sup>4</sup> This listing is not a definitive statement of the considerations relied upon by the Commission.

decision is clearly articulated.

### **C. The Telecommunications Act of 1996**

1. After we issued the notices of proposed rulemaking, but before conclusion of the hearings in this docket, Congress enacted the Telecommunications Act of 1996 ("Act"). Public Law No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 151, *et seq.*). President Clinton signed the Act on February 8, 1996. Notably, the Act mandates competition in the local exchange market. See 253 (no state or local statute or regulation may prohibit the ability of any entity to provide any interstate or intrastate telecommunications service). The Act also sets forth numerous provisions relating to interconnection and unbundling. For example, 251(a) sets forth the duty of telecommunications carriers to interconnect with the facilities and equipment of other providers. Subsection 251(c)(3) compels incumbent local exchange carriers ("LEC"):

. . .to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . . .

2. The parties to this case have argued that, in many instances, the Act constrains our authority to adopt some of the proposed rules. We address those arguments in the discussion relating to specific proposals. At this point, we simply comment upon the overall effect of the Act upon our

decision. We note that virtually every party to this proceeding filed extensive comment regarding the Act and how its provisions influence the determinations to be made in this proceeding. The two rounds of post-hearing comment provided for in this docket largely addressed the Act's interconnection and unbundling requirements. Therefore, the parties have had sufficient opportunity to comment upon the relationship of the Act to the interconnection and unbundling rules under consideration here, and it is appropriate for us to consider the Act in ruling upon the various proposals herein.

3. In general, we observe that, in adopting the rules set forth in Attachment A, we have attempted to adopt rules which are consistent with the requirements of HB 1335 and the notices of proposed rulemaking issued herein, while avoiding inconsistency with the Act. In that spirit, we have carefully considered arguments that various rules proposed by some of the commenters in specific reliance upon the Act exceed the scope of the notices of proposed rulemaking. We disagree with those arguments with respect to the rules set forth in Attachment A. The Act is generally consistent with the intent of HB 1335 and the notices which initiated this docket.

Therefore, even though the Act was passed after the issuance of the notices of proposed rulemaking, we are able to approve rules which are both within the scope of the notices and consistent with the Act.

4. The suggestion was made (*e.g.*, by USWC) that the

rules adopted here should be as narrow as possible inasmuch as the Federal Communications Commission ("FCC") will be promulgating rules to implement the Act. See 251(d) (within 6 months of enactment of the Act, FCC must establish regulations implementing interconnection and unbundling requirements). We disagree with that suggestion for various reasons.

5. First, we believe that the rules approved here are consistent with the Act for the reasons discussed *infra*. Second, HB 1335 requires us to implement interconnection and unbundling standards by July 1, 1996. See 40-15-503, C.R.S.

Therefore, we cannot defer action on interconnection and unbundling rules in anticipation of forthcoming FCC regulations. Finally, we note that the States retain extensive authority to implement the Act's requirements. See

251(d)(3) (in prescribing and enforcing rules, the FCC shall not preclude the enforcement of State regulations which are consistent with 251 and which do not substantially prevent implementation of the Act); 253(b) (nothing in 253 shall affect the ability of a State to impose, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers); 261(b) (nothing in Act shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of the Act, or from prescribing regulations after such date of

enactment, if such regulations are not inconsistent with the Act). We conclude that the provisions set forth in Attachment A are consistent with the Act, and that no need exists to await FCC action before adoption of the rules.

## **II. APPLICABILITY OF RULES**

Rule 1 states that the rules are applicable to all providers who offer telecommunications exchange service within the state. In conjunction with Rules 2.24 and 2.25 (definitions of "telecommunications exchange service" and "telecommunications provider"), this rule clarifies that the regulations are, intended to apply to all providers of local exchange service.

## **III. DEFINITIONS**

1. As discussed *infra*, substantial disagreement exists between the parties regarding substantive requirements which use terms defined in Rule 2. However, with respect to the definitions themselves, most of the provisions contained in Rule 2 were consensus rules, or, at least, little dispute existed with respect to these terms. We discuss here the rationale for some of the definitions which were not included in the notices of proposed rulemaking or for which some controversy existed among commenting parties.

2. Some of the new definitions (*i.e.*, terms which were not included in the notices of proposed rulemaking) in Attachment A are based upon the Act. These include the terms

"incumbent telecommu-nications provider", "network element", and "rural telecommunica-tions provider."

3. Rule 2.10 defines "incumbent telecommunications provider" in a manner consistent with subsection 251(h)(1) of the Act. In addition, the provisions in Rule 2.10 which describe the circum-stances in which a new entrant may be considered to be an incumbent provider are generally consistent with subsection 251(h)(2).<sup>5</sup> The provision in Rule 2.10 that a new entrant will be considered to be an incumbent after three years from the date of certification, absent specific action by the Commission, is based upon our judg-ment that this is an appropriate requirement for new entrants. Rule 2.10, in conjunction with other rules, will result in asymmetric treatment of incumbents as compared to new entrants. Notably, even before passage of the Act we received comment as to whether incumbents should be treated differently than new entrants. We address this issue infra.

4. With respect to the definition for "network element", Rule 2.13 is identical to the definition set forth in 3(a)(45) of the Act (to be codified at 47 U.S.C. 153(a)(45)). We find this to be appropriate.

5. "Rural telecommunications provider", Rule 2.17, is based upon the provisions of the Act, 3(a)(47) (to be codified at 47 U.S.C. 153(a)(47)), as well as the provisions set forth at subsection 40-15-503(2)(d), C.R.S. In

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<sup>5</sup> This rule was suggested by Staff and the OCC. We note that the three factors which would result in a new entrant being treated like an incumbent are, in Rule 2.10, stated in the disjunctiv

conjunction with Rule 9, rural telecommunications providers will be exempt from many of the interconnection and unbundling requirements established here, absent further action by the Commission.

6. We note that Rule 2 does not incorporate definitions for "loop concentration", "loop distribution", and "loop feeder." Some of the parties (*e.g.*, AT&T and MCI) proposed to define these terms in the rules as part of their position that the loop should be unbundled into a number of components. In Rule 6.2, we list those elements which must be unbundled. Rule 6.2 does not adopt the position of new entrants<sup>6</sup> regarding loop unbundling. Therefore, these definitions are unnecessary. See discussion regarding Rule 6.

7. As noted above, 40-15-503(2)(b) mandates that the Commission adopt interconnection and unbundling rules relating to "essential facilities." The parties disagreed with respect to the definition of this term. USWC argued that an "essential facility" is a feature, function or capability that competitors cannot practically duplicate or obtain from an alternative source, and to which reasonable access is necessary to enable competition.<sup>7</sup> In contrast, parties such as AT&T and MCI suggested that no definition of "essential facilities" is necessary. According to that comment, the Act

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<sup>6</sup> In many instances, the positions of parties seeking to enter the local exchange market petition with incumbent LECs (*e.g.* AT&T, Comptel, ICG, MCI, MFS, and TCI *et al.*) were virtual with respect to many of the rules. This decision, in discussing some of the positions these parties, refers to these parties as "new entrants."

<sup>7</sup> Consistent with this concept of essentiality, USWC's unbundling rule would limit the networks required to be unbundled.

does not limit competitor access to unbundled network elements to "essential facilities" only. AT&T and MCI recommended that, if the Commission adopts a definition of the term, it should be sufficiently broad to include all network elements which the FCC may require to be unbundled.

8. Our adopted rule defines "essential facilities or functions" as those network elements which are required to be unbundled. As indicated in the arguments for or against a particular definition of the term, the significance of the definition is related to the unbundling requirements themselves. As such, our definition, in conjunction with Rule 6, which lists the network elements which must be unbundled, directly resolves the dispute. In addition, the definition of "essential facilities" is potentially related to imputation requirements for incumbent local exchange providers. We address those requirements in Rule 7.6 See discussion *infra*.

#### **IV. INTERCONNECTION--RULE 3**

1. As defined in the rules, interconnection is the process of providing a connecting link between the networks of competing telecommunications providers for the purpose of completing local calls originating on the network of one provider and terminating on the network of another provider. Simply put, interconnection enables the customers of one provider to call customers of another provider. Rule 3 in Attachment A sets forth our approved requirements relating to

interconnection.

2. There was substantial disagreement between the parties regarding certain issues associated with interconnection, including: (1) should the same interconnection requirements apply to incumbents and new entrants alike, or should more stringent requirements be applied to incumbents; (2) at what points should interconnection be compelled; (3) what collocation arrangements should be mandated; (4) what rates, terms, and conditions should apply for interconnection? We discuss these issues here.

#### **A. Applicability of Rule 3**

1. Adopted Rule 3.1 provides that, "All telecommunications providers shall interconnect directly or indirectly with the facilities and equipment of other telecommunications providers" (emphasis added). In addition, Rule 3.4 directs that a telecommunications provider generally (*i.e.*, the rule does not distinguish between incumbents and new entrants) shall allow for physical or virtual collocation of equipment necessary for interconnection at that provider's premises. Some of the parties objected to rules which apply identical interconnection requirements to new entrants and incumbent LECs.

2. Parties such as AT&T, MCI, and MFS argued that the Act imposes different interconnection standards upon incumbent LECs as compared to new entrants. Specifically,

these parties suggested, while the Act requires all providers to interconnect with the facilities of other telecommunications providers ( 251(a)(1)), only incumbent LECs are compelled to provide interconnection at any technically feasible point ( 251(c)(2)). These parties also pointed out that the Act, 251(c)(2)(6), imposes collocation obligations upon incumbents only. According to these parties, Congress acknowledged the monopoly position of the incumbents and the significant market and cost hurdles that new entrants would encounter in competing with incumbent LECs. Thus, it was suggested, imposition of identical interconnection responsibilities upon incumbents and new entrants is directly inconsistent with the Act.

3. Staff, the OCC, USWC, and CITA disputed these arguments. These parties suggested that adoption of identical inter-connection obligations for all providers will foster competition. These parties also submitted that uniform requirements are consistent with the Commission's duty to adopt non-discriminatory interconnection rules. We agree with these positions.

4. First, interconnection by all providers is necessary to enable end-users of one telecommunications provider to complete calls to customers of other providers. The obligation to inter-connect on the part of all providers will advance the goal of promoting competition in the local exchange market. The record does not indicate that imposition of identical interconnection requirements will harm the

ability of new entrants to compete with incumbents. Since, under the Act, even new entrants must inter-connect with other providers, there should be good reason to adopt lesser interconnection standards for new providers. No compelling reason was offered in this proceeding.

5. As for the preemptive effect<sup>8</sup> of the Act on our rules, we disagree with the arguments by the new entrants. Federal law may be found to preempt inconsistent State action, generally, in three ways: (1) Congress may express its intent to preempt State law; (2) preemption may be inferred from a pervasive scheme of federal regulation such that preclusion of State laws on the subject will be assumed; and (3) a State law may be preempted because it conflicts with a federal law. *Grand Junction v. Ute Water Conservancy District*, 900 P.2d 81 (Colo. 1995), *Banner Advertising, Inc. v. People*, 868 P.2d 1077 (Colo. 1994). See also *Cippollone v. Liggett Group, Inc.*, 112 S.Ct. 2608 (1990). None of these circumstances exist here.

6. We note that, while the Act enumerates distinct requirements for new entrants and incumbents, the Act does not specifically command that incumbents and new entrants be treated differently under State regulation. Moreover, the Act's preservation of significant State prerogative in implementation of its purposes (paragraph 0) indicates that Congress has not intended to preempt State regulation simply

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<sup>8</sup> In our view, the numerous arguments in this proceeding that the Act prevents us from adopting rules are preemption arguments.

because that regulation is different. We conclude that our interconnection rule, which treats all providers the same, does not conflict with the purposes of the Act, and, therefore, is not preempted.

### **B. Points of Interconnection**

1. Rule 3.3 declares that telecommunications providers shall allow interconnection, ". . .at any technically feasible point within the provider's network. . . ." The rule is consistent with the directives within 251(c)(2) of the Act. Some of the parties (*e.g.*, AT&T, MCI, USWC) suggested that the rule should specify the permissible points for interconnection as being: a point inside the originating provider's central office; a point outside the originating provider's central office that such provider controls; a point outside the terminating LEC's central office; or, at any point agreed to between the interconnecting providers. As grounds for their recommendation, these parties observed that the FCC will conduct a rulemaking proceeding to determine the points at which it is "technically feasible" to provide interconnection.

Pending that determination, these parties proposed that the rules specify the points listed above.

2. Our decision to direct simply that interconnection occur at any "technically feasible point" is based upon the suggestion of Staff and the OCC. As noted in their comments, the adopted rule is consistent with present

federal law (*i.e.*, the Act). Specifying or restricting the possible points of interconnection as suggested in some of the comments may prove to be too restrictive in the future. Therefore, we accept the recommendation by Staff and the OCC to adopt a standard which is consistent with the Act at this time.

3. USWC and CITA also recommended that the interconnection rules be limited to trunkside interconnection<sup>9</sup> only. That is, USWC and CITA strongly opposed the suggestion that the rule allow for lineside, as well as trunkside, interconnection<sup>10</sup>. According to USWC and CITA: Trunkside interconnection relates to the interconnection of provider-switched networks, and permits the mutual exchange of calls. Lineside interconnection, on the other hand, relates to the connection of dedicated end-user loops to the lineside of a switch, and is essentially an unbundling issue. Lineside interconnection has nothing to do with the interconnection of switched networks, or the exchange of local calls between networks. Therefore, since trunkside and lineside interconnection are fundamentally different, trunkside interconnection only should be addressed in the interconnection rule; lineside interconnection should be addressed in the unbundling regulation.

4. We understand USWC's and CITA's objection (to inclusion of lineside interconnection in the rule) to be

<sup>9</sup> Trunkside interconnection refers to the connection between switches through trunks.

<sup>10</sup> Lineside interconnection generally refers to the connection between a switch and a loop.

premised upon two arguments: (1) the services involved in lineside inter-connection (e.g., unbundled switching ports, loopless exchange service) are not essential elements which should be unbundled; and (2) there is no market demand for the services which could be provided with lineside interconnection.

5. All other parties opposed the position of USWC and CITA. These parties commented that the USWC/CITA position is overly restrictive. According to this comment, competing LECs will require both trunkside and lineside interconnection.

For example, in the event a competitor decides to build its own loop, it may need interconnection on the lineside only. This would enable a provider to connect end-users to their network. A potential effect of the USWC/CITA position, according to the parties, is that competitors may be required to replicate existing network infrastructure. These results, it was asserted, will impair competition in the local exchange market.

6. Since we agree with those parties opposing the USWC/CITA position, the interconnection rule is not limited to trunkside interconnection. We conclude that rejection of the USWC/CITA arguments is consistent with the intent of HB 1335 as well as the Act.

### C. Collocation

1. The notices which initiated this proceeding essentially proposed that only virtual collocation be required. Physical collocation was to be permitted by mutual agreement only. However, the Act mandates that incumbent LECs provide, ". . . physical collocation of equipment necessary for interconnection or access to unbundled network elements. . . ." See 251(c)(6). Although the Act compels incumbent LECs to offer physical collocation, USWC, nevertheless, asserted that it should not be forced to provide the service. USWC argued that the legality of physical collocation is in question<sup>11</sup>, and suggested that the rules continue to mandate virtual collocation, while permitting providers to negotiate for physical collocation. We reject this suggestion.

2. Undoubtedly, Congress was aware of the holdings of the federal courts with respect to the authority of the FCC to order physical collocation at the time of passage of the Act. Comment in this proceeding (*e.g.*, by AT&T) asserted that prior case law regarding physical collocation simply held that the FCC lacked authority to order the service under then existing statutes. Of course, it is not our prerogative to decide upon the constitutionality of 251(c)(6). Based upon the Act, most of the parties recommended that we compel the

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<sup>11</sup> *Bell Atlantic Telephone Co., et. al. v. FCC et. al.*, 24 F.3d 1441 (D.C. Cir. 1994) was cited in this argument.

offering of physical collocation, in addition to virtual collocation. We agree with this comment.

3. Rule 3.4 requires providers to offer physical collocation, except where the Commission determines that the service is not practical for technical reasons or due to space limitations. We find that this requirement will promote competition in the local exchange market, consistent with the intent of HB 1335 while affording a mechanism for an alternative in circumstances where the specific facts compel a different result.

4. USWC also suggested that collocation requirements be limited to equipment needed to terminate calls (e.g., circuit terminating equipment). Notably, USWC interprets the Act's reference to "equipment necessary for interconnection or access to unbundled network elements" as restrictive provisions. We clarify that the rule is not intended to limit collocation in the manner suggested by USWC.<sup>12</sup> We agree with the comments by the new entrants that USWC's proposed limitation upon the type of equipment which may be collocated may substantially impair the ability of new providers to compete. This result would be contrary to HB 1335 and the Act.

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<sup>12</sup> Neither do we interpret the Act in the same manner as USWC.

## **V. INTERCONNECTION RATES, TERMS, AND CONDITIONS**

The rates, terms, and conditions to be established for inter-connection were among the most controversial issues discussed in this docket; little consensus was reached. In part, the parties disagreed regarding issues such as: (1) what pricing methodologies should be used in setting rates; (2) what rates should be established for new entrants; and (3) may rates be set by agreement between providers, or should the tariff process apply? Our disposition of these issues is set forth in Rules 3.3 and 7.1.

### **A. Pricing For Interconnection**

With respect to the issue relating to the rates for interconnection, the primary dispute between the parties concerned the methodology to be employed in setting such rates. Specifically, the new entrants argued that prices be set at Total Service Long Run Incremental Costs ("TSLRIC"). USWC and CITA strongly opposed the use of TSLRIC in this manner, maintaining that rates must be designed to recover some portion of shared and common costs. Staff and the OCC suggested that these rules not specify the ratemaking methodology for interconnection. Instead, Staff and the OCC asserted, the principles set forth in the Commission's Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers, 4 CCR 723-30, ("Costing and Pricing Rules") should control the pricing of these services.

## B. Position of New Entrants

1. The new entrants generally recommended that pricing for interconnection should be set at TSLRIC.<sup>13</sup> According to their arguments: The Commission should set rates at levels which would occur in fully competitive markets. In such a market, prices would naturally move toward incremental cost. The Commission should attempt to replicate the results of a competitive market by setting rates at their economically efficient levels (*i.e.*, their incremental cost). Notably, such prices would be compensatory to incumbent LECs.

2. The new entrants further argued that economic-based pricing is essential if competition in the local exchange market is to succeed. In order to promote an environment which will present consumers with the greatest diversity of pricing plans, calling options, and service features, the new entrants suggested, it is important that the underlying exchange network be available to all retail providers on the same terms, conditions and prices. Since economic (*i.e.*, incremental) cost is the effective price faced by the LEC itself, other providers should also be charged for network components based upon such costs. In short, the new entrants argued that rates for interconnection must be set at TSLRIC in order to promote competition.

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<sup>13</sup> TSLRIC, as defined by some of the parties, is equal to the firm's total cost of producing its services, assuming the service in question is offered, minus the firm's total cost of producing its services excluding the service in question. This definition was taken from Commission's Costing and Pricing Rules.

3. Finally, the new entrants maintained that the Act mandates rates based upon TSLRIC. According to this argument, 252(d)(1) directs that the charge for interconnection and network elements shall be based on cost, and "may include a reasonable profit." TSLRIC pricing already includes a reasonable profit. That is, these parties claimed that a properly performed TSLRIC study is based upon costs and includes a reasonable profit. The new entrants concluded that profits in excess of those included in TSLRIC (e.g., the recovery of contribution for shared or common costs) would result in excessive rates such that competition in the local exchange market would be impractical, and, therefore, would constitute a barrier to entry. As such, these parties claimed that prices in excess of TSLRIC contravene the Act.

### **C. USWC/CITA Position**

1. USWC and CITA emphatically disputed the positions of the new entrants.<sup>14</sup> According to these parties, "cost-based" pricing<sup>15</sup> does not mean that prices should equal costs. In response to the argument that prices in a competitive market would move to TSLRIC, USWC stated that this assertion is based upon "the textbook model of *perfect competition*, where the prices of a *single-product firm* will in

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<sup>14</sup> USWC's proposed pricing rules stated that the prices for interconnection and unbundled elements shall be set to cover TSLRIC, plus a reasonable portion of shared and overhead costs.

<sup>15</sup> Subsection 40-15-503(2)(b)(I), C.R.S. directs that the Commission adopt rules for "cost-based, non-discriminatory carrier interconnection to essential facilities or functions, which shall be nondiscriminatory."

the long-run equal 'marginal costs'. . . ." USWC January 17, 1996 comments, page 28. However, USWC pointed out, multi-product firms such as USWC itself have significant shared and common costs. These costs, which are economic costs of the firm, must be recovered from all services in the aggregate, if it is to remain in business. Thus, while competition may drive prices towards TSLRIC, a multi-product firm can never price its services at TSLRIC, or it would not recover total cost.

2. USWC claimed that prices for all services, including interconnection, must include a markup above incremental costs in order to provide a contribution to shared and overhead costs, and in the case of a rate-of-return regulated firm, to embedded costs as well. If prices for some services do not include a contribution to shared, overhead and embedded costs, these costs would be borne by customers of other services. Interconnection rates set at TSLRIC, according to this contention, will mean that USWC's prices for retail end-user offerings would have to be increased to enable recovery of shared, overhead and embedded costs. Thus, pricing interconnection at TSLRIC would result in a subsidy from USWC's retail customers to new entrants. USWC concluded that this would result in a significant competitive advantage for new entrants, since it would be required to raise retail rates to make-up for the lost contribution.

3. As for the contention that the Act mandates TSLRIC pricing, USWC responded: Section 252(d) requires rates to be

based on costs and "may include a reasonable profit." Although TSLRIC studies include a return component, that component is based on the forward-looking anticipated cost of capital. In addition, those studies include the "return" on investment directly attributable to a particular service only.

A TSLRIC study for network elements would not include any of the joint or shared costs of the network, and thus would not include any return on these elements. For these reasons, USWC claimed, the Act does not require TSLRIC pricing. Furthermore, pricing to recover shared and common costs is consistent with the provisions of the Act.

#### **D. Staff/OCC Position**

Staff and the OCC essentially recommended that the pricing methodology for interconnection *not* be specified in the rules. These parties pointed out that the Commission's Costing and Pricing Rules provide sufficient guidance regarding the pricing of regulated services. Given the existence of those rules, Staff/OCC suggested that it would be inappropriate for the Commission to bind itself to any one particular methodology in this docket. We agree with this recommendation.

#### **E. Adopted Rule**

1. Staff/OCC are correct in observing that the Costing and Pricing Rules address the issue regarding the pricing for interconnection. For example, Rules 4 and 5, 4 CCR 723-30, mandate that TSLRIC as well as fully distributed cost studies be presented at the time of any service rate proposal for either a fully regulated telecommunications service or an emerging competitive service which has been granted relaxed regulatory treatment by the Commission. Rules 4 and 5 also provide that TSLRIC studies will be used to establish price floors. Fully distributed cost studies will be used as one component of the pricing decision.

2. We further note that Rules 4 and 5 contain other guidance regarding the principles and methods by which the rates for interconnection should be set. Given the guidance set forth in the Costing and Pricing Rules we find it unnecessary to accept any of the pricing theories advocated by the parties in this docket. Rule 3.3 in Attachment A reflects our decision. The rule, in part, provides that interconnection rates shall be just, reasonable, and non-discriminatory, and consistent with the Costing and Pricing Rules.

#### **F. Interconnection Rates For New Entrants**

1. The new entrants also suggested that new providers should be permitted to adopt the interconnection rates of the

incumbent LEC. The reasons offered for this proposal were: First, this proposal would streamline the tariff process and establish rates for interconnection more quickly, thus promoting competition in the local exchange market. Second, such a rule would produce uniform rates for all LECs.

2. USWC, Staff, and the OCC resisted the suggestion by the new entrants. In part, these parties pointed out that adoption of the new entrants' proposal amounts to a universal grant of relaxed regulation. That is, under the new entrants' rule, individual providers would be exempted from requirements that they justify their rates to the Commission by submission of appropriate studies. We agree with the statements of USWC, Staff, and the OCC that there is insufficient information in the present docket to grant relaxed regulation to all new entrants. Therefore, Rules 3.3 and 7.1.2 require new entrants to establish interconnection rates through the tariff process.

#### **G. Interconnection Tariffs**

1. Adopted Rule 7.1 requires providers to file tariffs to establish the rates, terms, and conditions for interconnection.<sup>16</sup> Based upon certain provisions in the Act, USWC argued that any rule which mandates the filing of tariffs

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<sup>16</sup> Rule 7 also requires that the rates, terms, and conditions for termination of local traffic, unhandled network elements, and white pages be established through the tariff process.

for interconnection or unbundled network elements has been preempted. Specifically, USWC noted, 252(a)(1) states:  
Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers . . . The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement . . .

Section 252 also establishes a process in which State Commissions may mediate or arbitrate providers' negotiations concerning interconnection or unbundled network elements.

2. USWC argued that tariff requirements directly conflict with the negotiation process established in the Act. Such requirements, USWC claimed, would circumvent and undermine the Act's negotiation process and render "meaningless the provisions of the Act which assign mediator and arbitrator roles to the Commission." USWC February 21, 1996 Comments, page 35. In light of these provisions of the Act, USWC concluded that we are prohibited from adopting a tariff process for interconnection or unbundled services.

3. Other parties, especially Staff and the OCC, disagreed with USWC's assertions. Notably, Staff and the OCC explained that a tariff requirement may be consistent with the negotiation process specified in the Act. According to those comments, certain matters may best be treated in privately-

negotiated agreements. These may include requests for construction of special facilities for inter-connection; requests for unique, non-standard network interconnections; arrangements involving carrier-specific interfaces or protocols; and arrangements involving unique, non-standard operational support systems. On the other hand, Staff and the OCC also suggested that some matters are appropriate for tariffing. Generally, these include rates and charges for interconnection and unbundled network elements, and standard terms and conditions for such services. We agree with those parties who advised us that the Act does not preclude a tariff process.

4. As discussed in the comments of Staff and the OCC, a tariff and a negotiation process may coexist where generally available terms and conditions are set forth in tariffs, and other items are left for private negotiations. We note that one of the purposes of a tariff is to ensure that listed terms and conditions (*e.g.*, rates) are publicly known and generally available to all customers on a uniform, nondiscriminatory basis. We believe that the Act, in its negotiations procedure, also intends this result.

5. Significantly, 252(e)(1) states that any interconnection agreement adopted by negotiation or arbitration must be submitted to the State commission for

approval. Section 252(h) provides that any agreement approved by a State commission shall be made available for public inspection and copying. Pursuant to 252(i), an LEC is required to make available any interconnection, service, or network element provided under an approved agreement to which it is a party to any other requesting provider upon the same terms and conditions as those provided in the agreement. Similarly, Bell Operating Companies, such as USWC, may file with a State commission a statement of the terms and conditions it generally offers within that State to comply with 251.

6. It is apparent to us that the negotiations process specified in the Act is consistent with the basic intent of a tariff requirement: both are designed to ensure the availability of services on a uniform, non-discriminatory basis to all customers. For this reason, we disagree with USWC's contention that any tariff requirement contravenes the Act. The adopted rules, specifically Rule 7, reflect our determination.

7. Additionally, we point out that Rule 8 permits providers to negotiate agreements regarding interconnection, the termination of local traffic, the purchase of any unbundled network element, or publication of a White Pages directory. The rule does direct that such agreements shall

not be inconsistent with specific provisions contained in a provider's currently effective tariff. We find that the Rules' tariff requirements and the provisions regarding negotiated agreements are consistent with the Act. In addition, as noted in the discussion above (paragraph 0), the Act specifically provides that State requirements regarding interconnection and unbundling are permissible. For these reasons, we conclude that the adopted rules relating to the tariff process are appropriate.

#### **VI. COMPENSATION FOR TERMINATING LOCAL TRAFFIC**

Rule 4 sets forth the requirements relating to compensation for terminating local traffic. The parties disagreed on a number of provisions contained in this rule, including: (1) how providers should compensate each other for the termination of calls on each other's networks, by bill and keep<sup>17</sup> or reciprocal compensation<sup>18</sup>; (2) should the rules incorporate a business-residence support charge; (3) what other rate principles should be incorporated in the rule (e.g., setting termination charges equal to access rates, allowance of flat rates)?

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<sup>17</sup> Under a bill and keep arrangement (or mutual traffic exchange), each LEC provider "bills" respective end-user and "keeps" the associated revenue. No compensation changes hands between LECs

<sup>18</sup> Under reciprocal compensation, LECs would compensate each other for the termination of traffic on their networks. Rates and charges would reflect each provider's cost.

## A. Bill and Keep

1. Substantial disagreement existed between the parties regarding the propriety of adopting a bill and keep method. Staff and the OCC recommended use of bill and keep on an interim basis. USWC flatly opposed adoption of the method even on a temporary basis as suggested by Staff and the OCC. Generally, the new entrants recommended use of bill and keep until certain market tests are met. They also opposed the proposal by Staff and the OCC as incorporating an arbitrary time period.

2. USWC, as just noted, was the primary opponent of bill and keep even as an interim measure.<sup>19</sup> According to USWC:

The primary reason for its opposition to the method is that bill and keep does not reflect cost causation, and, therefore, is inconsistent with economically rational pricing. Bill and keep will likely not accurately reflect cost for two reasons.

First, traffic between providers is unlikely to be in balance. Second, it is also unlikely that various providers' cost of terminating traffic will be the same (e.g., the networks of various providers may be different in character

<sup>19</sup> CITA does object to bill and keep as a permanent compensation plan. Apparently, for reasons associated with implementation of reciprocal compensation, CITA recommended that independent telephone companies be permitted to remain under the existing bill and keep arrangement until "decisions could be made regarding cost recovery methods and compensation arrangements." CITA's February 29, 1996 comments, page 4.

depending upon factors such as regions served). If either circumstance occurs, bill and keep would not accurately reflect cost.

3. USWC also argues that, if access rates are different than terminating charges for local traffic, bill and keep would lead to rate arbitrage. That is, there would be an incentive for providers to seek classification of toll traffic as local, in order to avoid access rates.<sup>20</sup>

4. Finally, USWC argued that the Act prohibits adoption of bill and keep. This argument was based upon the provisions of 252(d)(2)(A), which require that each provider recover its transport and termination costs. Since, according to USWC, bill and keep is not reflective of cost causation, it would contravene the Act. USWC, for all these reasons, opposes bill and keep even on an interim basis.

5. In response to argument that LECs are now unable to measure terminating local traffic, USWC represented that it is in the process of developing a mechanism for measuring such calls. USWC stated that this system has already been deployed, or will soon be deployed in areas where it is facing local exchange competition. According to this comment, the cost of the system "is a small part of the overall cost to

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<sup>20</sup> USWC also suggested that we adopt a rule which would set terminating local traffic rates equal to access charges.

provide local interconnection services and would be provided as support for the pricing of local interconnection service in Colorado." USWC February 21, 1996 Comments, page 18.

6. The new entrants primarily argued that bill and keep is appropriate, at least as an interim arrangement, because it will promote competition in the local exchange market. In particular, the method would avoid the measurement and billing costs entailed in a reciprocal compensation scheme, and, as such, would encourage entry into the market. The new entrants also pointed out that the measurement system being implemented by USWC is apparently a work-in-progress. Moreover, since only USWC possesses the system, new entrants would be required to purchase it from USWC at some as-yet-unknown costs. This result, it was suggested, is inconsistent with the intent of HB 1335 to foster competition.

7. The new entrants also argued that, contrary to the contention of USWC, the Act specifically authorizes the use of bill and keep. See 252(d)(2)(B)(i) (specified pricing standards shall not be construed to preclude the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery).

8. The new entrants finally disputed the Staff and OCC proposal which, according to the argument, sets an

arbitrary date for transition to a reciprocal compensation method. AT&T and MCI proposed a "market-based" analysis for such a transition. Under their proposed rule, a permanent local call termination compensation scheme would be established only after an incumbent LEC, has filed TSLRIC studies for the switching, transport and other components used in terminating local calls, has unbundled the facilities or functions identified in the unbundling rule, and has provided true number portability.

9. Generally, Staff and the OCC proposed that bill and keep be utilized until three years after the effective date of the rules, or six months after the implementation of a number portability database, whichever occurs first. This proposal, Staff and the OCC asserted, will provide incentives for providers to obtain approval of appropriate rates and will expedite implementation of local number portability. According to Staff and the OCC, this interim measure would also serve the goal of promoting competition.

10. We accept the Staff/OCC recommendation for the suggested reasons. In addition, some of the arguments made by USWC and the new entrants persuade us to adopt the Staff and OCC proposal. It is apparent that there is presently no proven mechanism readily available to new entrants for measuring terminating local traffic. Thus, the cost of

measurement and billing under a reciprocal compensation arrangement are unknown at the present time. Therefore, we will not accept USWC's position that bill and keep is inappropriate even as an interim measure. As for the arguments relating to the Act, we agree with the new entrants that bill and keep is not prohibited.

11. We also reject the position of the new entrants that bill and keep be approved for some unknown period of time. USWC appears to be correct that bill and keep may not ultimately be reflective of cost causation. As such, we should adopt a rule which will encourage the development and deployment of effective measures to move to reciprocal compensation. We find that the Staff/OCC suggestion is appropriate in view of all these considerations.

## **B. Business/Residence Support Charge**

1. USWC, with the support of CITA, has consistently maintained that the rules should allow for the establishment of a Business/Residence Support Charge. According to USWC, this charge is intended to replace the implicit subsidy from high contribution business customers which will be lost when these customers choose an alternative provider. We note that this proposal is based upon a number of assertions regarding present rates and the future business activities of new entrants. Specifically, the proposal assumes--USWC claimed as much--that current rates for business basic exchange are set at a level far above costs. Next, the USWC contention posits that the high contribution from business subscribers (*i.e.*, the mark-up above cost-of-service for basic business service and optional services purchased by business customers) is used to subsidize residential basic exchange specifically. To the extent new competitors enter the local exchange market, USWC then anticipates, they are likely to serve business exchange customers almost exclusively. USWC concluded that, as it loses business customers and the large contribution from the services these customers purchase, it will lose the subsidy provided to services purchased by residential subscribers.

2. USWC ultimately argued that if it is to be

required to maintain the differential between business and residential local exchange service, it must be permitted to charge a Business/Residence Support Charge to interconnecting local exchange providers. That charge would be assessed either as a flat charge per alternative exchange provider access line, or as a per minute-of-use charge for local calls that another provider delivers to USWC for termination on the USWC network. Additionally, USWC contemplates that the charge would be assessed upon competitors whose ratio of business/residence customers is less than USWC's comparable ratio.

3. This proposal was opposed by all other parties (except for CITA) for various reasons.<sup>21</sup> For example, a number of commenters maintained that a Business/Residence Support Charge would be anti-competitive, inasmuch as it would preserve implicit subsidies in the rates of incumbent LECs. The charge would, in effect, cause new entrants to subsidize incumbent providers. As an anti-competitive measure, the new entrants also claimed, it is prohibited by the Act.

4. Staff and the OCC recommended that we reject both the USWC proposal as well as any proposal which would explicitly proscribe a charge like a Business/Residence

<sup>21</sup> In fact, some of the parties (e.g. AT&T) suggested that we adopt a rule which would prohibit collection of a charge like a Business/Residence Support Charge in the permanent local termination rate.

Support Charge. We agree with their reasoning. The above discussion points out that the justification for the proposal depends upon a finding that residential basic exchange service is being subsidized by business basic exchange. The present record does not support such a finding. In our view, the USWC proposal is essentially a rate-making matter. That is, the necessity for such a charge must be investigated in a ratesetting case, applying appropriate ratemaking principles (e.g., whether considerations regarding universal service justify a Business/Residence Support Charge). It would be inappropriate to approve (or disapprove) such a charge in this rulemaking proceeding. We will decline to do so.

### **C. Termination Rates**

1. Rule 4.6 provides that the rates for terminating local traffic may be usage-based; flat charges based upon, for example, capacity port charges; or some alternative mechanism.

The Commission will examine the rates of individual providers pursuant to the provisions of Rule 7.2 (i.e., through the tariff process).

2. We specifically decline to adopt the proposal by USWC that rates for terminating local traffic be the same as switched access rates. USWC proposed this rate structure, apparently, to preclude rate arbitrage. See discussion *supra*.

Depending upon the level of access rates, such a rate design could be substantially anti-competitive. Moreover, as with other instances in which the parties have urged us to adopt specific ratemaking principles, we conclude that this type of proposal should be investigated in a ratesetting case.

## **VII. OTHER INTERCOMPANY ARRANGEMENTS**

1. Rule 5 sets forth requirements relating to a number of necessary arrangements between competing telecommunications providers. Most of these items were, for the most part, agreed to by the parties. In part, the rule: requires providers to deal with each other in good faith (Rule 5.1); directs providers to offer service in accordance with applicable Commission rules (Rule 5.2); requires all providers to afford reasonable access to poles, ducts, conducts, and rights-of-way (Rule 5.3); compels competitors to offer interconnecting providers with both answer and disconnect supervision as well as all available call detail information necessary to enable proper customer billing (Rule 5.4); requires providers to enter into mutual billing and collection agreements (Rule 5.5); directs that providers offer the interoperability of non-optional operator services between networks (Rule 5.6); commands that providers develop mutually agreeable and reciprocal arrangements for the protection of

customer proprietary network information (Rule 5.7); requires that providers cooperate in development and implementation of procedures for service repair referrals (Rule 5.8); directs that providers offer necessary operational support to enable other providers to offer service consistent with Commission rules (Rule 5.9); and requires providers to make available access to technically-reasonable, non-proprietary signaling protocols used in the routing of traffic.

2. Rule 5.12 sets forth certain directives regarding the provision of a "White pages" directory. Since there was some controversy regarding this issue, we discuss the rationale for the adopted rule here.

### **White Pages**

1. USWC and CITA contended that each local exchange provider should be responsible for assuring that their customers' listings are included in a directory. These parties suggested that directory publishing is a fully competitive activity. As such, they maintained, no provider (e.g., the incumbent LEC) should be responsible for assuring that the listings of customers of other providers appear in a White Pages directory.

2. The new entrants argued that provision of a White Pages directory is necessary in order to promote competition.

That is, these parties claimed that requiring each new entrant to publish a directory would be a significant barrier to entry. Moreover, the parties suggested, adopting a rule which might result in the proliferation of multiple White Pages directories would not be in the public interest. Rather, the parties argued that publication of a single comprehensive directory by the incumbent LECs, the circumstance which exists at the present time, is most appropriate.

3. The new entrants requested that the White Pages directory rule require: (1) that listings for the customers of new providers appear in the incumbent LECs' White Pages directory and in the yellow pages directory for business customers; (2) that new providers have comparably easy-to-find information included in the customer guide pages of the White Pages directory; and (3) that all customers be provided a directory by the incumbent LEC. Finally, the new entrants asserted that incumbent LECs should provide a White Pages directory at no charge to new providers. The new entrants specifically requested that they be provided equal space in the customer call guide pages for free, and that their customers be provided a White Pages directory (by the incumbent LEC) also for free. Apparently, the new entrants believe that publication of a comprehensive White Pages

directory (*i.e.*, a directory which includes the listings of all customers, including those of other providers) has intrinsic value. That value would inure to the incumbent LECs as publishers of the directory and should be considered as in-kind compensation for any costs associated with publication of the directory.

4. Staff and the OCC followed a more moderate approach than the new entrants, USWC and CITA. Staff and the OCC agreed with the new entrants that incumbent LECs should be compelled to provide a comprehensive White Pages directory. In the Staff's and OCC's view, provision of a single White Pages directory to telephone customers is in the public interest. These parties also agreed that imposition of a directory publication requirement upon new entrants would constitute an unreasonable barrier to entry. Consequently, Staff and the OCC supported the principle that, in the absence of Commission action placing responsibility upon another provider, the incumbent LECs should serve as the "provider of last resort" for publication of a White Pages directory. Staff and the OCC, however, would place responsibility for actual delivery of the published directory to end-users upon new entrants (*i.e.*, new providers would be required to deliver the published directory to their own customers). Finally, Staff and the OCC would permit the incumbent LECs to charge

other providers for publication of the White Pages directory.

5. We accept the Staff and OCC position for the reasons stated in their arguments. That position reasonably balances the interests of incumbents and new entrants. Rule 5.12 sets forth the requirements for the White Pages directory. In part, the rule: (1) requires incumbents to "cause"<sup>22</sup> a comprehensive White Pages directory to be published and delivered to new entrants; (2) places responsibility for delivery of the published directory to their own customers upon each provider; (3) places responsibility upon each provider for provision of accurate subscriber listing information (*i.e.*, name, address, and telephone number) to the White Pages provider; (4) requires the White Pages provider to offer premium listings to the customers of competing providers; and (5) requires the White Pages provider to offer space in the customer guide pages of the directory. In addition, the rates, terms, and conditions associated with the transfer of customer listing information, the publication of the White Pages directory, the publication of customer guide information, and the publication of premium listings for the customers of competing carriers, shall be established in filed tariffs. See Rule 7.4.

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<sup>22</sup> The rule does not mandate incumbent LECs to actually publish the directory themselves. The Commission recognizes that, presently, many incumbents contract with third parties for publication of the directory.

## VIII. UNBUNDLING REQUIREMENTS--RULE 6

There was substantial disagreement among the parties concerning unbundling provisions to be included in the rules. Items of controversy included: (1) what network elements should be unbundled; (2) should unbundling mandates apply to all providers or to incumbent LECs only; (3) what rates, terms, and conditions should apply to unbundled services; and (4) what process should apply with respect to implementation of unbundling (*e.g.*, a tariff process)?

### A. Elements to be Unbundled

1. Rule 6.1 and 6.2 require incumbent telecommunications providers to offer access to a number of network elements designated as "essential facilities or functions". These include: loop, local switching; common transport links, dedicated transport links, local and toll tandem switching, operator systems, signaling links, signal transfer points, and access to each service control point via signal transfer points. This list of "essential" network elements which incumbents will be compelled to unbundle was suggested by Staff and the OCC.

2. In recommending the list of services to be unbundled, Staff and the OCC considered technical feasibility,

economic feasibility, and the necessity of the elements to the provision of local exchange service by new entrants. We find these considerations to be appropriate, and, as stated above, agree with the recommendations by Staff and the OCC. Based upon the extensive comment provided in this case, we conclude that the listed elements are reasonably necessary (*i.e.*, essential) to the promotion of competition in the local exchange market, as directed in HB 1335.

3. To one degree or another, virtually all other parties disagreed with the Staff and OCC position. The USWC list of elements subject to unbundling was virtually identical to the Staff's and the OCC's list with one exception. In USWC's view, operator systems are not essential to competition in the local exchange market, inasmuch as these services are already competitive. Therefore, USWC opposed unbundling of operator systems. Other comment, however, suggested that services provided by operator systems (*e.g.*, intercept; operator handled calls such as collect calling, calling card, person-to-person, etc.; busy verification; busy interruption; etc.) are critical to a new entrant's ability to enter the local exchange market. See AT&T January 22, 1996 Comment, pages 14-15. We are persuaded by that comment, and conclude that operator systems should be subject to the rule's unbundling mandate.

4. USWC also expressed concern with designating some elements as "essential," since this designation may require it to impute the charges for those elements into its prices for other services. Notably, Rule 7.6.2 directs that imputation shall be required (*i.e.*, a provider shall impute its charges for unbundled network elements into the rates for its own services) only for elements which are "bottleneck monopoly input(s)". This provision is consistent with the suggestion of a number of the commenting parties. For example, Staff pointed out that an imputation requirement will limit pricing flexibility on the part of incumbent LECs (and the Commission) with respect to retail services. Such a requirement, if not carefully circumscribed, might give new entrants an undeserved competitive advantage. Thus, Staff and other parties recommended that imputation requirements be limited to bottleneck monopoly inputs only.

5. Rule 7.6.2 further provides that the designation of an element as an "essential facility or function" (*i.e.*, inclusion of a network element in Rule 6.2) shall not constitute a conclusive finding that the element is a bottleneck monopoly input. In effect, Rule 7.6.2, leaves open the question regarding imputation requirements for specific unbundled services. We conclude that this question should be

decided in future proceedings (e.g., where specific rates for a provider's unbundled network elements are established).<sup>23</sup>

6. AT&T and MCI supported the Staff and OCC list of unbundled network elements also with one exception. These parties argued that it is essential for the local loop component to be unbundled into three separate elements: loop feeder, loop concentration, and loop distribution. According to this contention, new entrants should have the ability to use only those portions of the loop which are necessary to serve their customers. Therefore, competing providers should have the capability to interconnect with the incumbent LEC at any of the above-specified points (i.e., loop feeder, loop distribution, or loop concentration).

7. Comment by USWC and CITA indicated that it would be difficult to implement unbundling of the loop into feeder and distribution. For example, USWC claimed that existing loop plant is not concisely segmented into "feeder" and "distribution" plant with clearly defined points of interface.

In addition, USWC suggested, the current loop network was not designed with the thought of unbundling in mind, and assumed one provider. According to USWC:

With multiple providers interfacing at points in the loop, new interfaces would have to be developed, so that different providers could interconnect. New security procedures would be needed to assure network integrity . . .

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<sup>23</sup> Rule 7.6.1 also states that imputation shall be required with respect to a provider's price interconnection, the termination of local traffic, and "White Pages" directory listings, in accordance with the Costing and Pricing Rules. We point out that Rule 4(1)(f) of the Costing and Pricing Rules states that cost studies for any service offerings that include, as underlying cost components, any tariffed fully regulated service must impute the tariffed rates as a part of the cost-of-service.

The fact is, unbundling the loop into feeder and distribution cannot be accomplished without significant expenditures to reengineer the way loops are provisioned.

USWC January 17, 1996 Comments, page 60. This comment, at the very least, raises questions regarding the advisability of loop unbundling as advocated by the new entrants. Additionally, 271(c)(2)(B)(iv) of the Act requires unbundling of the loop without any mention of further unbundling of the loop into subparts. At this time we decline to adopt the AT&T/MCI sugges-tion.<sup>24</sup>

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<sup>24</sup> As suggested by Staff and the OCC, we may revisit the list of elements required to undled after the FCC has made its determinations regarding unbundling.

8. Other parties such as MFS and Comptel took greater exception to the Staff and OCC unbundling recommendation. These parties claimed that the proposal is overly restrictive in its unbundling mandate in light of the provisions of the Act. Specifically, these parties argued that the Act's unbundling requirements are not limited to "essential" or "necessary" facilities. See 251(c)(3), 251(d)(2)(B). These parties interpret the Act as directing unbundling in any instance where failure to unbundle would impair a provider's ability to provide the service it seeks to offer. Therefore, it was claimed, the Staff and OCC proposal is inconsistent with the Act.

9. We do not agree with these assertions. Section 251(d)(2) directs that, in determining what network elements should be unbundled, the FCC shall consider: (1) whether access to such network elements as are proprietary in nature is necessary; and (2) whether the failure to provide access to network elements would "impair" the ability of a telecommunications carrier to provide the services it seeks to offer. These provisions indicate, first, that incumbent LECs may not be required to provide unbundled access to proprietary network elements. Second, the FCC's forth-coming regulations will provide access to non-proprietary elements, apparently, only in instances where a provider's ability to offer service would be *impaired* by failure to unbundle. We agree with USWC that this "impairment" standard appears to be similar to the essentiality criterion set forth in HB 1335. In any event, it

is not apparent at this time that our adopted rule and the rationale for the rule are inconsistent with the Act.<sup>25</sup>

#### **B. Applicability of Unbundling Rules**

1. Rule 6.1 requires *incumbent* telecommunications providers to unbundle the facilities or functions listed in the rule. Significantly, the rule does not compel other providers (*i.e.*, providers not classified as "incumbents") to unbundle their networks. According to the definition of "incumbent telecommunications provider" contained in Rule 2.10, all existing LECs (as of February 8, 1996, the effective date of the Act, will be considered as incumbent providers and required to unbundle their networks. However, Rules 2.10 and 6.1, in effect, provide that new entrants shall be considered to be incumbents three years after the date of certification, unless the Commission determines that such designation is not in the public interest. Hence, absent a specific Commission determination to the contrary, a new entrant will be compelled to unbundle its network, in accordance with the rule, three years after the date of its certification. These provisions are based upon the final recommendations of Staff and the OCC regarding the applicability of the unbundling mandates. The new entrants and the incumbent LECs (*i.e.*, USWC and independent telephone companies represented by CITA) emphatically disputed these

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<sup>25</sup> As previously stated, we may revisit the rules after the FCC adopts implementing regulations under the Act.

recommendations for vastly different reasons.

2. The new entrants opposed the temporary exemption from unbundling requirements proposed by Staff and the OCC. Instead, these parties maintained that new providers should be flatly exempted from the Rules' unbundling requirements without limitation. TCI *et al.* suggested that the exemption for new entrants continue until the incumbent LECs are no longer the dominant providers in the local exchange market. At this point, the entire industry should be deregulated. Thus, in the contemplation of TCI *et al.*, new entrants would never be compelled to offer unbundled network elements to their competitors. Other parties such as MFS and Comptel apparently intend that this issue (*i.e.*, the necessity for new entrants to unbundle their networks) be determined by the FCC pursuant to the provisions of 251(h)(2).<sup>26</sup>

3. As grounds for their positions, the new entrants argued: Significant policy reasons exist for not requiring new entrants to unbundle their networks. For example, TCI *et al.* stated that an unbundling mandate for new entrants would:

- extinguish any incentive for new providers to invest in or develop new infrastructure;
- deter entry into the market on the part of facilities-based carriers;
- eliminate incentives for providers to upgrade or expand their networks;
- in the case of cable system operators,

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<sup>26</sup> Those provisions empower the FCC to provide for the treatment of a new entrant as an incumbent specified circumstances. Those circumstances are: (1) the new entrant occupies a position market for telephone exchange service within an area that is comparable to the position occupied by an incumbent LEC; (2) such carrier has substantially replaced an incumbent LEC; and (3) such treatment is consistent with the public interest, convenience, and necessity.

negatively impact their technical ability to provide their core cable television business.

These results would follow under an unbundling requirement, TCI *et al.* argued, since competitors would have nearly immediate access to the network of a new entrant.

4. The new entrants also contended that HB 1335 and the Act prohibit application of an unbundling rule to new entrants. With respect to the provisions of HB 1335, TCI *et al.* asserted that subsection 40-15-503(2)(b) directs the Commission to establish rules for the unbundling of "essential" facilities. TCI *et al.* suggested that the term "essential" refers to the bottleneck facilities owned by incumbent LECs which are monopolies, or, at least, the overwhelmingly dominant providers in the market.

5. As for the provisions of the Act, the new entrants claimed that it also prohibits us from applying an unbundling requirement to new providers. These parties first argued that such a rule would constitute a barrier to entry (*i.e.*, potential facilities-based providers would not enter the market for fear of having to afford access to their networks to competitors) in contravention of 253. Second, the new entrants suggested that the Act (*i.e.*, 251(a-b)) intends that unbundling mandates apply to incumbents only. Given that intention, it was asserted, the Commission is precluded from adopting unbundling rules which treat new entrants and incumbents equally.

6. The new entrants specifically opposed the Staff and OCC recommendation to exempt new providers from the

unbundling rule for three years (absent further directives from the Commission). Besides contravening the Act and HB 1335, the parties alleged, this proposal constitutes an arbitrary determination as to when new entrants will be compelled to unbundle their networks. TCI *et al.* reasoned that the imposition of unbundling mandates on new entrants would be appropriate only when those providers possess a substantial share of the local exchange market and the incumbent LECs are no longer dominant providers. Finally, it was suggested that the Staff and OCC rule usurps the authority of the FCC to determine when new providers shall be treated as incumbents. See 251(h)(2).

7. USWC and CITA disputed the arguments by the new entrants. These parties argued that the pro-competition policies expressed in HB 1335 necessitate application of unbundling requirements to all providers equally. Specifically, USWC and CITA claimed: It is in the interests of consumers that all local exchange providers unbundle their networks. Such unbundling would assure choices (both in quality and price) for providers seeking to purchase unbundled elements resulting in lower prices to end-users. In addition, a uniform unbundling mandate would impose the same cost requirements on providers, forcing them to be more efficient, again resulting in lower prices to consumers.

8. USWC and CITA further argued: The TCI *et al.* claim that unequal unbundling requirements should be approved in order to encourage new investment is invalid. Notably,

TCI's Colorado network already is as extensive in the urban areas of the State as is USWC's network. Other potential competitors already have facilities-based networks in the regions of the State where competition is likely to occur (e.g., the Denver metro area). Thus, there is no justification for limiting unbundling to incumbent providers. Finally, USWC and CITA observed that, although the Act directs only incumbents to unbundle, it does not specifically preclude State commissions from adopting rules which would also require new entrants to unbundle their networks.

9. As noted above, we accept the Staff's and OCC's recommendation for a temporary unbundling exemption for new entrants. Staff and the OCC reasoned that a three-year period of time would give new entrants an opportunity to establish a market presence. In addition, eventual unbundling will serve to enhance competition. Their proposal also permits a new provider to further defer unbundling if it is able to demonstrate to the Commission that such action is in the public interest. We agree with this proposal and the Staff's and OCC's rationale.

10. We also agree, with USWC and CITA to the extent they point out that some of the likely competitors in the local exchange market (e.g., TCI, AT&T, MCI, etc.) already have facilities in place. Moreover, we observe that the willingness of new entrants to construct new facilities will, in addition to unbundling requirements, depend on other factors such as the rates eventually set for unbundled network

elements. Therefore, TCI *et al.*'s arguments regarding disincentives to new investment as a result of unbundling are not totally persuasive. TCI *et al.* further claimed that the lack of an unbundling requirement for new entrants would actually encourage them to undertake new investment in their network. It is less than clear that such a result will follow. For example, it is possible that providers would forego new investment if they could continue to obtain network elements from incumbent LECs.

11. We do agree with the new entrants that, in light of the currently dominant market position of the incumbent LECs, it is appropriate to apply the unbundling rule to the incumbents only. Since this disparate treatment may result in less choice for providers, as argued by USWC, that dissimilar treatment should be limited. Generally, we find that the Staff's and OCC's approach reasonably balances all interests herein. That approach will also permit new entrants to further defer unbundling of their networks if the public interest requires it.

12. Finally, we note our disagreement with the arguments that the adopted rule is inconsistent with the Act. The provisions cited by the new entrants do not expressly prohibit States from requiring new entrants to unbundle. The discussion above also explains that the States retain extensive authority to regulate upon matters relating to unbundling. See paragraph 0

### **C. Pricing and Tariffing For Unbundled Elements**

The parties substantially disagreed with respect to pricing and tariffing of unbundled network elements. The issues here are identical to those relating to the pricing and tariffing for interconnection. See discussion above, paragraphs 0. through 0. Our holding here is identical. Briefly, Rule 7.3 requires providers, who are required to unbundle, to file tariffs. We find a tariff process to be appropriate for the purpose of establishing rates, terms, and conditions for unbundled network elements. We reject any argument that the Act prohibits any tariff requirements. In addition, the rates for unbundled elements will be set in accordance with the directives contained in Rule 7.5.

### **IX. CONCLUSION**

The rules attached to this decision as Attachment A will be adopted (subject to applications for rehearing, reargument, or reconsideration). After consideration of the extensive comment filed in this proceeding, we find that the adopted rules are consistent with the legislative directives set forth in HB 1335.

**X. ORDER**

**A. The Commission Orders That:**

1. The rules attached to this decision as Attachment A are hereby adopted. This order adopting the attached rules shall become final 20 days following the mailed date of this decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this decision is timely filed, this order of adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

2. Within 20 days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register* along with the opinion of the Attorney General regarding the legality of the rules.

3. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion by the Attorney General.

4. The 20-day period provided for in 40-6-114(1), C.R.S, within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the mailed date of this decision.

5. This Order is effective upon its Mailed Date.

B. ADOPTED IN SPECIAL OPEN MEETING March 29, 1996.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\_\_\_\_Commissioners

THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF COLORADO  
  
RULES ON  
INTERCONNECTION AND UNBUNDLING

4 CCR 723-39

**BASIS, PURPOSE, AND STATUTORY AUTHORITY.**

The basis and purpose of these rules is to prescribe the provision of nondiscriminatory access to, and interconnection with, the facilities of the telecommunications providers' networks to any other telecommunications provider offering or seeking to offer telecommunications products or services to the public. These rules also provide for the unbundling of certain telecommunications providers' networks. These rules provide an environment that will actively promote the competitive nature of the telecommunications industry, increase the affordability of telecommunications services, encourage technological advancements, and expand customer choices in the marketplace.

These rules are clear and simple. They can be understood by persons or entities expected to comply with them. They do not conflict with any other provision of law. There are no duplicating or overlapping rules.

These rules are issued pursuant to 40-15-501, *et seq.* and 40-2-108, C.R.S.

**RULE 4 CCR 723-39-1. APPLICABILITY.**

These rules are applicable to all certified telecommunications providers that provide telecommunications exchange service in the state of Colorado.

**RULE 4 CCR 723-39-2. DEFINITIONS.**

The meaning of terms used within these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. As used in these rules, unless context indicates otherwise, the following definitions shall apply:

723-39-2.1 Collocation (physical and virtual): Physical collocation occurs when one telecommunications provider owns interconnection facilities physically located within another telecommunications provider's physical premises. Virtual collocation occurs when one telecommunications provider extends its facilities to a point of interconnection within a reasonably close proximity to, but not physically located within, another telecommunications provider's physical premises. In virtual collocation, the provider requesting collocation ("lessee") may request the type of equipment to be used from another provider who owns the space ("lessor"). In such case, the lessee may own, or lease and maintain the equipment.

723-39-2.2 Common transport link: A communications path (1) used by multiple customers and (2) containing one or more circuits connecting two switching systems in a network.

723-39-2.3 Customer: A person, including a telecommunications provider, who purchases a telecommunications service from a telecommunications provider.

723-39-2.4 Customer network interface: The facilities on or near the customer's premises which allow the customer to interface with the network.

723-39-2.5 Dedicated transport link: A communications path (1) used by one customer and (2) containing one or more circuits connecting two switching systems in a network.

723-39-2.6 Dial tone: An audible tone sent from an automatic switching system to a customer to indicate that the network is ready to receive dial signals.

723-39-2.7 End-user: A person, other than a telecommunication provider, who

purchases a telecommunications service from a telecommunications provider.

723-39-2.8 Essential facilities or functions: Those network elements which a telecommunications provider is required to offer on an unbundled basis.

723-39-2.9 Exchange access: The offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

723-39-2.10 Incumbent telecommunications provider: A telecommunications provider that on February 8, 1996, provided telephone exchange service in Colorado and either (a) on such date was a member of the exchange carrier association or (b) is a person or entity that became a successor or assign of a member described in clause (a). If a provider has held a Certificate of Public Convenience and Necessity to offer local exchange service in Colorado for three years, such provider shall be considered an incumbent unless the Commission determines that such designation is not in the public interest. A telecommunications provider may also be considered an incumbent telecommunication provider if: (a) such provider occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a provider described above; (b) such provider has substantially replaced an incumbent telecommunication provider described above; or, (c) the Commission determines that such designation is in the public interest.

723-39-2.11 Interconnection: The process of providing a seamless connecting link between competing networks for the completion of local traffic that originates in the network of one telecommunications provider and terminates in the network of another telecommunications provider.

723-39-2.12 Loop: The facilities which connect a customer network interface to a main distribution frame, or its equivalent.

723-39-2.13 Network element: A facility or 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.

723-39-2.14 Operational support: A mechanism to facilitate the provision of local exchange services, including but not limited to the taking of service and repair orders, and the exchange of billing data and customer account data in a manner consistent with Federal and Colorado law, through the mutual exchange of information between telecommunications providers. This information may be exchanged in a variety of ways which may include, but are not limited to, electronic interfaces, technical interfaces, or access to databases.

723-39-2.15 Operator systems: Systems that provide for live or mechanized operator functions that assist end-users with call completion and directory assistance.

723-39-2.16 Originating provider: The telecommunications provider that serves the end-user who originates a local call.

723-39-2.17 Rural telecommunications provider: A telecommunications provider which:

- (1) serves only rural exchanges of ten thousand or fewer access lines;
- (2) provides common carrier service to any local exchange carrier study area that does not include either: (a) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or, (b) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- (3) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- (4) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- (5) had less than 15 percent of its access lines in communities of

more than 50,000 on February 8, 1996.

723-39-2.18 Service control point (SCP): A node in the signaling network to which informational requests for service handling (for example, routing) are directed and processed. The SCP contains both the service logic and the customer specific information necessary to process individual requests.

723-39-2.19 Signal transfer point (STP): A facility which provides the function of connecting signal links in order to transfer appropriate signals from and between the various elements of a signaling network.

723-39-2.20 Signaling links: Transmission facilities in a signaling network which carry all out-of-band signaling traffic between the end office and signal transfer point, the tandem office and signal transfer point, the signal transfer point and service control point, and the signal transfer point and another signal transfer point.

723-39-2.21 Switch: A facility that provides the functionalities required to connect appropriate lines or trunks to a desired communications transmission path. These functionalities may include, but are not limited to: (1) recognizing service requests, (2) obtaining required call specific information, (3) data analysis, (4) route selection, (5) call completion or hand-off, (6) testing, (7) recording, and (8) signaling.

723-39-2.22 Tandem switch: A facility that provides the function of connecting trunks to trunks for the purpose of completing inter-switch calls.

723-39-2.23 Telecommunications: The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

723-39-2.24 Telecommunications exchange service: The service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

723-39-2.25 Telecommunications provider: Any provider of telecommunications

exchange services.

723-39-2.26 Telecommunications service: The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

723-39-2.27 Terminating provider: The telecommunications provider that serves the end-user who receives a local call.

723-39-2.28 Unbundling: The disaggregation of facilities and functions into multiple basic network products or services so they can be separately offered to other telecommunications providers in a manner that allows requesting providers to combine such elements in order to provide telecommunications services.

**RULE 4 CCR 723-39-3. INTERCONNECTION.**

723-39-3.1 All telecommunications providers shall interconnect directly or indirectly with the facilities and equipment of other telecommunications providers.

723-39-3.2 All telecommunications providers shall provide dialing parity to competing providers of telephone exchange service and telephone toll service, and shall permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

723-39-3.3 Telecommunications providers shall provide for the interconnection with the facilities and equipment of any requesting telecommunications provider:

723-39-3.3.1 for the transmission and routing of telephone exchange service and exchange access;

723-39-3.3.2 at any technically feasible point within the provider's network;

723-39-3.3.3 that is at least equal in quality to that provided by

the provider to itself or to any subsidiary, affiliate, or any other party to which the provider interconnects; and,

723-39-3.3.4 (1) at rates, terms, and conditions that are just, reasonable, and nondiscriminatory; (2) in accordance with the rates, terms, and conditions established by the provider pursuant to contract, arbitration, or tariff; and, (3) consistent with the Commission's Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers (4 CCR 723-30).

723-39-3.4 Collocation: A telecommunications provider shall provide, pursuant to rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for the physical collocation of equipment necessary for interconnection or access to unbundled network elements at the telecommunications provider's premises. A telecommunications provider may provide virtual collocation if the Commission determines that physical collocation is not practical for technical reasons or because of space limitations.

723-39-3.5 Each telecommunications provider shall be responsible for constructing and maintaining the facilities on its side of the point of interconnection unless the interconnecting providers agree to some other arrangement.

723-39-3.6 Each telecommunications provider shall construct and maintain its interconnection facilities in accordance with accepted telecommunications engineering standards and practices. Each terminating provider will make available to all originating providers all technical references to documents that provide the technical specifications of the terminating provider's interconnection interfaces. In no event shall a telecommunications provider construct or maintain its interconnection facilities under terms and conditions different from the terms and conditions the provider offers to itself, its affiliates, or another telecommunications provider.

723-39-3.7 The Commission's quality of service rules at 4 CCR 723-2 shall

apply to the provision of interconnection facilities.

723-39-3.8 Terminating telecommunications providers shall make all required interconnection facilities available within 90 days of a *bona fide* written request. No unreasonable refusal or delay, or discriminatory provision of service by a terminating provider shall be allowed.

**RULE 4 CCR 723-39-4.            COMPENSATION FOR TERMINATING LOCAL TRAFFIC.**

723-39-4.1 For purposes of this rule, local calls originate at the customer network interface of the calling party's provider and terminate at the customer network interface of the called party's provider.

723-39-4.2 Except as provided in Rule 4.8, a terminating provider may charge the originating provider a termination fee for all local calls which originate on the originating provider's network and terminate on the terminating provider's network.

723-39-4.3 The termination fee shall be based on the costs associated with each network element (1) on the terminating provider's side of the point of interconnection and (2) used by the terminating provider to terminate the call.

723-39-4.4 If the originating provider is (1) interconnected to the terminating provider through the purchase of one or more unbundled elements owned by the terminating provider or a third provider or (2) uses one or more unbundled elements owned by a the terminating provider or a third provider to originate the call:

723-39-4.4.1            The terminating provider shall charge the originating provider a termination fee in accordance with this rule, and

723-39-4.4.2            The provider of the unbundled elements shall charge the originating provider for the use of the unbundled elements.

723-39-4.5 If the terminating provider is: (1) interconnected to the originating provider through the purchase of one or more unbundled elements owned by the originating provider or a third provider; or, (2) uses one or more unbundled elements owned by a third provider to terminate the call:

723-39-4.5.1 The terminating provider shall charge the originating provider a termination fee in accordance with this rule, and

723-39-4.5.2 The provider of the unbundled elements shall charge the terminating provider for the use of the unbundled elements.

723-39-4.6 The termination fee, subject to Commission approval, may reflect either: (1) a usage-sensitive charge based on, for example, distance, duration, or time of day; (2) a flat charge based on, for example, capacity port charges reflecting either the trunk group size or the peak-use of interconnecting capacity; or, (3) any combination thereof or alternative mechanism.

723-39-4.7 To the extent Extended Area Service (EAS) agreements in existence on the effective date of these rules, conflict with this rule, the agreements must be modified to conform with the provisions of this Rule 4.

723-39-4.8 Until either (1) three years after the effective date of these rules or (2) six months after the implementation of a number portability database as contemplated in Rule 5, 4 CCR 723-34 (Rules on Local Number Portability and Administration), whichever occurs first, a terminating provider shall recover its costs associated with terminating local traffic through the offsetting of its reciprocal obligations with the originating providers. During this period, terminating and originating providers shall waive mutual recovery.

723-39-4.8.1 The terminating provider's costs associated with the termination of local calls may be recovered, as approved by the Commission, in the rates the terminating provider charges for services provided to its customers.

723-39-4.8.2 If the terminating provider provides the originating provider with dial tone, the terminating provider may charge the originating provider with the use of unbundled local switching for the generation of dial tone when the terminating provider terminates calls from the originating provider on the terminating provider's network.

**RULE 4 CCR 723-39-5. OTHER INTERCOMPANY ARRANGEMENTS.**

723-39-5.1 Telecommunications providers shall deal with other telecommunications providers in a good faith and cooperative manner.

723-39-5.2 All telecommunications providers are obligated to serve their customers in accordance with the Commission's rules.

723-39-5.3 All telecommunications providers shall provide reasonable access to poles, ducts, conduits, and rights-of-way when feasible and when access is necessary for other telecommunications providers to provide service. Upon application by a telecommunications provider, the Commission shall determine any matters concerning reasonable access to poles, ducts, conduits, and rights-of-way upon which agreement cannot be reached, including but not limited to, matters regarding valuations, space, and capacity restraints, and compensation for access.

723-39-5.4 Telecommunications providers shall provide interconnecting telecommunications providers with both answer and disconnect supervision as well as all available call detail information necessary to enable proper customer billing.

723-39-5.5 Telecommunications providers shall be required to enter into mutual billing and collection agreements so that each telecommunications provider can accept other service provider telephone line number and other nonproprietary calling cards and can bill collect or third party calls to a number served by another provider.

723-39-5.6 Telecommunications providers shall offer the interoperability of nonoptional operator services between networks including, but not limited to, the ability of operators on each network to perform such operator functions as completing collect calls, third party calls, busy line verification calls, and busy line interrupt.

723-39-5.7 Telecommunications providers shall develop mutually agreeable and reciprocal arrangements for the protection of their respective customer

proprietary network information.

723-39-5.8 Telecommunications providers shall cooperate in developing and implementing procedures for repair service referrals so that trouble reports are directed to the correct provider or providers.

723-39-5.9 Each telecommunications provider shall offer, in a nondiscriminatory manner pursuant to contract or tariff, the necessary operational support to enable other certified telecommunications providers the opportunity to provide their customers quality of service as is available to the telecommunications provider's customers, consistent with 4 CCR 723-2 (Rules Regulating Telecommunications Service Providers and Telephone Utilities). Such contracts or tariffs shall be approved by the Commission and available for review pursuant to Commission order.

723-39-5.10 Telecommunications providers shall make available access to technically reasonable, non-proprietary, as determined by the Commission, signaling protocols used in the routing of local and interexchange traffic; including signaling protocols used in the query of call processing databases such as 800 Database Service, Alternate Billing Service (ABS), and Line Information Data Base (LIDB); and shall make available the signaling resources and information necessary for the routing of local and interexchange traffic.

723-39-5.11 Telecommunications providers shall be prohibited from interfering with the transmission of signaling information between customers and other telecommunications providers in a manner that is injurious to network integrity or that results in fraud. This shall not preclude a telecommunications provider from blocking specific signaling information to the extent required by the end-user's service (e.g., CLASS services).

723-39-5.12 White Pages.

723-39-5.12.1 Each telecommunications provider certified before February 8, 1996 ("White Pages provider"), shall cause the customer information (i.e. name, address, and telephone number) of all customers within the local calling area served by the provider regardless of whether the customer

subscribes to the telecommunications services of that particular provider, to be published in a "White Pages" telephone directory. Upon Commission approval, a different telecommunications provider may assume the responsibilities identified in this rule.

723-39-5.12.2 Each "White Pages" provider shall cause each competing provider to receive one "White Pages" telephone directory for each access line the competing provider serves in the "White Pages" provider's operating area.

723-39-5.12.3 Each competing telecommunications provider shall, in turn, cause a "White Pages" telephone directory to be delivered to each of its customers (one directory per access line purchased).

723-39-5.12.4 Each telecommunications provider shall be responsible to provide to the "White Pages" provider the information required to adequately list all subscriber's information (i.e. name, address, and telephone number) in the "White Pages" telephone directory. This information will be provided in a mutually agreeable format.

723-39-5.12.5 Each "White Pages" provider shall offer premium listings in its "White Pages" telephone directory to competing telecommunications providers' subscribers.

723-39-5.12.6 Each "White Pages" provider shall provide competing telecommunications providers space in the customer guide pages of the "White Pages" telephone directory for the purpose of notifying customers how to reach competing providers to: (1) request service; (2) contact repair service; (3) dial directory assistance; (4) reach an account representative; (5) request buried cable local service; and, (6) contact the special needs center for customers with disabilities.

723-39-5.12.7 All parties involved shall abide by the Commission's rules on privacy and the handling of customer proprietary network information.

**RULE 4 CCR 723-39-6. UNBUNDLING.**

723-39-6.1 Each incumbent telecommunications provider shall provide, to any requesting telecommunications provider for the provision of a telecommunications service, nondiscriminatory access to essential facilities or functions. An incumbent telecommunications provider shall provide such unbundled essential facilities or functions in a manner that allows requesting providers to combine such facilities or functions in order to provide such telecommunications service.

723-39-6.2 The following network elements are essential facilities or functions:

- 723-39-6.2.1 Loop;
- 723-39-6.2.2 Local Switching;
- 723-39-6.2.3 Common Transport Links;
- 723-39-6.2.4 Dedicated Transport Links;
- 723-39-6.2.5 Local and Toll Tandem Switching;
- 723-39-6.2.6 Operator Systems;
- 723-39-6.2.7 Signaling Links;
- 723-39-6.2.8 Signal Transfer Points; and
- 723-39-6.2.9 Access to each Service Control Point via Signal

Transfer Points.

723-39-6.3 Notwithstanding Rule 6.1 and 6.2, incumbent telecommunications providers are not required to unbundle an element that the provider: (1) does not offer customers as part of a bundled service; or, (2) exclusively offers the element as part of a bundled service through buying the element from another provider and reselling it.

723-39-6.4 A facilities-based telecommunications provider that provides the sole loop to a customer's premises shall offer that loop as an unbundled network element. For purposes of this rule, an alternate provider's loop need not be in actual use to be considered a second loop to a customer premises.

723-39-6.5 A detailed record of all requests for unbundling shall be

maintained by the providers requesting such unbundling and filed quarterly with the Commission. This information shall contain the name of the requesting person, the date of the request, the specific type of unbundling requested, the provider's planned and actual response date, and the provider's response.

**RULE 4 CCR 723-39-7. PROCESS AND IMPUTATION.**

723-39-7.1 Interconnection.

723-39-7.1.1 Except as provided in Rule 9 below, on the first day after the effective date of these rules, each incumbent telecommunication provider shall file with the Commission tariffs effective on thirty days notice that establish rates, terms, and conditions for interconnection.

723-39-7.1.2 Within thirty days after receiving operating authority, each telecommunications provider certified after the effective date of these rules shall file with the Commission tariffs effective on thirty days notice or, if applicable, price lists, that establish rates, terms, and conditions for interconnection.

723-39-7.2 Termination of Local Traffic.

723-39-7.2.1 Except as provided in Rule 9 below, pursuant to Rule 4.8, each telecommunications provider shall, on the first day after the time period identified in Rule 4.8, file with the Commission tariffs effective on thirty days notice that establish rates, terms, and conditions for the termination of local exchange traffic.

723-39-7.2.2 Within thirty days after receiving operating authority, each telecommunications provider certified after the period identified in Rule 4.8 concludes shall file tariffs effective on thirty days notice or, if applicable, price lists, with the Commission establishing rates, terms, and conditions for the termination of local exchange traffic.

723-39-7.3 Unbundling.

723-39-7.3.1 Except as provided in Rule 9 below, within 30 days after the effective date of these rules, each incumbent telecommunication

provider shall file with the Commission tariffs effective on thirty days notice that establish rates, terms, and conditions for the sale of unbundled network elements.

723-39-7.3.2 Within thirty days after designation as an incumbent provider, each telecommunications provider certified after the effective date of these rules shall file with the Commission tariffs effective on thirty days notice or, if applicable, price lists, that establish rates, terms, and conditions for the sale of unbundled network elements.

723-39-7.4 White Pages.

723-39-7.4.1 Except as provided in Rule 9 below, each "White Pages" provider shall file with the Commission "White Pages" telephone directory tariffs within 30 days of a competing telecommunications provider receipt of operating authority within the provider's operating area. Such tariffs shall establish the rates, terms, and conditions for the transfer of customer information, the publication of "White Pages" telephone directories for the competing provider, the publication of customer guide information for the competing provider, and the publication of premium directory listings for the competing provider's customers.

723-39-7.4.2 When determining the just and reasonable rate the "White Pages" provider may charge a competing telecommunications provider, the Commission may consider, where applicable, the compensation arrangement that the "White Pages" provider has with its publisher.

723-39-7.5 Tariffs. Each tariff filed pursuant to this Rule 7 shall be reviewed by the Commission on a case-by-case basis. The telecommunications provider filing the tariff shall have the burden of proving that any proposed rates, terms, or conditions are consistent with the following:

723-39-7.5.1 Rates shall be cost-based, just, and reasonable, and may include a reasonable profit;

723-39-7.5.2 Rates, terms, and conditions shall be nondiscriminatory and competitively neutral;

723-39-7.5.3 Rates, terms, and conditions shall be established to promote a competitive telecommunications marketplace while protecting and maintaining the wide availability of high quality telecommunications service; and,

723-39-7.5.4 Rates shall be designed so that products and services that have been specifically deregulated by statute, rule, or Commission order are not subsidized by products or services that are subject to regulation by the Commission.

723-39-7.6 Imputation.

723-39-7.6.1 As applicable, each telecommunications provider shall impute its rates for interconnection, the termination of local traffic, unbundled network elements, and "White Pages" directory listings into the rates of its own services in accordance with 4 CCR 723-30 (Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers).

723-39-7.6.2 With respect to imputation associated with the rates for unbundled network elements, imputation shall only be required to the extent the unbundled network element is a bottleneck monopoly input. The fact that an element is defined as an essential facility or function is not conclusive evidence that it is or is not a bottleneck monopoly input.

**RULE 4 CCR 723-39-8. NEGOTIATION, MEDIATION, AND ARBITRATION.**

723-39-8.1 Nothing in Rule 7 shall be construed to limit a telecommunications provider's ability to reach a negotiated, mediated, or arbitrated agreement with respect to the rates, terms, and conditions associated with interconnection, the termination of local traffic, the purchase of an unbundled network element, or publication of a "White Pages" directory. Such agreements shall not be inconsistent with the rates, terms, or conditions contained in a telecommunications provider's currently effective tariff, and will be processed according to the applicable Commission Rules of Practice and

Procedure.

723-39-8.2 All agreements for interconnection, the termination of local traffic, the purchase of an unbundled network element, or publication of a "White Pages" directory shall be submitted to the Commission for approval and will be processed according to the applicable Rules of Practice and Procedure.

**RULE 4 CCR 723-39-9. EXEMPTION FOR RURAL TELECOMMUNICATIONS PROVIDERS.**

723-39-9.1 Rules 3, 4, 5.4 through 5.10, 5.12, 6, 7, and 8 shall not apply to rural telecommunications providers until: (1) such company has received a *bona fide* request for interconnection, the termination of local traffic, the purchase of an unbundled network element, or publication of a "White Pages" directory; and, (2) such request is deemed by the Commission to be technically feasible and not unduly economically burdensome.

723-39-9.2 A telecommunications provider making such a *bona fide* request shall submit a notice of its request to this Commission.

723-39-9.2.1 The Commission shall conduct a hearing for the purpose of determining whether to terminate the rural telecommunications provider's exemption under 9.1.

723-39-9.2.2 The Commission shall determine within 120 days after it receives notice of the request that such termination of the exemption is technically feasible, is not unduly economically burdensome, and is consistent with the state and federal universal service requirements.

723-39-9.2.3 Upon termination of an exemption, the Commission shall establish an implementation schedule for compliance with the request.

723-39-9.3 A rural telecommunications provider with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide may file an application with the Commission for a suspension, modification, or for the specific exemption pursuant to this Rule 9 of certain telephone exchange service facilities specified in such application. The Commission may grant such application to the extent it is necessary and for such duration, as it

determines:

723-39-9.3.1 (1) to avoid a significant adverse economic impact on users of telecommunications services generally; (2) to avoid imposing a requirement that is unduly economically burdensome; or, (3) to avoid imposing a requirement that is technically unfeasible; and

723-39-9.3.2 is consistent with the public interest, convenience, and necessity.

723-39-9.4 The Commission shall act upon such application filed pursuant to Rule 9.3 within 180 days after its receipt. Pending such action, the Commission may suspend enforcement of the requirement or requirements to which the application applies with respect to the provider or providers filing such application.

**RULE 4 CCR 723-39-10. DISPUTE RESOLUTION. At any time when a disagreement arises between providers regarding the provision of interconnection or unbundling under these rules, either party may file a complaint with the Commission.**

**RULE 4 CCR 723-39-11. VARIANCE OR WAIVER. The Commission may permit a variance or waiver from these rules, if not contrary to law, for good cause shown where compliance is impracticable, impossible, or unreasonable.**