

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE INTERCON-)
NECTION CONTRACT NEGOTIATIONS)
BETWEEN AT&T COMMUNICATIONS OF) DOCKET NO. 96A-345T
THE MOUNTAIN STATES, INC. AND)
U S WEST COMMUNICATIONS, INC.,)
PURSUANT TO 47 U.S.C. SECTION 252.)

DECISION REGARDING PETITION FOR ARBITRATION

Mailed Date: November 29, 1996
Adopted Date: November 27, 1996

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I. BY THE COMMISSION:

A. Statement

1. This matter comes before the Commission for consideration of the Petition for Arbitration filed by AT&T Communications of the Mountain States, Inc. ("AT&T" or "Petitioner"), on July 30, 1996. Pursuant to the provisions of the Telecommunications Act of 1996, Pub. L. No. 104-104,

110 Stat. 70, to be codified at 47 U.S.C., ("Act"), the petition requests that we arbitrate certain unresolved issues between AT&T and U S WEST Communications, Inc. ("USWC" or "Company"), relating to the rates, terms, and conditions for interconnection, unbundling of network elements, and resale of telecommunications services. USWC filed its response to the petition on August 28, 1996. We issued notice of the petition, and interested persons were allowed to intervene including Commission Staff ("Staff"), the Colorado Office of Consumer Counsel, American Communication Services of Colorado Springs, Inc., TCI Telephony Services, Inc., Sprint Communications Company L.P.; MCI Telecommunications Corporation; MCImetro Access Transmission Services, Inc. ("MCI"); and TCI Communications, Inc.

2. Besides AT&T's petition, a number of other telecommunications providers, pursuant to 252, have submitted similar Petitions for Arbitration involving USWC: MFS Communications Company, Inc. ("MFS"), on June 24, 1996; TCG Colorado ("TCG") on July 17, 1996; ICG TELECOM Group, Inc. ("ICG"), on August 2, 1996; and MCI, on August 9, 1996 (collectively ("Petitioners")). We consolidated all these petitions for consideration and hearing in Decision Nos. C96-835, C96-858, and C96-880. Our decision to consolidate was based upon substantial commonality of issues. Furthermore, we

noted that 252(g) specifically permits a State commission to consolidate arbitration proceedings to reduce the administrative burden on the commission and the parties to the proceeding. See Decision No. C96-835.

3. In addition to permitting the parties to submit pre-filed testimony, we conducted hearings in this and the other consolidated requests for arbitration on September 24 through 27, and 30, 1996 and October 1 through 4, 1996. Closing Statements of Position were filed by the parties on October 10, 1996. In part, those statements specified the remaining unresolved issues between Petitioners and USWC. Now being duly advised in the premises, we issue our order regarding the AT&T Petition for Arbitration.

4. As we anticipated in Decision No. C96-835, the consolidated hearings served the purpose of administrative economy and efficiency, inasmuch as the various petitions raised common issues. Nevertheless, we are issuing separate decisions on each petition. We do so as a matter of administrative convenience: The Act requires that we issue written decisions on the MFS and TCG petitions by November 8, 1996; the ICG petition by November 22, 1996; and written decisions are due on the more extensive AT&T and MCI petitions by December 1, 1996 and December 26, 1996 respectively. This process will not prejudice any party. In arriving at our determinations on the issues presented in each petition, we have considered the entirety of the consolidated record to the extent it is relevant to each issue.

B. Statutory Provisions Regarding Competition and Arbitration

1. Generally, the Act opens local exchange markets to competition. It does so, in part, by imposing certain duties upon incumbent local exchange providers ("ILECs") such as USWC. These include the duty to interconnect with the

facilities and equipment of any requesting telecommunications provider; the duty to provide to any requesting provider nondiscriminatory access to network elements on an unbundled basis on rates, terms, and conditions that are just and reasonable; and the duty to offer for resale, at wholesale rates, any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. See 251(c). The Act contemplates that ILECs will provide for interconnection, unbundled network elements, and resale pursuant to binding agreements entered into with new entrants. Such agreements may be arrived at through voluntary negotiations or pursuant to binding arbitration by the State commission. See 252(a-b) and discussion *infra*.

2. To implement the provisions of the Act, the Federal Communications Commission ("FCC") adopted comprehensive rules relating to interconnection, the unbundling of network elements by ILECs, and resale of ILEC services. See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial*

Mobile Radio Service Providers, CC Docket Nos. 96-98 & 95-185, First Report and Order (released August 8, 1996) ("First Report and Order"). In numerous instances, the parties have argued that the FCC's rules are dispositive of issues here.¹

3. AT&T filed its Motion to Narrow Issues on September 16, 1996. Essentially, that motion requested a declaration that the Commission is legally required to follow the FCC's rules with respect to matters at issue in the consolidated proceedings. The motion was precipitated by USWC's positions in prefiled testimony, which urged Commission consideration of certain issues independent of the FCC's rulings. At the September 20, 1996 prehearing conference, we ruled that our decisions would not reopen issues determined by effective FCC rules. We now memorialize that ruling.

4. As stated above, the Act, 251(d), directed the FCC to promulgate implementing regulations. In addition, the Act also directs State commissions, during arbitration, to comply with the FCC's rules. See 252(c)(1). In our view, these provisions clearly express Congress' intent to preempt contrary State action on matters lawfully ruled upon by the FCC. To the extent USWC claims that the FCC exceeded its

¹ As discussed *infra* certain provisions of the FCC's rules were recently stayed by the 8th Circuit Court of Appeals. See *Iowa Utilities Board v. Federal Communications Commission et al.*, 1589204 (8th Cir. October 15, 1996).

jurisdiction in its rulemaking, that is a judicial matter. For purposes of deciding the present case, we will not reopen matters determined by FCC rules.

5. We also note that prior to passage of the Act, the Colorado Legislature itself enacted House Bill ("HB") 1335, 40-15-501 *et.seq.*, C.R.S., in the 1995 legislative session. In that statute, the Legislature determined that competition in the market for basic local exchange service is in the public interest. See 40-15-101, C.R.S. HB 1335, consistent with that determination, directed the Commission to encourage competition in the basic local exchange market by adoption and implementation of appropriate regulatory mechanisms. Specifically, HB 1335 mandated that the Commission adopt rules establishing cost-based, non-discriminatory, and unbundled methods of pricing for carrier interconnection to essential facilities or functions, and rules relating to the terms and conditions for resale of services that enhance competition. See 40-15-503(2)(b)(I) and (IV), C.R.S. In fact, the Commission has adopted a number of rules to implement HB 1335's directives. See Rules on Interconnection and Unbundling, 4 *Code of Colorado Regulations* ("CCR") 723-39, and Rules for the Resale of Telecommunications Exchange Services, 4 CCR 723-40. During the 1996 legislative session, HB 1010 which mandated that the Commission adopt interim tariffs necessary to begin competition in the local exchange

market by July 1, 1996 was enacted. The interim tariffs of USWC were reviewed and adopted in Docket No. 96S-233T (See Decision No. C96-655), and the permanent tariff proceeding is ongoing in Docket No. 96S-331T.

6. As stated above, AT&T's Petition for Arbitration was filed pursuant to the provisions of 252 of the Act. That section provides that telecommunications carriers (*i.e.*, an ILEC and a new entrant into the local exchange market) may voluntarily negotiate the specific terms for the provision of interconnection services and unbundled network elements. In the event the negotiating carriers are unable to reach an agreement with respect to such terms, 252(b) provides that, during the period from the 135th to the 160th day after the date on which an ILEC receives a request for negotiation, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

7. Section 252(b)(4) of the Act provides that a State commission, in the course of arbitration proceedings, may require the petitioning and responding parties to provide such information as may be necessary for the commission to reach a decision on all unresolved issues. The issues in the arbitration proceeding are to be limited to those raised in the petition for arbitration and the response.² According to 252(b)(4)(C):

² Section 252(b)(4) of the Act.

The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions . . . upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.³

8. Notably, 252(c) directs that:

In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the (Federal Communications) Commission pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

In accordance with the provisions of the Act, this decision sets forth our determinations regarding those issues upon which AT&T and USWC have requested arbitration.

C. Costing and Pricing Issues

The above discussion points out that, in arbitration proceedings, the Commission is required to establish "rates

³ AT&T's petition states that its request for interconnection was served on USWC on March 6. Therefore, the Commission must decide all unresolved issues in the proceedings concerning A USWC by December 1, 1996.

for inter-connection, services or network elements . . .". See 252(c). At the September 20, 1996 prehearing conference, in granting TCG's Motion to Sever Consideration of U S WEST TELRIC Cost Studies, we determined that the interim prices established by the Commission in Docket No. 96S-233T ("233T") would be incorporated as the applicable rates⁴ in the Agreements subject to pending Petitions for Arbitration.⁵

We now affirm our previous ruling. The prices established on an interim basis in 233T, as ultimately modified subject to true-up in Docket No. 96S-331T, shall be incorporated into the arbitrated Agreement in resolution of pricing issues.⁶

D. 96S-233T Tariffs

1. Docket Nos. 96S-233T and 96S-331T were the outcomes of HB 1010, enacted by the Colorado General Assembly in the 1996 legislative session. Those provisions are codified at 40-15-503(2)(g) and (h), C.R.S. HB 1010 directed that the Commission require telecommunications

⁴ The use of the term "rates" also includes the applicable terms and conditions for the service not superseded by contractual agreement or this arbitration order.

⁵ Various pleadings and testimony presented at the consolidated hearing pointed out that we cannot establish rates for all services or elements at issue in the petitions. Our other arbitrated decisions relating to the consolidated petitions (*e.g.*, Decision No. C96-1186) point out that, where rates do not exist for a particular service or element, the specific interim rate will be subject to arbitration pursuant to a *bona fide* request process.

⁶ In 233T, pursuant to the requirements of HB 1010, we established interim rates for interconnection, unbundled elements, and resale. Docket No. 96S-331T is the proceeding intended to establish permanent rates. See discussion *infra*.

service providers that would provide unbundled facilities or functions, interconnection, services for resale, or local number portability to file tariffs containing temporary interim rates, terms, and conditions for the sale of such products. See 40-15-503(2)(g)(I), C.R.S. The Commission was instructed to conduct expedited proceedings on proposed interim tariffs for unbundled facilities or functions, interconnection, services for resale, and local number portability. Based upon that expedited review, we were commanded to approve or modify the filed tariffs on an interim basis.

2. USWC, in accordance with HB 1010 and our implementing rules, submitted interim proposed tariffs along with supporting comment. Those proposals were investigated and considered in 233T. A number of parties, including some of the Petitioners here, filed responsive comments to the proposals by USWC. Based upon those submissions, we issued Decision No. C96-655 on June 25, 1996. That decision ordered USWC to file revised interim tariffs establishing rates for unbundled elements, interconnection, and services for resale. The Company complied with that directive and interim interconnection, unbundling, and resale tariffs became effective on July 1, 1996.

3. HB 1010 and our implementing rules further mandated that USWC file proposed permanent tariffs to

supersede the interim tariffs on or before July 1, 1996. In fact, the Company complied with that requirement. Those proposed permanent rates are presently under investigation in Docket No. 96S-331T. That docket is now set for hearing in March of 1997.

4. Finally, we point out that HB 1010 and our regulations provide that the interim rates (*i.e.*, 233T prices) are subject to "true-up" with interest. That is, USWC or competing local exchange carriers ("CLECs") who provided or purchased service under the interim tariffs, shall recover the difference between rates paid under the interim tariffs and rates that would have been paid had the permanent tariffs been in effect from inception.

E. FCC Pricing Provisions

1. In its rules implementing the Act, the FCC directed that State commissions utilize certain costing methodologies and principles in establishing rates for interconnection, unbundled elements, and resale. For example, Rules 51.503 and 51.505 require that rates for interconnection and unbundled elements must be based on the total element long-run incremental cost ("TELRIC") of the element, plus a reasonable allocation of forward-looking common costs. Rule 51.607 requires that rates for resale of services equal the ILEC's existing retail rate, less avoided retail costs; Rule

51.609 specifies Uniform System of Accounts which shall be included in the calculation of avoided retail costs.

2. The FCC did recognize that, in particular arbitration proceedings, a State commission may not have available to it sufficient cost information to establish rates in compliance with the rules (e.g., based upon TELRIC methodologies). See 767, First Report and Order (" . . . it may not be possible for carriers to prepare, or the state commission to review, economic cost studies within the statutory time frame for arbitration"). In such circumstances, the FCC directed that State commissions use default proxy rates until such time as proper cost studies are reviewed and rates set in accordance with that review.

F. TCG Motion to Sever

1. In this consolidated proceeding, some of the parties, including USWC, AT&T, and MCI, presented cost studies and pricing recommendations for establishing prices in the arbitrated agreements. On September 6, 1996, TCG filed its Motion to Sever Consideration of U S WEST TELRIC Cost Studies. That motion requested that we *not* consider USWC's cost studies in the instant proceeding. TCG contended that the studies were only recently made available to the parties.

Since the studies were "extremely voluminous", TCG suggested, neither the parties nor the Commission could give adequate consideration to the costing issues (*e.g.*, to determine whether the studies, in fact, comply with the FCC's mandates) in the abbreviated schedule required in this case. TCG recommended, therefore, that the Company's cost studies be examined and considered in Docket No. 96S-331T. As all parties acknowledged, our ruling with respect to USWC studies would also apply to cost studies presented by other parties (*e.g.*, the Hatfield model presented by AT&T and MCI).

2. We allowed the parties to file a written response to TCG's suggestions, and, in addition, heard oral argument on the motion at the September 20, 1996 prehearing conference. With the exception of USWC, no party objected to the request to defer consideration of costing and pricing issues. Most parties agreed that the accelerated schedule required for

arbitration proceedings did not allow for adequate consideration of the cost studies offered in this case.

3. We note that, as in most ratemaking proceedings, the examination of cost studies is critical to price determinations. This is true regardless of what methodologies are used to set prices. Given the importance of cost to rate decisions, all parties and the Commission should be accorded sufficient opportunity to examine the studies and included cost models. The schedule required for resolution of the present petitions does not allow full and final consideration of these issues.

4. In light of our decision to sever final consideration of costing and pricing issues from this arbitration, some of the petitioners urged the use of the FCC proxies⁷ pending the resolution of 96S-331T. The FCC proxy rates, in general, are lower than the prices established in 233T.⁸ Staff and USWC recommended incorporation of the interim rates established in 233T, to be replaced with permanent rates established in 96S-331T.

5. We conclude that the interim rates established in 233T should be incorporated by reference in the arbitration agreements subject to replacement with final rates to be established in 96S-331T. In the first place, we note that the

⁷ The FCC proxy rates are set forth in the First Report and Order, Appendix B - Final Rules, 513 (unbundled elements and interconnection), 51.611 (resale), and 51.707 (transport termination).

⁸ To illustrate, the FCC proxy ceiling rate for an unbundled loop in Colorado is \$14.97/month set this rate at \$18.

FCC pricing rules (*e.g.*, Rules 51-501 through 51.515, and 51.601 through 51.611) were recently stayed pending appeal. *Iowa Utilities Board v. Federal Communications Commission et al.*, 1996 WL 589204 (8th Cir. October 15, 1996). The primary argument in this case in opposition to use of the 233T rates was that the FCC, in its rules, prohibited the use of such rates in the interim (*i.e.*, before permanent rates are established). The court's stay of the First Report and Order's pricing provisions, including the provisions relating to proxy rates, disposes of this contention. In light of the stay, no FCC directive precludes us from using our own interim rates.

6. Moreover, at the prehearing conference, before entry of the stay order, we determined that the use of the 233T rates was most appropriate and not violative of the FCC's rules. The 233T rates, as explained above, are interim rates only, and are subject to true-up with interest. In the First Report and Order, it is unclear whether the FCC meant to preclude the use of interim rates which are subject to true-up, especially when proceedings are presently pending to establish permanent prices. We conclude that applying 233T rates is consistent with the intent of the First Report and Order (*e.g.*, to establish reasonable interim prices on an expedited basis). Given the final adjustment of temporary rates for CLECs in the near future (*i.e.*, after resolution of

96S-331T), we conclude that application of the 233T rates, instead of the FCC proxies, will not discourage competition in the interim.

7. Furthermore, we point out that the 233T rates were set by the Commission after consideration of voluminous written comments from a number of parties, including potential competing local exchange providers such as AT&T and MCI. That proceeding specifically determined appropriate rates in light of existing state and federal laws. These circumstances, along with the mechanisms for true-up in the near future, persuade us that incorporation of the 233T interim prices is most appropriate given the subsequent replacement with permanent rates. We also conclude that interim use of 233T rates, even in the absence of the stay, is consistent with the FCC's rules.⁹

8. Accordingly, reference to the Interconnection Tariff as a term in the Arbitrated Agreements shall mean incorporation by reference on an interim basis of the prices and terms established by tariff in 233T subject to subsequent replacement and true-up with permanent rates and terms as established in 96S-331T.

⁹ At hearing, AT&T requested that we resolve pricing issues relating to interim local number portability. Our decision to incorporate existing and pending costing and pricing matters applies to this matter for the reasons discussed above. We note that permanent rates for international number portability are presently under consideration in Docket No. 96S-250T.

G. Bona Fide Request Process

We direct that the agreement between AT&T and the Company incorporate a *bona fide* request ("BFR"). In the event the parties do not agree on the provisions of such a process, their agreement shall be consistent with that process set forth in the MFS/USWC proposed agreement (Exhibit 68, pages 58 and 59). We point out that under the BFR process, the Company and AT&T will, in addition to other matters, negotiate the price to be charged for services subject to the process. As noted in the above discussion regarding Costing and Pricing Issues, Docket No. 96S-233T does not establish interim rates for all services. Therefore, we direct that AT&T and USWC shall also negotiate the specific price to be charged for services for which no 233T rate now exists as part of the BFR process. Such prices will be subject to modification by our decision in Docket No. 96S-331T. Since these negotiated prices will be subject to change and are not being finally approved here, we also direct that these rates will be subject to true-up under the same conditions as other 233T rates.

H. Most Favored Nation Provisions

1. Section 252(i) of the Act provides:
A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other

requesting telecommunica-tions carrier upon the same terms and conditions as those provided in the agreement.

The First Report and Order (1314) interpreted this section to require that, ". . . incumbent LECs must permit third parties to obtain access under section 252(i) to any *individual* interconnec-tion, service, or network element arrangement on the same terms and conditions as those contained in any agreement approved under sec-tion 252" (emphasis added). Accordingly, the FCC (1316) directed that, ". . . any requesting carrier may avail itself of more advan-tageous terms and conditions subsequently negotiated by any other carrier for the same *individual* interconnection, service, or ele-ment once the *subsequent agreement* is filed with, and approved by, the state commission" (emphasis added).

The FCC, as did the par-ties to the consolidated proceeding, here referred to these provi-sions, which would allow a CLEC to select terms and conditions from other approved agreements regardless of the provisions of a pre-existing binding agreement between the CLEC and the ILEC, as a most favored nation ("MFN") provision. We also use this term (*i.e.*, an MFN provision) to refer to Petitioners' request that they be per-

mitted to purchase services from USWC out of tariffs, regardless of the provisions of an existing interconnection agreement.

2. The Petitioners contend that the interconnection agreements with USWC should include MFN conditions and, similarly, conditions which would permit a CLEC to purchase services out of any effective USWC tariff, regardless of prices set forth in an existing agreement. Petitioners argue that the FCC correctly interpreted 252(i) to require that CLECs be permitted to select individual terms and conditions out of other approved interconnection agreements, notwithstanding the provisions of an existing, effective agreement with the incumbent carrier. Under this interpretation of the Act, a CLEC need not select the entirety of the subsequent or alternate interconnection agreement in order to avail itself of the more favorable terms or conditions contained in another agreement. Rather, Petitioners suggest, CLECs may select individual terms and conditions out of another agreement, regardless of the existence of a binding agreement with the incumbent.

3. Petitioners claim that a contrary interpretation

of 252(i) (e.g., an interpretation which would preclude a CLEC from taking advantage of new and lower prices for the same service contained in a subsequent agreement) would be anti-competitive in contravention of the intent of the Act. For example, Petitioners contend, a CLEC purchasing service from an ILEC at a higher price than other CLECs could not fairly compete in the provision of service to end users. Similarly, Petitioners argue that making available new tariffed prices to CLECs, regardless of the terms of an existing agreement, is consistent with USWC's role as a common carrier and its obligation to provide services on a non-discriminatory basis.

4. USWC fervently objects to inclusion of MFN conditions in its interconnection agreements, at least as requested by the Petitioners here. In the Company's view, 252(i) grants competing carriers the right to select provisions in a new interconnection agreement by selecting the new agreement **in its entirety only**; the Act does not suggest that CLECs may "pick and choose" individual terms and conditions from approved agreements. USWC contends that the MFN interpretation adopted by the FCC (and supported by Petitioners) is inconsistent with the Act's intent to implement competition, in part, through an individually negotiated interconnection agreement between ILECs and new entrants. This is so, inasmuch as the broad MFN requirements directed in

the First Report and Order would frustrate carriers' ability to negotiate contracts reflecting the unique requirements of each CLEC: If discrete terms and conditions of any approved agreement are universally available to other interconnecting carriers, the ILEC will be motivated to negotiate standardized agreements.

5. Moreover, USWC suggests, an MFN requirement is inequitable since only one party, the ILEC, would be bound to the economics of the interconnection agreement. Competing carriers would be able to unilaterally modify their contracts with the ILEC in the event subsequent interconnection agreements or new tariffs were more favorable.

6. In the event the Commission accepts the First Report and Order's MFN provisions, USWC suggests that we develop standardized, tariff-like offerings for interconnection agreements. Such standardized offerings would be applicable to all CLECs and would be modified by the Commission only. Staff agrees with the suggestion that the Company file tariffs reflecting generally available terms and conditions.

7. We understand the Company's concerns with

overbroad MFN requirements. Inappropriate bifurcation of provisions or terms of a contract or a tariff for incorporation into another contract lead to unfair results. For example, a CLEC should not be permitted to select a lower nonrecurring charge from another interconnection agreement, but decline to accept a higher, directly related recurring charge. Nevertheless, we do not accept the Company's position that 252(i) contemplates carrier acceptance of interconnection agreements only in their entirety. While we acknowledge that the FCC's MFN holding was one of the mandates recently stayed by the Eighth Circuit Court (see footnote 1), our independent interpretation of the Act is inconsistent with USWC's contention. The language in 252(i) compels an ILEC to make available "any interconnection, service, or network element (emphasis added)" provided in an approved agreement to other requesting carriers "upon the same terms and conditions as those provided in the agreement." The plain and clear provisions of the Act do not support USWC's argument on this issue.

8. Therefore, we direct that the interconnection agreements with USWC include MFN provisions incorporating the

language of the Act. The provision should allow AT&T to incorporate and use any interconnection, service, or network element from another agreement, upon acceptance of all of the terms and conditions in the agreement related to such interconnection service or element. In addition, while we cannot determine here all instances in which USWC may treat CLECs differently, we note that a carrier who causes the Company to incur greater costs in the provision of a service cannot reasonably demand the service at the original price.¹⁰ The agreement shall also provide that USWC will permit AT&T to purchase services out of an effective tariff, regardless of prices set forth in an existing agreement. This provision is consistent with the Act and USWC's common carrier obligations. Specifically, we find that a CLEC's ability to fairly compete in serving end users would be unduly impaired if it is prohibited from purchasing services from USWC at tariffed rates, terms, and conditions available to other providers.

¹⁰ The First Report and Order, 1317, pointed out that 252(i) permits different treatment Cs based upon differences in cost-of-service.

9. We reject AT&T's suggestion that USWC shall be required to provide new interconnection agreements or tariffs to AT&T within five days of the date new agreements are signed or new tariffs are submitted to the Commission. All approved agreements will be available for public inspection at the Commission within ten days of approval. See 252(h). Similarly, USWC is required to give public notice of new tariff filings under Colorado law. See 40-3-104, C.R.S. These provisions are adequate to provide notice of new agreements or new tariffs to AT&T. We also direct that, in the event AT&T decides to modify its existing agreement with USWC by selecting provisions from new agreements or tariffs, it shall give 30 days' notice to USWC and the Commission prior to effectuating this decision.

10. As for the Company's recommendation that we develop standardized, tariff-like offerings, we point out that our Rules on Interconnection and Unbundling, 4 CCR 723-39, already accommodate this suggestion. See Rule 7 (incumbent providers required to file tariffs establishing rates, terms, and conditions for interconnection, termination of local traffic, and unbundled elements). The Commission decision adopting the interconnection and unbundling rules held, consistent with USWC's suggestion here, that incumbent

providers should be required to file tariffs even in light of the Act's provisions which permit carriers to negotiate interconnection agreements. See Decision No. C96-347, pages 26 through 30. Significantly, our decision to require tariffs was, in part, based upon our interpretation of 252(i) as requiring non-discriminatory treatment of interconnecting carriers. Decision No. C96-347, pages 28 through 29.

I. Commission Authority to Impose Liquidated Damages Provisions

1. All Petitioners in the consolidated proceeding requested that we require liquidated damages provisions in the interconnection agreements with USWC.¹¹ Primarily, in conjunction with specific service quality standards, Petitioners request that USWC be compelled to pay specified liquidated damages whenever it failed to meet the approved standards.

2. USWC and Staff contend that the Commission lacks

¹¹ The parties alternately referred to "liquidated damages" as "penalties." We disagree with that characterization. In our view, the remedies requested by the Petitioners for failure of USWC to meet certain standards are not the legal equivalent of penalties, such as those referenced in Article 40 of the Communications Act. These monetary payments are not intended to penalize USWC. Rather, the remedies requested in the petitions are intended to compensate Petitioners for inadequate performance of contractual obligations on the part of the Company, as a substitute for actual damages.

authority to **compel** liquidated damages as part of arbitration.¹² In particular, both parties suggest that **under State law**, our jurisdiction to impose monetary penalties (or liquidated damages) upon regulated utilities such as the Company, is limited to those instances specified by statute. *See Haney v. Public Utilities Commission*, 574 P.2d 863 (Colo. 1978) (levying of fines or financial penalties is a judicial function; Commission lacks jurisdiction to impose monetary fines absent specific statutory authorization). Since no State statute permits the Commission to impose liquidated damages upon USWC in the circumstances at issue here (*i.e.*, for failure to comply with performance standards set forth in interconnection agreements), these parties reason that we lack the authority to compel such provisions in the interconnection agreements.

3. The Company and Staff further contend that the Act does not confer authority upon State commissions to require liquidated damages provisions in interconnection agreements.

¹² USWC itself concedes that the Commission may approve a liquidated damages clause volunteered to by the parties. However, the Commission may not, according to the Company, impose such a provision in these proceedings.

Therefore, the Commission may not look to federal law for support of Petitioners' request here.

4. Finally, Staff appears to argue that, regardless of the Act's intent with respect to this issue, Congress could not empower the Commission to take action not specifically authorized under State law. Staff suggests that the principles enunciated by the Court in *Howlett v. Rose*, 110 S.Ct. 2430 (1990) (federal law cannot compel a State to create a court competent to hear a federal claim), and preclude Congress from granting new authority to the Commission.

5. We hold that the Commission, as the State agency empowered to deal with utility regulation, is authorized to carry out the provisions of the Act as it relates to Colorado.

As the Petitioners point out, the Act forms the basis for our authority to arbitrate the instant petitions. Specifically, 252(b)(4)(C) directs that, "The State commission shall resolve each issue set forth in the petition and the response. . . . by imposing appropriate conditions. . . . upon the parties to the agreement. . . ." The Act does not limit State commission arbitration authority to specific regulatory provisions under State law.

6. More importantly, 252(c)(1) provides:
In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a *State commission shall ensure that such resolution and conditions meet the requirements of section 251*, including the regulations prescribed by the (Federal Communications) Commission. . . .

(emphasis added) Accordingly, the Commission in arbitration proceedings under the Act is, in good measure, enforcing federal rights. We further note that any appeal of our arbitration decision will involve the determination of whether our directives meet the requirements of federal law (*i.e.*, 251 of the Act). See 252(e)(6). These provisions clearly indicate that Congress intended to give State commissions the authority to enforce the Act and applicable FCC rules.

7. As for the contention that the Act may not empower the Commission to take action which is not authorized under State law, we find that *Howlett* does not lead to the conclusion reached by Staff.¹³ Notably, the Court in *Howlett*, *supra*, at 2438, observed that federal law is enforceable in state courts because the Constitution and laws passed pursuant to it are as much laws in the states as laws passed by the State Legislature. The Supremacy Clause makes those

¹³ Furthermore, whether Congress is empowered to expand or delegate Commission authority under the law (*i.e.*, whether these portions of the Act are constitutional) strikes us as a matter for resolution by the courts, not an administrative agency. For purposes of the present proceedings, enough for us to conclude that the Act intended to grant us authority to carry out the federal A

laws "the supreme Law of the Land", and charges State courts with a coordinate responsibility to enforce that law according to their regular modes of procedure. Staff itself noted that in *Federal Energy Regulatory Commission v. Mississippi*, 102 S.Ct. 2126 (1982), the Court held that Congress could require a state utilities commission to hear and determine causes arising out of the federal Public Utilities Regulatory Policy Act, especially where the state agency had jurisdiction to entertain analogous claims.

8. We point out that in HB 1335, the State Legislature itself ordered that the local exchange market be opened to competition. That statute, independent of the provisions of the Act, directs the Commission to regulate the interconnection of telecommunications carriers' facilities, the provision of unbundled facilities and functions by providers, the terms and conditions for resale of services, etc. See 40-15-503(2), C.R.S. Hence, the Act does not impose significant new regulatory requirements upon the Commission. This is not an instance, as in *Howlett*, where Congress has ordered the State of Colorado to create a forum competent to hear cases arising under the Act. The Commission, pursuant to HB 1335 and other provisions of State law, possesses authority and responsibility to regulate utility matters in the state, and hence is properly empowered to accept the arbitration role created by the federal Act.

9. We conclude that the establishment of performance standards and associated liquidated damages provisions is reasonable and necessary to implement the provisions of the Act and HB 1335. Testimony by the Petitioners uniformly indicates that in order to bring competition to ILEC markets, performance standards for inter-connection agreements are essential. For example, the Act demands that an ILEC provide quality of service to CLECs which is equal to that provided to itself. See 251(c)(2) (ILEC required to provide interconnection at least equal in quality to that provided to itself); 251(c)(3) (ILEC required to provide unbundled elements on a "nondiscriminatory" basis).

10. Concomitantly, Petitioners point out that it is crucial that approved performance standards be enforceable through adequate remedies. With no specific economic incentives to comply with performance standards, ILECs may discourage or inhibit competition by providing inferior services to new entrants. AT&T Witness Thayer, for example, stated that performance standards would be meaningless without adequate enforcement mechanisms. Petitioners further note

that the option of forcing new entrants to under-take costly and time-consuming enforcement proceedings in court or before the Commission in each instance of non-compliance with performance standards, would be unduly burdensome and injurious to nascent competition. Finally, the Petitioners pointed out that liquidated damages provisions, similar to the credits proposed in various testimony, for nonperformance of contractual provisions, are commercially reasonable.

11. We find that the inclusion of performance standards and liquidated damages provisions in interconnection agreements with USWC is necessary to advance the goals stated in the Act and in HB 1335, and that to so rule is within the scope of our role as arbitrators under the Act.

J. Performance Standards and Liquidated Damages Provisions

1. In its petition, AT&T requests that we impose specified performance standards and liquidated damages provisions upon USWC.¹⁴ Under 8.1 of its proposed contract,

¹⁴ The Petitioners advocated differing performance standards and liquidated damages provisions specific to their proposed agreements. We discuss these various proposals in the decisions relating to their proposed agreements.

AT&T requests that USWC be required to provide all services in accordance with service standards and Direct Measurements of Quality ("DMOQs") as specified in Exhibit 15 and as listed within Attachment 11 to Exhibit 15. Within the 112 pages included in Attachment 11 are detailed metrics for five categories of DMOQs: 1) billing; 2) operator and directory assistance; 3) ordering, provisioning, maintenance and repair; 4) network quality; and 5) interconnection and unbundled elements. For these categories, AT&T has also specified various monetary credits for which it requests USWC be liable when the performance of USWC fails to meet the DMOQ standards.

2. The Company opposes AT&T's recommendations. In part, USWC noted that, under the provisions of the Act and applicable State law, it is already obligated to provide non-discriminatory service to competitors. This means that the Company must provide service to CLECs of a quality that is at least equal to the service provided to itself. USWC suggests that the specific service standards urged by Petitioners, including AT&T, are in excess of those standards used by the Company for provision of its own services and in excess of present Commission rules. In general, USWC suggests that we establish a baseline of service quality which would be available to all new entrants. A provider seeking premium

each petition.

service (*i.e.*, service quality in excess of the baseline standard) would request such service through the *bona fide* request process ("BFR"), and would be required to pay for that added quality.¹⁵

¹⁵ We note that the Company did agree to service standard conditions in its agreement with Irt XXXII, Exhibit 68). Under those standards, USWC is required to perform specified activities (e.g., installation of unbundled loops, interim number portability installation, out of service orders, and interconnection trunk installation) which meet or exceed the average performance by the Company for the total universe of specified activities. Notably, the MFS agreement does not provide for any liquidated damages.

3. Staff also addressed this issue. In Staff's view, service quality standards and liquidated damages provisions, if adopted,¹⁶ should be uniform and set forth in publicly available documents such as tariffs or rules. Hence, Staff agreed with the Company on this point. Similarly, Staff also agreed with USWC that superior (*i.e.*, in excess of the rules) service quality should be paid for by the requesting carrier.

Staff suggests that we order the Company to file each industry standard it presently relies on within 30 days. In particular, Staff urges, USWC should submit to the Commission, industry standards now relied upon for the provisioning of all services, including switched access, future inter-connection services, unbundled network elements, and retail services that will be available for resale.¹⁷

¹⁶ As discussed above, Staff questioned the Commission's authority to impose liquidated damages.

¹⁷ Staff Witness Wendling also suggested that Petitioners submit proposed quality of service standards which could be used by the Commission in opening a rulemaking proceeding to establish service performance standards.

4. For purposes of this arbitration proceeding, Staff recommends that we approve existing service standards: For resale, Staff points out that the Commission presently has rules in place for the provision of services to end users.¹⁸ For interconnection, Staff suggests that we approve those quality of service measurements presently utilized by the Company for interconnection with interexchange carriers. With respect to unbundled services, Staff generally recommends that the Company be ordered to provide a quality of service at least equal to that provided to itself and its own end use customers. Finally, Staff suggests that, in order to permit competing carriers to monitor the quality of service provided, USWC should be compelled to provide to competing providers, periodic reports (e.g., on a monthly or quarterly basis) containing service quality data.

5. In ruling upon this issue, we first note that Commission Rule 723-2-16.1.2 recognizes that a LEC is expected to meet generally accepted industry standards for an element of, or the total service when such standard is not specifically defined within the rules. With this in mind, we agree with Staff and USWC that the minimum baseline standards for service quality and related enforcement provisions should

¹⁸ For example, the Rules Regulating Telecommunications Service Providers and Telepho-
nics, 4 CCR 723-2, set forth detailed requirements regarding the provision of local excha-
nge service to end users.

be uniform, so as to similarly affect the industry. As such, these standards should be set forth in rules and all CLECs should be entitled to service under these criteria as part of any interconnection agreement. Establishing required minimum standards by rule will ensure an acceptable quality of service for all end users, including the customers of new entrants into the local exchange market. Therefore, we intend to initiate rulemaking proceedings in the near future to adopt any additional appropriate service quality standards that are necessary to reflect the interactions between the CLECs and ILECs.¹⁹ To assist in this effort, and to guarantee that standards presently utilized by USWC in the provision of its own services are made public, those service standards²⁰ and related enforcement provisions presently applicable to the Company or relied upon by the Company shall be filed with the Commission and served upon each Petitioner in this case within 30 days of the effective date of this order. For purposes of the present proceeding, we note that USWC must provide service to each Petitioner, including AT&T, which is equal in quality to that provided by the Company to itself, which, at a minimum, requires meeting all applicable rules of the Commission.²¹

¹⁹ The agreements entered into by USWC pursuant to these consolidated proceedings should recognize that their provisions will be subject to modification to reflect new rules of the Commission regarding performance standards and possible compensation related to performance under such standards.

²⁰ This would also include standards relied upon by the Company for evaluating its performance in areas such as billing and electronic data interface availability, besides the normal measurements of work performance as suggested in Appendix D of the USWC Closing Statement of Position.

²¹ See, for instance, Rules 723-39-3.6 and 3.7 under our Rules on Interconnection and Unbundling, as well as Rules 723-40-3.3.1 and 4.1 under our Rules for the Resale of Telecommunications Exchange Services.

6. We also agree with Staff and the Company that CLECs desiring service quality in excess of the baseline standards should request such service through a BFR process and will be required to pay for such service. Staff's suggested reporting requirements, as discussed above, are also approved. Appropriate language shall be incorporated into the interconnection agreement between USWC and AT&T.²²

7. As for AT&T's specific suggestions, generally we find them to be largely unsubstantiated in the record of this proceeding relative to the breadth and complexity of the proposed standards.²³ For example, no justification for the particular monetary amount of recommended liquidated damages was offered to us. We also note that in some instances, the proposed standards are and remain incomplete.²⁴ While some or perhaps even all of these standards may be appropriate for measuring the responsiveness of USWC to AT&T service requirements, we cannot make a determination as to whether the USWC performance requested by AT&T constitutes a standard of service greater than that which USWC normally provides to

²² We note that USWC and MFS reached an agreement on service quality reports to be provided Company. See Exhibit 68, page 81. This particular arrangement appears to comply with the objective.

²³ Tr. 9/25/96, pp 81-85.

²⁴ For instance, the proposed standards on pages 82 through 86, and 108 through 112 of Attachment of Exhibit 15 are missing or not defined.

itself or is otherwise appropriate.²⁵

8. We note that AT&T did suggest²⁶ that it have the right to obtain service from another vendor in the event USWC is unable to provide that service, in accordance with approved performance standards, and that failure is reasonably anticipated to last for more than 30 days. In this circumstance, AT&T suggests that the Company would be responsible for payment of reasonable charges incurred in excess of the otherwise applicable charges. We find that AT&T's proposal is appropriate,²⁷ especially since it would apply to service failures in excess of 30 days.

K. Approval of Contract Language

We are not approving the entirety of the contract language to be incorporated in an agreement between AT&T and USWC. The Act apparently requires the parties to negotiate an agreement based upon the arbitration decision and to submit that agreement to the Commission for subsequent approval; the Act does not require us, in this arbitration proceeding, to specify the precise language of an interconnection agreement in its entirety. See 252(e).

²⁵ Tr. 9/26/96 p 148.

²⁶ Part 8.6, Revised Exhibit 6 to the AT&T Petition for Arbitration.

²⁷ However, we do not imply that the performance standards are the DMOQs as referenced in Exhi

L. Interim Number Portability

AT&T and USWC both recognize that the issue regarding cost recovery for interim local number portability is being considered in Docket No. 96S-250T. Hearings were held on September 16, 1996 on the issues presented herein. The Company's argument disputes the FCC's decision in CC Docket No. 95-116²⁸ regarding cost recovery for interim number portability. We do not dispute the FCC's decision in this docket, and until such time as a decision is rendered by the Administrative Law Judge in our interim number portability docket, we have determined that the rates established in the Interconnection Tariff shall apply.

M. General Terms and Conditions

1. Term Of Interconnection Agreement 1.1-1.3

a. AT&T and USWC dispute the term of their proposed interconnection agreement.²⁹ AT&T proposes that the agreement would be in effect initially for five years unless terminated earlier (by AT&T). AT&T would have the unilateral

²⁸ First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-1 ed July 2, 1996.

²⁹ AT&T's suggestions are set forth in Part 1, Revised Exhibit 6 to the AT&T Petition itration, which is Exhibit 15 in this proceeding.

right to extend the term of the agreement for successive one-year periods upon expiration of the initial term. At the expiration of the term of the contract, AT&T suggests, the agreement would continue in effect on a month-to-month basis under the same conditions and prices until terminated by AT&T.

In addition, AT&T proposes that it may elect to terminate the contract, at its sole discretion, upon 60 days' notice to the Company. Individual services or network elements could be terminated, according to Revised Exhibit 6 (Part 1, 1.3), upon 30 days' notice. In the event of termination of the agreement, AT&T's liability would be limited to payment of amounts due for services provided under the agreement up to the date of termination of the contract. If AT&T selects another vendor for services provided under the agreement, USWC would be obligated to cooperate in the orderly and efficient transition of service to the other vendor.

b. USWC simply proposes that the agreement would be effective for a period of two and a half years. Thereafter, the agreement would continue in force and effect until replaced by a new agreement between the parties.³⁰ See Section V, page 89, Exhibit 68.

c. We conclude that an initial contract term of

³⁰ USWC's most recent suggestions for the precise contractual language to be included in interconnection agreements with the Petitioners were set forth in Exhibit 68, the Joint Position Statement and USWC on Negotiated Terms to be Included in an Arbitrated Interconnection Agreement for the State of Colorado.

three years is reasonable. This period of time is sufficient to allow AT&T to conduct reasonable planning with respect to its entry in the local exchange market. After this initial three-year term, the agreement will continue in effect on a month-to-month basis until terminated by AT&T or the earlier completion of a new interconnection agreement by negotiation or arbitration. Petitioner shall give 60 days' notice to USWC prior to termination. In such an event, USWC will be required to cooperate in the orderly transition of service to a new vendor (if necessary). Upon termination of the contract, AT&T shall be responsible for payment of all amounts due for services provided up to the date of termination of the contract. Additionally, AT&T shall also be responsible for payments due under any BFR arrangement.

2. Material Breach 1.4

a. AT&T proposes³¹ that in the event of material breach of the agreement, the breaching party shall cure such breach within specified time periods after written notice from the other party: 30 days of receiving written notice from the other party for non-payment of amounts due under the agreement; 10 days or within the applicable interval required by other provisions of the contract, whichever period is shorter, if the breach adversely affects the non-breaching

³¹ Part 1, 1.4, Exhibit 15.

party's subscribers; or 45 days for any other failure to perform in accordance with the agreement. USWC's proposal³² generally provides that if any violation of the agreement continues for 30 days after written notification, the other party may seek legal and/or regulatory relief.

b. We conclude that AT&T's suggestions, as set forth in 1.4 of its proposed interconnection agreement, are reasonable. Therefore, we approve those proposals.

3. Audits and Inspections 4

a. In its proposed agreement³³, AT&T requests that we approve specific audit and inspections provisions. Notably, AT&T suggests that it be permitted to conduct up to four audits per year of Company books and records for purposes of examining the accuracy of USWC's billing and invoicing and its compliance with the agreement. Audits would be conducted at AT&T's expense, subject to reimbursement by the Company in the event an audit finds an adjustment in the charges paid or payable by AT&T by an amount greater than one percent, on an annualized basis, of the aggregate charges for services provided under the agreement. The AT&T proposal would also require USWC to refund any overcharges plus interest at the highest interest rate allowed by law for commercial transactions.

³² Section JJ, page 93, Exhibit 68.

³³ Part 1, Section 4 of Exhibit 15.

b. USWC's proposed audit provisions³⁴ would limit the number of audits to one per year, and each party would bear its own expenses with respect to each audit. In the event an audit dis-closes errors, USWC's proposal simply requires that "corrective action" will be undertaken in a timely manner.

c. Generally, we conclude that USWC's suggestions are more appropriate with the modifications discussed here. The AT&T proposals (*e.g.*, audits up to four or more times per year, interest for overcharges at the highest commercial rate allowable) are unduly burdensome. We find that the agreement should provide for one audit per year for the purpose of investigating the accuracy of USWC's billing and invoicing, and one audit per year for the pur-*pose* of investigating USWC's compliance with the agreement, includ-*ing* any approved performance standards. The requesting party will be required to pay audit costs. However, consistent with AT&T's suggestion, the Company will be required to reimburse AT&T for its audit expenses in the event an audit finds an adjustment in the charges paid or payable by AT&T by an amount greater than 1 per-cent, on an annualized basis, of the aggregate charges for services provided under the agreement. This requirement offers an incentive towards ensuring the accuracy

³⁴ Section XXIV, pages 60-61, Exhibit 68.

of billing for services provided under the agreement. In the event an audit reveals overcharges, USWC will be required to refund such overcharges along with interest at an annualized rate of 18 percent.³⁵

4. Indemnification 5.2

AT&T and USWC propose different provisions regarding indemnification under the interconnection agreement.

AT&T's proposals are contained in Part 5 of Exhibit 15, USWC's proposals are set forth in Section T, page 88, Exhibit 68. In our view, USWC's proposals are more appropriate. Therefore, to the extent the parties are unable to agree to alternative contractual language regarding indemnification, we direct that the agreement between AT&T and the Company contain the indemnification language set forth in Exhibit 68.

5. Limitation of Liability - 7.1 and 7.2

AT&T and USWC also dispute the contractual provisions regarding limitation of liability. The AT&T proposals are set forth in Part 7, Revised Exhibit 6 to the Petition for Arbitration, and USWC's proposals in Section U, pages 88 through 89, Exhibit 68. We conclude that USWC's proposals are more appropriate. However, consistent with the suggestion by AT&T, we clarify that any liquidated damages provisions approved by the Commission for violation of

³⁵ This is the interest rate approved by the Commission for access billing errors in proceedings relating to MFS' Petition for Arbitration.

performance standards shall be exempt from any limitation of liability provision.

6. Remedies for Failure to Meet DMOOs 8

The requests of AT&T under this section have been decided as stated under the heading "Performance Standards and Liquidated Damages Provisions" in this decision.

7. Warranties

a. In Part 9 of Exhibit 15, AT&T proposes that the Company be required to agree to extensive warranties. For example, USWC would be required to warrant that interconnection and unbundled network elements will be provided in a nondiscriminatory fashion, that interconnection will be provided at any technically feasible point, that specific network elements will be made available to AT&T on an unbundled basis, that USWC will provide nondiscriminatory access to telephone numbers, that USWC will provide competitively neutral interim number portability, etc. For the most part, these proposed express warranties restate AT&T's specific requests for interconnection, collocation, resale, and unbundled network elements, and, to the extent we agree with these requests, the present decision directs USWC to provide such services. USWC proposes³⁶ that no warranties would be made under the agreement.

³⁶ Section II, page 93, Exhibit 68.

b. We reject the AT&T proposed warranties. To the extent the proposed warranties duplicate ongoing obligations imposed upon USWC in the agreement, they are unnecessary. We also note that AT&T did not present any evidence or information sup-ported any further warranties in the agreement.

8. Nonexclusive Remedies - 10

AT&T proposes³⁷ contractual provisions stating that the remedies specified in the agreement are cumulative and in addition to any remedies that may be available at law or equity. In our view, this specific provision (Part 10.1, Revised Exhibit 6) is consistent with applicable laws, and is, therefore, appropriate for inclusion in an interconnection agreement. However, we decline to approve those suggestions contained in Parts 10.2 through 10.4 of the AT&T proposed agreement. In part, those suggestions relate to requirements more appropriately treated in Commission rules. For example, Part 10.3 would impose certain liability for USWC's fail-ure to timely switch a subscriber's service to AT&T. We point out that Rule 25, Rules Regulating Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-2, already sets forth require-ments relating to changes in subscribers' service. Part 10.4 of the AT&T proposed agreement is

³⁷ Part 10, Exhibit 15.

inappropriate inasmuch as it incorporates AT&T's suggested performance standards and liquidated damages provisions. As discussed in this decision, we do not adopt these provisions.

9. Dispute Resolution - 11

a. Both AT&T and USWC agree that contractual provisions for alternative dispute resolution (e.g., arbitration) are appropriate,³⁸ and we concur. Requiring the parties to bring all disputes arising under the agreement to the Commission or the courts utilizing a formal process would likely be excessively burdensome. Such a requirement may harm the development of competition in the local exchange market by delaying the resolution of disputes and requiring the parties to expend potentially substantial resources in obtaining formal decisions from the Commission or the courts for all disputes.

b. AT&T's suggested dispute resolution process is, in our estimation, unacceptable for one reason: The process apparently provides for no recourse (e.g., an appeal of an arbitrator's decision) to the Commission. Section 2.1 of Attachment 1, for example, states:

Except for disputes or matters for which the Tele-communications Act of 1996 specifies a particular remedy or procedure, negotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between U S WEST and AT&T arising out of this

³⁸ AT&T's specific recommendations for an alternative dispute resolution process are presented in Attachment 1, Exhibit 15. USWC states its proposal in Section DD, Exhibit 68.

Agreement or its breach. U S WEST and AT&T agree not to resort to any court, agency, or private group with respect to such disputes except in accordance with this Attachment.

Similarly, 11.1 of Attachment 1 states that, "The Arbitrator's decision and award shall be final and binding. . . ."

c. In the absence of an agreement to alternative provisions, USWC's suggested dispute resolution provision is acceptable with the modifications expressed here. First, the term "non-binding" should be deleted. We direct USWC to agree to a dispute resolution process which includes negotiation or arbitration. Subject to a party's right to appeal an arbitrator's decision to the Commission or to the courts where appropriate, and a party's right to bring an original action to the Commission,³⁹ such arbitration shall be binding upon the parties. Second, to provide incentives to the parties to limit disputes, we direct that the arbitrator shall have the authority to award fees and costs with respect to each arbitrated dispute.⁴⁰ Finally, to remove all doubt in the matter, we specify that the arbitrator may not modify any interconnection agreement approved by the Commission.

10. Nondisclosure of Confidential Information - 12.3

Both AT&T and USWC agree that the interconnection agreement should contain provisions relating to the manner in

³⁹ It is our expectation that original actions will be brought to the Commission only extraordinary matters.

⁴⁰ We retain jurisdiction to award fees and costs on appeal of an arbitrator's decision to the Commission.

which a party must treat confidential information received from the other party.⁴¹ In fact, the proposals by Petitioner and the Company are similar. To illustrate, the proposals by both AT&T and USWC provide that the receiving party may use confidential information only for purposes related to carrying out the agreement. Each party is mandated to protect the confidentiality of the other party's proprietary information.

The difference in the parties' positions is that AT&T would then impose a duty of confidentiality for a period of five years, while USWC's proposal continues this duty for an indefinite period of time. We adopt the provisions suggested by USWC.

11. Provision on Obtaining Services from Tariffs on Other Clec Agreements - 13

This request by AT&T has been addressed under the heading of "Most Favored Nations Provisions" within this decision.

12. Patents/Trademarks - 16

Petitioner requests that the interconnection agreement include provisions protecting the patents, copyrights, logos, trademarks, trade secrets, and other proprietary or intellectual property of each party.⁴² USWC does not oppose this request, and we find it to be

⁴¹ See Part 12, Exhibit 15 and FF, Exhibit 68.

⁴² See Part 16, Exhibit 15.

appropriate. Therefore, we direct that the inter-connection agreement include these proposed provisions.

13. Provisions for Waiver - 19

AT&T next requests general contract language which clarifies that waivers must be in writing and that waiver of any default shall not be construed as a waiver of any other default, etc.⁴³ Apparently, the Company does not oppose this language and we find it to be proper. The agreement between AT&T and USWC shall incorporate these provisions.

14. Compliance with Governing Laws - 20.2

a. In Part 20, Exhibit 15, AT&T proposes detailed requirements relating to the Company's obligation to comply with applicable laws. The AT&T suggestions are overly burdensome and, therefore, we decline to approve them. For example, the suggested language would require USWC to obtain Petitioner's approval prior to making tariff filings. Additionally, Petitioners' suggestion could interfere with regulatory agencies' (e.g., this Commission) authority to regulate the Company. We conclude that the contractual provision recommended by USWC⁴⁴ is sufficient to reflect the parties' continuing obligation to comply with applicable laws.

⁴³ See Part 19, Exhibit 15.

⁴⁴ Section Z, Exhibit 68.

15. Assignment of Contract - 23 and 33

a. Both parties suggest that the interconnection agreement contain conditions restricting the ability of a party to assign or delegate obligations under the contract without the consent of the other party.⁴⁵ The proposal by AT&T would restrict only the Company's ability to assign rights or obligations under the agreement. In contrast, USWC's would limit the ability of both parties to assign the contract.⁴⁶ Petitioner's recommended provision would further restrict USWC's ability to subcontract performance of any obligation under the agreement.

⁴⁵ AT&T's recommendations are presented in Part 23, Exhibit 15. USWC submits its proposal in Part 23, Exhibit 68.

⁴⁶ Both proposals would permit assignment to wholly owned affiliates without the consent of the other party.

b. We find USWC's suggestion to be the most appropriate. Since interconnection agreements concern the provision of specialized and regulated services, it is fitting that each party to the contract recognize that assignment of rights and obligations is restricted.⁴⁷ Additionally, we note that AT&T's proposal to limit the ability of the Company to subcontract performance of obligations under the agreement appears to be highly intrusive upon the conduct of even the ordinary course of operations by USWC. No justification was offered for this proposal.

c. We approve USWC's specific recommendation on this issue as set forth in Section HH, page 93 of Exhibit 68. Notably, the Company's suggestion also provides that the agreement, ". . . shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns." This contractual term addresses AT&T's request for such a provision.⁴⁸

16. Branding - 15

a. The First Report and Order requires ILECs to rebrand or unbrand resold operator, call completion, or directory assistance services. See Rule 51.613(c), First

⁴⁷ For example, assignment of performance of duties under an approved agreement may require approval of the Commission.

⁴⁸ See Part 33, Exhibit 15.

Report and Order.⁴⁹ In its petition, AT&T requests that we expand branding requirements to virtually all services offered under the agreement. In particular, AT&T recommends contract language that provides:⁵⁰

Services offered by AT&T that incorporate Network Elements or Combinations made available to AT&T pursuant to this Agreement, and Local Services that AT&T offers for resale shall, at AT&T's sole discretion, be branded exclusively as AT&T's services, or otherwise, as AT&T shall determine. . . . In those instances where AT&T requires USWC personnel to interface directly with AT&T Customers, either orally in person or by telephone, or in writing, such personnel shall identify themselves as representing AT&T, and shall not identify themselves as representing USWC. All forms, business cards or other business materials furnished by USWC to AT&T Customers shall be subject to AT&T's prior review and approval, and shall bear no corporate name, logo, trademark or tradename other than AT&T's or such other brand as AT&T shall determine. In no event shall USWC personnel acting on behalf of AT&T pursuant to this Agreement provide information to AT&T's local service customers about USWC products or services. . . .

As justification for these recommendations, AT&T contends that these branding conditions are necessary to avoid customer confusion. For example, Petitioner claims, a customer who has contacted AT&T concerning service problems would be confused when USWC repair personnel appear at the customer's

⁴⁹ The rule defines rebranding or unbranding as offering operator, call completion, or direct distance services, ". . . in such a manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers, or that such services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information.

⁵⁰ Part 15.1, Exhibit 15.

premises in response to the contact. AT&T also suggests that without such provisions USWC will have an unfair opportunity to engage in anti-competitive conduct (e.g., USWC repair personnel explicitly or implicitly marketing the Company's services to AT&T customers during service calls).

b. USWC opposes these branding proposals arguing: First, compulsory rebranding would result in dilution of USWC's own brand name. Since a brand name constitutes a valuable asset belonging to the Company itself, it is not subject to appropriation (or deletion as with unbranding) at the unilateral request of a competitor. Second, AT&T's branding proposals would compel USWC to promote the brand names of competitors, in violation of the principles of competitive neutrality and fairness.

c. We agree in part with AT&T on this issue. Primarily, we agree that branding of services beyond that ordered by the FCC (e.g., to repair and maintenance) is advisable where necessary to avoid customer confusion. We concur, for example, that customers may be confused when USWC personnel appear at their premises in response to a contact with AT&T. Therefore, the agreement between the Company and AT&T should require USWC personnel, when contacting an AT&T end user for repair, maintenance, or other purposes, to specifically state that the customer contact is in response to the end user's call to AT&T; to represent that the personnel

are appearing on behalf of AT&T; and to leave with the customer AT&T contact information to the extent provided in reasonable form by AT&T. We also agree with AT&T that Company personnel should avoid any marketing or promotion of USWC, during maintenance, repair, or other contacts with AT&T's customers, nor furnish or offer to furnish to customers during these contacts any written material relating to USWC's services.

d. We reject Petitioner's remaining requests. First, we agree with the Company that it would be improper, in effect, to conscript its employees in efforts to affirmatively market the services of competitors. Therefore, we reject all requirements that USWC be compelled to assist AT&T in marketing of its services. We also decline to impose or prescribe additional conduct or speech on the part of USWC personnel.

N. Interconnection and Collocation

1. Points of Interconnection (Attachment 3, 13.6.1.9)

a. AT&T requests that it be allowed to interconnect at any technically feasible point of interface. AT&T also requests that provisioning of all types of trunk interconnection, shall be provided, including Signaling System Seven ("SS7"), Multi-Frequency ("MF"), Dual Tone Multi-

Frequency ("DTMF"), DialPulse, Primary Rate-Integrated Services Digital Network ("PRI-ISDN"), Direct-Inward-Dial ("DID"), Centralized Automatic Message Accounting-Automatic Number Identification ("CAMA-ANI"), and trunking necessary for interim Local Number Portability ("LNP").

b. Consistent with 251(a) of the Act, the Commission's Rules on Interconnection and Unbundling, 4 CCR 723-39-3.1, require that all telecommunications providers "shall interconnect directly or indirectly with the facilities and equipment of other telecommunications providers." Furthermore, USWC is required by 4 CCR 723-39-3.3.2, and the Act require interconnection at "any technically feasible point within the [local exchange] provider's network."

c. We find that AT&T's request for interconnection at any technically feasible point of interface is consistent with this Commission's Rules. The trunk interconnections, including SS7, MF, DTMF, DialPulse, PRI-ISDN, DID, CAMA-ANI, and trunking necessary that for interim LNP are of the type that USWC provides itself and should be available to AT&T.

2. AT&T seeks Commission Approval of its Attachment 5 Ordering procedure

a. AT&T seeks approval of an extensive provisioning and ordering process as set forth in Attachment 5 of Exhibit 15. The Petitioner requests that USWC deploy network facilities in all of the USWC serving areas on a timely basis for each of the elements in this section. AT&T requests that it be allowed to order each of the elements individually or in any combination. AT&T also desires a single point of contact with an electronic interface available 24-hours-a-day, 7-days-a-week for ordering and provisioning order flows. AT&T describes electronic interfaces for transferring and receiving orders, service completion, and other provisioning data. AT&T requests that it have real time access to customer profiles, names, address information, identification of features, and services subscribed to by a customer. AT&T further describes the necessity for it to be able to obtain from USWC each local switching element and all technically available features or functions from the specified USWC switch.

b. AT&T requests that the order format and data elements use standard data elements developed by the Order and Billing Forum. Petitioner sets out specific performance requirements and completion intervals for each network element. AT&T desires that 90 percent of all orders be

completed by the Desired Due Date, 98 percent of all orders must be completed by Committed Due Date, and at least 99 percent of all orders be completed without error.

c. In general, USWC opposes recommendations such as those contained within the AT&T proposed language. As we have pre-viously noted, USWC believes that under the provisions of the Act and applicable State law, it is already obligated to provide non-discriminatory service to competitors.

d. To the extent the service order installation inter-vals proposed by AT&T in Attachment 5 are different than those nor-mally used by USWC or required by the rules of this Commission,⁵¹ the appropriate venue for review of AT&T's proposals is the future rulemaking proceeding we have discussed above (Performance Stan-dards and Liquidated Damages Provisions). Most of the other issues raised by AT&T in Attachment 5 are discussed in other sections of this decision. We decline to approve Attachment 5 as proposed.

3. Two-way Trunking (Attachment 3, 13.6.1.4 - 5)

a. AT&T requests that USWC provide two-way trunk groups for interconnection and, at AT&T's request, and provide unidirectional traffic on such trunks, operating them as if they were one-way trunk groups. AT&T also desires that USWC

⁵¹ See, for instance, 4 CCR 723-2-24.

provision trunks without any user restrictions.

b. As this is technically feasible and provides efficient utilization of the facilities to the CLEC, we direct that trunks be established as one-way or two-way trunks in accordance with standard engineering practices at the option of AT&T. For proper access billing and to avoid circumvention of the access tariff, the Agreement shall require that AT&T utilize separate trunk groups for delivery of local and toll traffic to the USWC access tandem switch. We also note that AT&T is responsible for providing appropriate data to USWC for identification of traffic transiting the USWC network to other CLECs.

4. Direct Trunking (Attachment 3, 13.6.1.2.1)

a. AT&T requests that USWC provide for direct trunks for intraLATA traffic (except 911, directory assistance, operator services, and other services that may require special routing) and, at AT&T's request, that USWC allow AT&T to route such traffic either directly to a USWC tandem or directly to a USWC end-office.

b. USWC has recommended a traffic measurement standard of 512 Economic Centum Call Seconds ("ECCS") for the determination of when direct end-office trunking is appropriate.

c. We believe that determining the right mix of direct trunked and tandem switched transport will ensure

network and economic efficiency. Therefore, except for services such as 911, directory assistance, operator services, and other services that may require special routing, USWC shall allow AT&T to route traffic either directly to a USWC tandem or directly to a USWC end-office in accordance with standard engineering practices that promote network and economic efficiency. We will not require reference to a fixed standard for direct trunking. However, as previously discussed, we require that local traffic be separated from toll traffic (access traffic).

5. Definition of Collocation and Types of Interconnection Through Collocation (Attachment 4, 2.1, 2.2.1, 2.2.4, and 2.2.5)

a. AT&T has requested that it be allowed to obtain space in, including but not limited to, USWC wire centers and tandem offices, as well as all buildings or similar structures owned or leased by USWC, that house USWC network facilities, vaults with loop concentrators or similar structures, Local Switching Offices, Central Offices, Controlled Environmental Vaults, and environmental huts. Petitioner requests that USWC provide space to meet AT&T's needs for placement of equipment and that USWC grant it a license to occupy and obtain access to such space. Where space is insufficient, USWC shall provide virtual collocation for AT&T equipment. AT&T will annually forecast and review its collocation needs. AT&T requests that it be permitted to

collocate the amount and type of equipment it deems necessary in its collocated space for purposes of interconnection with USWC's network or access to USWC's unbundled network elements.

Petitioner's request includes, but is not limited to, collocation of transmission equipment, multiplexing equipment, and remote switch modules. AT&T requests that it shall have unrestricted rights to use collocated space for the provisioning of telecommunications and related services. Finally, AT&T requests that it be permitted to interconnect its network and its collocated equipment with the network and equipment of other collocating telecommunications carriers which have space within the USWC premises.

b. USWC disputes the definition of "premises"; stating that the First Report and Order broadly defined premises to include structures such as cable vaults or other structures maintained in public rights of way.⁵² USWC states that a fundamental tenet of the FCC's previous collocation orders has been the physical segregation of a local exchange carrier and interconnector equipment. The Company points out that space constraints in cable vaults and in other non-end office structures preclude USWC, as a general matter from ensuring that adequate space exists to allow both collocation of CLEC equipment and physical separation from USWC's equip-

⁵² USWC Closing Statement Of Position, dated October 10, 1996, page 12.

ment. Thus, USWC believes that the Commission cannot make a blanket determination that collocation at any USWC premises is technically feasible. USWC states that specific CLEC requests for collocation in non-end office USWC structures will require a case-by-case determination and should go through the BFR process.

c. USWC also opposes the collocation of remote switching units ("RSUs") in its end offices. In support of this position, it notes that the First Report and Order did not mandate such collocation. Finally, the Company argues that AT&T's proposed collocation provision will create a significant threat of bypass of switched access services.

d. Staff encourages the collocation of RSUs as a means of providing digital services to areas that are currently without digital switches or service. Staff notes, for example, that a new entrant might collocate a RSU at a USWC analog central office to provide Integrated Services Digital Network ("ISDN") to customers where the USWC end office switch is incapable of providing this digital service.

e. The necessity of physical collocation of CLEC equipment, where technically feasible, is recognized in 251(c)(6) of the Act and in this Commission's Rules, 4 CCR 723-39-3.4. In 573 of the First Report and Order, the FCC broadly interpreted the term "premises" to include ILEC

central offices, service wire centers, and tandem offices, as well as all buildings or similar structures owned or leased by the ILEC that houses ILEC network facilities. The FCC treats as an ILEC premise, any structures that house ILEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures.

f. Collocation on USWC premises shall be allowed when-ever it is technically feasible in accordance with Commission Rules. Our Rules, as well as the Act, require that USWC collocate equipment necessary for interconnection or access to unbundled ele-ments at its premises. The First Report and Order defines premises to include structures other than USWC's end offices, such as cable vaults.

g. We direct that collocation be allowed in the manner requested by AT&T accordingly. Collocation at any USWC premises shall be accomplished through the BFR process. Collocation provi-sions shall not constrain the types of equipment that may be collo-cated. AT&T shall be allowed to locate the amount and type of equipment it deems necessary in its collocated spaces for intercon-nection with USWC's network or access to USWC's unbundled network elements. Such equipment includes, but is not limited to, trans-mission equipment, multiplexing equipment and RSUs, subject to availability of space.⁵³ AT&T shall be permitted to share its

⁵³ We do note that AT&T voluntarily stipulated during this proceeding that it would not

col-located space with other providers and to interconnect or cross-connect to other providers' equipment collocated at the premise. Where space is limited, such as in cable vaults or man-holes, AT&T shall be permitted to collocate equipment of the type that USWC would normally locate in those facilities.

6. Vendors for Collocated Equipment (Attachment 4, 2.2.6)

a. AT&T requests that it be allowed to use vendors approved by USWC for all required engineering and installation services of collocated equipment, provided that USWC shall not unreasonably withhold approval. AT&T submits that approval by USWC will be based on the same criteria it uses in approving contractors for its own purposes.

b. We find the request by AT&T to permit it to be allowed to use vendors approved by USWC for the engineering and installation of collocated equipment in USWC premises is a reason-able provision.

7. Collocation Terms (Attachment 4, 2.2.9, 2.2.10, 2.2.13)

a. AT&T requests that it be allowed 24-hour, 7-day-a-week access for its AT&T personnel and agents to its collocated facilities. AT&T requests that this include access to collocated cable racks, conduits, and ingress and egress of

ote switching modules to bypass access charges. (Tr. 9/25/96 pp 137-38) The Agreement shall elect this voluntary stipulation.

fiber and power cable. Petitioner submits that USWC must comply with AT&T's cable diversity standards and specific levels of diversity provided in its collocation requests. Finally, AT&T requests that USWC will provide completed Environmental, Health & Safety Questionnaires for each collocated building space within 24 hours of AT&T's proffer of the questionnaire and request for each collocation. If the site proves contaminated, USWC must offer alternative space.

b. With regard to access to collocation space, we find that AT&T requires the ability to timely access its collocation equipment. However, we are also sensitive to the issue of preserv-ing the security and network reliability of USWC's equipment in USWC's portion of the premise. USWC stated that it does not have space available at all locations to construct secured collocation areas accessible 24-hours-a-day.

c. Staff recommended that background checks, liability bonding, and other mechanisms should be in place before permitting unescorted 24-hour-a-day, 7-day-a-week access to unpartitioned col-located facilities.⁵⁴

d. We direct that where a provider has requested col-location through a BFR process and where space allows partition of USWC equipment, providers shall be allowed 24-

⁵⁴ Staff's Position Statement, page 4.

hour-a-day, 7-day-a-week unescorted access. Where it is not possible to construct secured locations for unescorted access, USWC shall provide a 24-hour-a-day, 7-day-a-week manned telephone number through which AT&T may request escorted entry to collocation space. Such escorted entry by USWC shall be made available within the approximate travel time required by the AT&T technician to meet the USWC escort at the USWC premises. As an alternative to providing timely escorts, USWC may consider the mechanisms suggested by Staff, such as liability bonding and background checks, to allow unescorted access by AT&T personnel to USWC premises not physically partitioned.

e. We direct that USWC provide AT&T access to collocated cable racks, conduits, and ingress and egress of fiber and power cable. USWC must provide AT&T the same cable diversity as it provides itself. Cable diversity requests above and beyond that which USWC provides itself will be accommodated through a BFR process and paid for by AT&T.

f. Rather than require USWC to complete an environmental questionnaire within 24 hours of its being proffered by AT&T, we direct that AT&T and USWC utilize the language in H of the USWC/MFS agreement.⁵⁵

8. Damages for Delay in Collocation Turnover Dates

⁵⁵ See Paragraph H., Page 85 of Exhibit 68, the Joint USWC and MFS Agreement.

AT&T requests that it be compensated by USWC for any delays in the negotiated completion and turnover dates which create expenditures or delays to AT&T. AT&T specifies liquidated damages for this delay as being \$1,000 for each day the turnover date is delayed. AT&T's specific suggestion is unsubstantiated. No justification for the particular monetary amount of recommended liquidated damages was offered to us.

9. Information for Collocation (Attachment 4, 2.2.22)

a. AT&T requests that USWC provide it, within five business days of a collocation request: Work Restriction guide-lines; USWC contacts; USWC escalation process for disputes; Draw-ings; Installer access restrictions; Vendor/supplier certifications requirements; and installation intervals from application through completion.

b. In the USWC/MFS Agreement (Exhibit 68), USWC agreed that within 15 days of a receipt by USWC from MFS of a request for collocation and an associated quote preparation fee, the Company will notify MFS of whether sufficient floor space is available to accommodate MFS's request.⁵⁶

c. We direct that USWC provide the AT&T requested information (Attachment 4, 2.2.22) within ten days of

⁵⁶ See Exhibit 68, paragraph E (1.), page 31 of the USWC/MFS Agreement.

receipt by USWC.

10. Battery Reserve Capacity (Attachment 4, 2.2.24)

a. AT&T requests that USWC shall provide battery reserve capacity that is adequate to ensure eight hours of operation if no emergency generator access is available, or two hours of battery reserve should emergency generator access be available. In addition, USWC is requested to provide AT&T with remote access to automatic battery alarm notification.

b. USWC, in its Replacement Interconnection Agreement,⁵⁷ states that the National Reliability Council ("NRC") Best Practices (recommended by the FCC) calls for a minimum of eight hours of battery backup for sites not supported by a permanent on-site standby engine-generator, and a minimum of three hours for those sites that have an on-site standby alternating current source. USWC standards comply with these NRC recommendations, and in the case of sites with a permanent on-site standby engine, the USWC standard is a minimum of four hours.

c. Commission Rule 15.1.3, Relating to Provision of Service During Maintenance or Emergencies,⁵⁸ requires that for central offices of greater than 10,000 access lines,

⁵⁷ Replacement of U S West Proposed Interconnection Agreement as Filed in Response to Petition for Arbitration, filed September 6, 1996, Appendix E, paragraph 52. See Exhibit B5.

⁵⁸ Rule 15.1.3 of the Rules Regulating Telecommunications Service Providers and Telephones, 4 CCR 723-2.

permanent auxiliary power units shall be installed and a minimum of four hours of battery reserve rated for peak traffic load requirements provided. The AT&T request that it be provided with two hours of battery reserve, should generator access be available, is less than the four hours of reserve that USWC provides as a minimum standard, pursuant to Commission rule. We direct that USWC provide sufficient power for its equipment and collocated CLEC equipment such that the provisions of Commission's Rule 15.1.3 (4 CCR 723-2) are met. That is, in central offices that have more than 10,000 access lines, permanent auxiliary power units shall be installed, and four hours of reserve battery power for peak traffic load requirements provided for USWC as well as CLEC equipment.⁵⁹ We also direct that AT&T shall be provided with remote access to automatic battery alarm notification as requested.

11. Collocation Intervals (Attachment 4, 2.2.24)

a. AT&T requests that intervals for physical collocation shall be a maximum of three months from the requested date. Additionally, AT&T requests that installation intervals for virtual collocation will have a maximum interval of two months.

⁵⁹ This requirement also applies to control offices serving less than 10,000 lines except that the power source must be available at the central office within four hours.

b. USWC in its agreement with MFS,⁶⁰ details various intervals for the construction of necessary cage/hardwall enclosures for physical collocation. USWC also provides that for virtual collocation, it shall complete the installation of MFS's collocated equipment within 90 days of USWC's receipt of MFS's collocated equipment. USWC also states that it will install line cards and other minor modifications on intervals equivalent to those that USWC applies to itself, but in no instance shall any such interval exceed 90 days.

c. We direct that USWC provide for the physical collocation of CLEC equipment as soon as technically possible, but in no event more than five months from the requested date, even for significant additions such as initial collocation installations. For virtual collocation or other equipment additions or other minor equipment modifications, USWC shall apply intervals equivalent to those that USWC applies to itself, but in no instance shall any such interval exceed 90 days.⁶¹

12. Equipment Storage (Attachment 4, 2.2.27)

a. AT&T requests that USWC provide a physically collocated space, in a separate area of USWC's premises, for

⁶⁰ Exhibit No. 68, pages 31 and 32.

⁶¹ These directives are meant to be in concert with 4 CCR 723-39-3.6 and 3.8. Normally, the rule shall apply.

the stor-age of equipment maintenance spares. The number of such spares necessary for storage would be based on vendor/manufacturer failure rates. USWC shall not restrict AT&T's use of its collocation area if AT&T chooses to use its collocated space to store its equipment maintenance spares.

13. Meet Points for Access to Unbundled Elements
(Contract 37)

a. AT&T requests that USWC permit it to interconnect its facilities or facilities provided by AT&T or by third parties, with each of USWC's Network Elements at any technically feasible point designated by AT&T. AT&T states it should be able to choose any technically feasible method of access to unbundled elements and USWC must make meet points available on request.

b. Our rules require that carriers provide for the interconnection with any requesting telecommunications provider for the transmission and routing of telephone exchange service and exchange access at any technically feasible point within the car-rier's network.⁶² We agree that AT&T should be able to choose any technically feasible method of access to unbundled elements of USWC. However, when meet-points are to be used to access unbundled network elements, the CLEC, such as AT&T, is responsible for the meet-point costs. Normally these should be collected through recurring

⁶² See 4 CCR 723-39, Rule 3.3, 3.3.1 and 3.3.2.

rate elements for the type of service provided and associated with access to these elements.⁶³

14. Traffic Type

a. AT&T submits that there should be no restrictions on the type of traffic for interconnection, and no requirement to segregate traffic. Furthermore, AT&T asserts that USWC should have the burden of proof to show that the combined traffic is not technically feasible.

b. For proper access billing and to avoid circumvention of the access tariff, the interconnection agreement shall require that AT&T utilize separate trunk groups for delivery of local and toll traffic to the USWC access tandem switch or the end office switches. We also direct that AT&T is responsible for providing appropriate data to USWC for identification of traffic transiting the USWC network to other CLECs.

15. Limitations on Interconnection

a. AT&T submits that there should be no limitation on the number of points of interconnection in a geographic area or their placement. Furthermore, AT&T requests that the Commission not allow distance limitations to be placed on mid-span meets. The purchase of interconnection should not be limited to that which is presently available in USWC's private

⁶³ See page 19, IV.B.2 of Exhibit 68.

line and access tariffs.

b. USWC urges this Commission to require each CLEC to establish one point of interconnection ("POI") in each local calling area in which it offers facilities-based telecommunications service. USWC further requests that the agreement provide for a construction charge if the CLEC meet point is greater than one mile from a USWC end office.⁶⁴

c. We will require AT&T to establish a POI in each local calling area in which it is delivering and receiving local traffic. AT&T may establish the POI in a particular calling area through the use of its own facilities or through the lease of facilities from other providers. AT&T may also offer service in a local calling area through the purchase of unbundled elements. USWC shall not require nor prevent AT&T from establishing more than one POI in each local calling area served by AT&T. We also decline to approve the USWC request for assessment of construction charges for interconnection meet-points over one mile from the USWC end-office. See discussion *infra*. We further direct that the Agreement require each party to construct and maintain its own facilities to an equivalent meet-point, unless a different point is mutually agreed upon.⁶⁵ The purchase of interconnection shall

⁶⁴ USWC Closing Position Statement, page 7.

⁶⁵ In determining the meet-point, it should be viewed as occurring at the half-way point between location of the two parties, unless mutually agreed upon to do otherwise.

not be limited to that which is presently available in USWC's private line and access tariffs.

O. Unbundled Network Elements

1. Scope of Unbundling and Combining Network Elements

a. AT&T requests that it be permitted to use one or more network elements to provide any feature, function, or service. AT&T further requests that the elements listed in subsections 1 through 11 (except 1, 3, 4, and 5 dealing with subloop unbundling) of 37 of Exhibit 15 comprise the elements to be unbundled at this time, and that it be recognized as not being an exclusive list. AT&T also requests adoption of several clauses related to general provisioning of services.

b. For its part, USWC recommends that the Commission restrict AT&T's ability to buy unbundled elements such that reassembly of those unbundled elements to create a complete telecommunications service is not possible. USWC witnesses testified that they disagree with the First Report and Order and are of the opinion that the purchase of all of the necessary unbundled elements to form a complete service is not within the intent of the 1996 Telecommunications Act. Specifically, Dr. Harris, a USWC witness, testified that the potential for price arbitrage created by this situation would

harm USWC.

c. AT&T disagrees with the USWC position and recommends that there be no restriction on the combinations of unbundled elements that interconnectors may purchase. AT&T notes that the potential for arbitrage hinges on the pricing of elements, and that pricing is not at issue in this proceeding. Finally, AT&T maintains that such a restriction is contrary to the First Report and Order⁶⁶ as well as the Interconnection and Unbundling Rules (4 CCR 723-39-6.1) of this Commission.

d. Staff provided two options based on whether the Commission is preempted by the FCC on this issue. If the Commission is not preempted, Staff recommends the implementation of a Residual Unbundling Charge ("RUC") to account for the disparity in prices between current retail "finished" business services and the sum of the unbundled elements, including unbundled loop charges. USWC agrees with the institution of such an additional charge to CLECs. However, if the Commission determines that the FCC preempts the State on this issue, Staff recommends that the Commission follow the FCC rules.

e. We direct that the agreement not include any restrictions on the bundling of network elements apart from

⁶⁶ FCC Interconnection Order at 293-296.

any incorporated through the Interconnection Tariff. We will not implement any residual charge as proposed by Staff and USWC at this time, since the issue will be readdressed in Docket No. 96S-331T. Any losses incurred by USWC in the interim will be trued-up to the permanent rates.

f. With respect to AT&T's discussion of the network elements which are to be unbundled, we note that 4 CCR 723-39-6.2 lists the network elements that this Commission has initially required the ILEC to furnish on an unbundled basis.

In its review, the FCC has held that certain additional requirements should also be available to CLECs as basic unbundled network elements. In its agreement with MFS, USWC agreed to provide the network elements required by the FCC. The agreement between AT&T and the Company, shall incorporate the network elements referenced in 4 CCR 723-39-6.2 and those additional elements required in the First Report and Order. Unless otherwise addressed in this decision, to the extent further network elements are requested by AT&T, they should be made available by USWC pursuant to the BFR process.

g. In conjunction with its discussion of unbundled network elements, AT&T wants to incorporate into the agreement, several specific criteria regarding provisioning of network elements.⁶⁷ These criteria include ordering multiple

⁶⁷ See Section 2 of Attachment 5 of Exhibit 15.

elements per order, time frames for provisioning of services, a single point of contact for ordering and provisioning, joint disaster coordination recovery plans, and recognition of AT&T as the customer of record.

h. The issue of time frames for service order installation has been previously discussed in this decision.

To the extent not discussed elsewhere in this decision, the remainder of AT&T's suggestions appear reasonable and shall be part of the Agreement.

2. Local Loop

a. AT&T has requested the availability of served loop types which it believes USWC is required to provide pursuant to the First Report and Order. These include two and four-wire loops as well as conditioned loops that support ISDN, High-bit-rate Digital Subscriber Line ("HDSL"), Asymmetric Digital Subscriber Line ("ADSL") and DS1. AT&T also requests loops that provide both analog and digital support of Plain Old Telephone Service ("POTS"), CLASS/LASS OHT ISDN, DS0, DS1, TR303, TR08, TR57, Subrates, Fractional T1, and all Sonet rings.⁶⁸ AT&T further argues that unless it is required by technology, it should not be forced to disclose the type of service to be provided on the line.

b. USWC proposes to provide its standard

⁶⁸ We note that the AT&T testimony did not specifically request nor justify provisioning of the abilities nor even define some of these acronyms. See Lynott testimony, Exhibits 5, 6, and 7.

unbundled element two or four-wire loops capable of supporting services within the nominal voice-grade bandwidth of 300 to 3,000 Hertz. To the extent AT&T desires to provide services that require transmission capabilities beyond that of the nominal bandwidth available on its standard loop offering, USWC proposes to charge AT&T for any necessary conditioning.⁶⁹

USWC further suggested that to the extent not already covered by the USWC tariff,⁷⁰ any work done to remove equipment, such as load coils used in provisioning voice grade service, should incur a non-recurring charge to be paid by the requesting party, commonly referred to as an "individual case basis" charge.⁷¹

c. Staff notes that the Commission's rules, 4 CCR 723-2-17, define basic service which USWC is to provide on a ubiquitous basis over its existing loop plant. The definition does not include the capability for services such as ADSL HDSL, or ISDN. Staff further recommends that USWC file a tariff establishing a standard flat nonrecurring charge for qualifying conditioned unbundled loops (e.g., ADSL, HDSL, or ISDN).

d. We are persuaded by the recommendations of

⁶⁹ Exhibit 54, pp. 76-77.

⁷⁰ We note that under 5.4.5 of its Exchange and Network Services Tariff, USWC offers the Balance Enhancement feature which guarantees a specific loss level for a loop facility.

⁷¹ Tr. 10/2/96, p. 194.

USWC and Staff on this issue. We believe that this is consistent with the intent of the First Report and Order. The Agreement shall provide for the standard unbundled loop supporting services within the nominal voice-grade frequency bandwidth, available as either a two or four-wire loop. Rates for this loop are established by the Interconnection Tariff.

e. Loop conditioning for advanced services such as HDSL or ADSL shall also be made available by USWC, subject to the Interconnection Tariff. To the extent not covered by the Interconnection Tariff, USWC shall develop a standard nonrecurring rate for removal of existing conditioning, normally load coils used for voice-grade service.

f. In Docket No. 96S-331T, USWC shall also develop its basic unbundled loop element recurring rate on the basis that no conditioning, load coils, or any other equipment investment, is included within that rate. If AT&T seeks to provide advanced digital services requiring conditioning features beyond those provided in the Interconnection Tariff, it shall utilize the BFR process to obtain such conditioned loops.

g. As we have previously found in Decision No. C96-665, AT&T is not required to nominate or disclose the specific service it proposes to offer over the loop. However, to the extent the technical characteristics required of the loop differ from that of standard voice grade service, AT&T

shall make USWC aware of such characteristics.

3. Network Interface Device

a. AT&T suggests access to the Network Interface Device ("NID") as the interface to customers' premises wiring for alternative loop technologies. AT&T also requests approval of 2.1.3 in Attachment 3 of Exhibit 15.

b. As noted within its testimony, AT&T believes that the NID should be an unbundled building block under Commission rules (4 CCR 723-39-6) and requests that it be unbundled.⁷² Within its testimony, AT&T requested that, in a single family home environment, it be allowed to use any spare capacity of an existing USWC NID. If no spare terminals were available, AT&T would install its own NID and move the customer's inside wires to its device.⁷³ At hearing, AT&T recommended, that when necessary, it be allowed to request that USWC replace the existing Company NID with one of larger capacity.⁷⁴ AT&T would expect to pay for the larger NID based on TELRIC costs.⁷⁵

c. USWC is not opposed to unbundling of the NID, since this is required by the First Report and Order (See

⁷² Exhibit 6, pp 4-5.

⁷³ Exhibit 7, p 5.

⁷⁴ Tr. 9/25/96 pp 29-30.

⁷⁵ Tr. 9/25/96 p 289.

392). USWC notes that the FCC only requires that the CLEC be allowed to connect to the ILEC's NID via it's own NID, which is reflected within the USWC NID proposal contained in Exhibit 68 (See pages 78 and 79). The Company did testify that it would allow access to the USWC NID for a single family residence to the extent space is available for another protector. However, when it hooks up CLEC facilities to the USWC NID or provisions a larger NID at the pre-mise to accommodate CLEC customer requirements, or when there are other recurring costs associated with unbundled access to the NID, USWC suggested that the CLEC should be responsible for such costs.⁷⁶

d. The FCC has required unbundling of the NID as a network element, access to which shall be incorporated into the agreement. The FCC also allowed the States to determine whether direct connection to the NID is technically feasible pursuant to such access by CLECs.⁷⁷

e. As conceded by USWC, access to its NID is certainly technically feasible. We understand that the parties are close to agreement on this issue. We direct that the agreement allow unbundled access to the USWC NID where spare capacity exists. Alternatively a CLEC may request placement

⁷⁶ Tr. 10/2/96 pp 14-15, 96.

⁷⁷ See First Report and Order, 396.

of a larger NID. AT&T shall be afforded the option of either installing its own NID as allowed under the First Report and Order or gaining access to the USWC NID.⁷⁸ Hookup or installation shall be the responsibility of USWC with the CLEC responsible for payment of any hookup or non-capitalized installation charges. To the extent there are capitalized investments made for which recurring charges are normally assessed, the manner of collection of these shall be incorporated into the Interconnection Tariff, which the agreement shall incorporate by reference.

f. We specifically do not approve 2.1.3 in Attachment 3 of Exhibit 15. The requirements for connection to the USWC NID stated under 2.1.3.2 do not coincide with the testimony or requests of AT&T in this proceeding. We note that the standards cited by AT&T were not specifically explained within the AT&T testimony. We do note that, generally, standards should be viewed as acceptable for incorporation into the agreement if they are industry standards which are or would be used by USWC in the provisioning and maintenance of its NID.

4. Local Switching

a. AT&T requests that the Commission approve its

⁷⁸ We clarify that this option exists for situations in which the installed NID is the same as that normally used on a single family home. This could include locations such as duplexes or townhomes in which an individual NID is used for each dwelling unit. (See Tr. 10/2/96 pp 23-25)

request that USWC provide all of the features, functions and capabilities of which a local switching unit is capable, including all functions listed and unlisted in 5.1.1 of Attachment 3 of Exhibit 15. Although USWC initially opposed inclusion of switching features in the local switching element,⁷⁹ the joint agreement with MFS specifically includes them within the switching element.⁸⁰

b. While our Rules do not specifically include features and functions within the definition of local switching,⁸¹ the FCC has incorporated them within the scope of the switching function under its interpretation of the Act.⁸²

As previously discussed, we have ruled that we would not reopen issues determined by effective FCC rules. This particular interpretation of the Act by the FCC is not subject to the stay order of the 8th Circuit Court of Appeals. Therefore, the request of AT&T is granted and the agreement shall incorporate language to the effect that the local switching element includes access to all of its capabilities.⁸³

⁷⁹ See p 85 of Exhibit 54.

⁸⁰ See A.1. on page 73 of Exhibit 68.

⁸¹ See 4 CCR 723-39-2.21.

⁸² See 412-413 of the FCC Report and Order.

⁸³ We see no need to adopt the language contained within 5.1.1 of Attachment 3 of Exhibit 15. T proposes to include all of the capabilities listed there plus any unlisted. This is simply best for the universal capabilities of the particular switch as required under the First Report and Order.

The pricing of the basic switching function and the associated features and functions by USWC shall be determined in Docket No. 96S-331T. In the interim, AT&T may obtain these services through the BFR process.

5. AIN Triggers

a. AT&T requests access to AIN triggers to access USWC's Software Management Systems ("SMS") and other call related data bases such as the Local Information Data Base, Toll Free call-ing and LNP databases. The testimony and exhibits of AT&T are somewhat confusing on this issue. Initially, AT&T requested access to unbundled AIN triggers on the USWC local switch so as to access AT&T's AIN platform.⁸⁴ Subsequent to the First Report and Order, AT&T modified its request to seek only the capability to launch an AIN inquiry to the USWC AIN platform from either a USWC or AT&T local switch.⁸⁵ AT&T has also eliminated language from Exhibit 15 related to using the SMS capabilities of USWC.⁸⁶

b. As noted in the testimony, USWC opposes unbundling AIN triggers. However, USWC has offered to provide access to AIN call related databases when local switching is purchased from it.⁸⁷ In this instance, we do not believe that

⁸⁴ Exhibit 6 pp 14-17.

⁸⁵ Exhibit 8, pp 5-7.

⁸⁶ Exhibit 15 Attachment 3, pp 65-67.

⁸⁷ Exhibit 68 1. page 64.

AT&T has clearly established that further unbundling or access to functions over and above what is required under the First Report and Order is necessary. Therefore, we refer the parties back to the language in that document on access to call related databases as guidance on this issue. AT&T is provided the opportunity to incorporate such language into its agreement to the extent it believes necessary. If AT&T desires specific unbundling of AIN triggers, that issue should be pursued through a specific request to USWC for an unbundled network element.

6. Digital Cross-Connect

a. Pursuant to its view of requirements of the First Report and Order, AT&T requests to have access to digital cross connects. We note that USWC does not dispute access at the cross connects points, but suggests that this occur through the application of an Expanded Interconnection Channel Termination ("EICT").⁸⁸ As testified to by AT&T witness Lynott, this Commission has directed USWC to make available points of interconnection at cross connect points as defined by industry standards.⁸⁹ We direct that the agreement incorporate access to unbundled network elements at cross connect points. In terms of the USWC request for use of

⁸⁸ See Exhibit 54, p 76 and Exhibit 68, p 19 A.2.

⁸⁹ See Exhibit 6, p 22 and Decision No. C96-655 pp 53 and 65.

an EICT to access the cross connect, we note that this is included within the current Interconnection Tariff in the agreement.

7. Dark Fiber

a. AT&T requests that all unused transmission media be available to it pursuant to a lease agreement and that USWC provide AT&T data concerning the location and characteristics of the unused media within five business days of a request from AT&T. Furthermore, AT&T requests that such unused media be held in reserve for AT&T for 90 days after confirmation of its intended use by AT&T. AT&T requests approval by the Commission of Section 4 of Attachment 4 of Exhibit 15 in its entirety.

b. In its Statement of Position, AT&T presents a different and more limited version of this request by addressing the unbundling of dark fiber as a network element.

However, within its testimony, AT&T requested access to dark fiber as an ancillary function (*i.e.*, similar to collocation or conduit/rights-of-way) and not as an unbundled network element. AT&T based its request on the delay and difficulty in obtaining rights-of-way, permitting, and conduits for new fiber facilities.⁹⁰

c. USWC opposes unbundling of dark fiber as

⁹⁰ Exhibit 7, pp 8-10 and Tr. 9/25/96 pp 27-28.

outside the scope of the Act. It believes that availability of dark fiber on the terms requested by AT&T and MCI would be tantamount to exclusive use of USWC's spare capacity by its competitors. In its Statement of Position, Staff recommends that dark fiber be tariffed as a service.

d. We will not approve the language contained within Section 4 of Attachment 4 of Exhibit 15. We view most of the pro-visions of this section as beyond the pale of nondiscriminatory treatment and being overly burdensome to USWC. For instance, we do not see why USWC should be obligated to globally offer all its unused transmission media as well as the amount and location of that media to AT&T. We also do not believe it advisable to require USWC to expand its facilities simply because not enough dark fiber is available to AT&T.⁹¹

e. Pursuant to a previous decision, this Commission has found that dark fiber is jurisdictional to this Commission and that it can also be termed interchangeably as a service or facility.⁹² In this instance, we view it as a facility similar to conduit, to which it is an alternative. As noted in the First Report and Order, a facility used in the

⁹¹ However, AT&T is free to request that USWC construct facilities for the benefit of AT&T on USWC construction charge tariff, if AT&T so desires additional transmission media. (See 5. the USWC Access Service Tariff) To the extent that such construction is desired, the agreement incorporate this provision of the Access Service Tariff.

⁹² See Exhibit 67, p 5-7.

provision of a telecommunications service can be defined as a network element. (See 262) While USWC argued that dark fiber does not meet the "impairment" test of 251(d)(b)(2) of the Act, we note that the FCC includes in the nomination of a network element an assessment of whether the unavailability of the element would affect the CLEC's cost to provide service.

(See 285) Generally, we believe that availability of dark fiber should be cost effective relative to the use of other elements, when used for high traffic or bandwidth applications.

f. At this time, we do not believe that dark fiber should be generally unbundled as a network element because possible reconfiguration or cuts by a CLEC may not be consistent with the operational plans (i.e., technical feasibility) for the facility by the ILEC.⁹³

g. Nonetheless, in instances where there exists excess reserve of fiber capacity, leased use of the facility can be financially beneficial to both parties as well as the general public interest.⁹⁴ Since assessment of the availability of dark fiber should be a case-by-case analysis, the best means for access to the use of USWC dark fiber by a CLEC is through the BFR process in which the CLEC should initially describe the technical requirements and terminal

⁹³ Tr. 9/25/96, pp 154-58. We would view this limitation as similar to that for subbundling, which both of the parties agree should be reviewed through the BFR process.

⁹⁴ Tr. 9/25/96 pp 192-193.

locations of the desired fiber optic facility.

h. We will allow AT&T access to the Company's dark fiber only on the condition that AT&T make its own dark fiber available to USWC on the same conditions, subject to the same BFR process. We do so for the following reason: AT&T notes that the public interest will be served by the efficient use of telecommuni-cations facilities such as dark fiber. For example, the more effi-cient use of dark fiber may result in less need for new rights of way and resulting damage to other infrastructure caused by instal-lation of more telecommunications facilities. This rationale applies to dark fiber owned by all providers, not only that of the ILEC. We conclude that the reciprocal availability of AT&T's dark fiber will enhance USWC's ability to administer its own dark fiber through the BFR process (*e.g.*, the Company may be able to lease some of its dark fiber to CLECs if it has available to it dark fiber from other providers).

i. Therefore, at its option, AT&T can incorporate into the agreement the availability of dark fiber through a BFR process within the previously described limitations.

8. Signaling

a. AT&T requests unbundled access to both signaling links and Signaling Transfer Points ("STPs") as well as access to the Service Control Point ("SCP") via the STP. AT&T specifi-cally wants clarification that it can acquire STP

use on a stand-alone basis, for connection to third party networks. AT&T also requests Commission approval of 10.2 and 13.5 of Attachment 3 of Exhibit 15 regarding network standards and definitions.

b. The USWC testimony responded that it proposed to offer unbundling signaling links, STP ports, and access to the SCP via the STP. USWC claims that its proposal meets the requirements of the Act and the First Report and Order.⁹⁵

c. We note that the First Report and Order concluded that nondiscriminatory access must be provided on an unbundled basis to the signaling links and STPs of the ILECs. Furthermore, it states that purchase of these unbundled elements gives the CLEC the right to use them for signaling access to third party net-works.⁹⁶ These requirements are also in harmony with those of this Commission. In regard to the specific request to use the STP to access third party signaling networks, this is allowed and required of the ILEC pursuant to both the First Report and Order as well as the rules of this Commission. Unbundled use of the STP is defined by this Commission as an essential function. We note that the definition of the STP port as proposed by USWC witness Piegat only provides access to the SCP.⁹⁷ This is contrary to both

⁹⁵ See Exhibit 54, p 90 and Exhibit 49, p 3.

⁹⁶ See 479-483 of the Final Report and Order.

⁹⁷ See Exhibit 49. p 5.

the rules of this Commission and the Final Report and Order. While USWC witness Piegat testified that use of the STP should be under a BFR process, this testimony was largely unconvincing.⁹⁸ To the extent that some requests for signaling transmissions are more complicated than others, it may take USWC longer to fulfill a service order, just as there is a difference between providing a loop for basic voice grade versus a special service application. Both, however, are provided as a standard, tariffed, service offering. The same is expected of and required for the unbundled STP. The request of AT&T for unbundled access to signaling links, the STP, and access to the SCP via the STP is approved. The agreement shall incorporate the ability of a CLEC to acquire STP use on a stand-alone basis, for connection to third party networks.⁹⁹

d. We will not approve the request of AT&T to adopt the specific standards and definitions included within 10.2 and 13.5 of Attachment 3 of Exhibit 15. We note that the standards cited by AT&T do not necessarily coincide with

⁹⁸ As noted by USWC witness Piegat, CLEC signaling requests that are similar to those generally should be processed through the normal provisioning process. (Tr. 10/1/96 p 74) Unless additional ten-digit global title translations are required, the requests would be similar to the common practice of dealing with 6 digit requests. (pp 78-79) In this instance, the ordering procedure could be fairly streamlined. (pp 93-94)

⁹⁹ AT&T witness Lynott testified that the current interim tariff of USWC does not allow interconnection to third party networks. (Exhibit 8, pp 2-3) We agree that the current interconnection Tariff is unclear on this issue but we clarify that such connection is allowed.

references within the current USWC Interconnection Tariff nor were the specifics of the standards explained within the AT&T testimony. Generally, standards and definitions should be viewed as acceptable for incorporation into the agreement to the extent they are industry standards which are or would be used by USWC in the operation of its signaling network for provisioning of the desired function.

9. Customized Routing

a. AT&T requests assignment of line class codes for routing of operator and directory assistance calls to the AT&T operator platforms. AT&T testified that certain types of switches have the capability of providing routing of operator requests from the local switch of USWC so that when AT&T is purchasing the unbundled switching element from USWC, it could perform its own operator functions.¹⁰⁰ AT&T also notes that this Commission has previously required USWC to develop a proposed tariff and supporting information as to the costs, feasibility and timing of providing CLECs the ability to provide their own operator platform, but when purchasing the unbundled switching element from USWC.¹⁰¹

b. USWC apparently does not oppose the concept of CLECs routing operator calls to their own operator platform,

¹⁰⁰ Exhibit 6, p 13.

¹⁰¹ See Decision No. C96-665, p 78.

when purchasing the unbundled switching element from USWC. However, it did note specific technical limitations in existing LAESS switches on the USWC network that might limit the feasibility of such routing.¹⁰²

c. Prior to the First Report and Order, this Commission had required USWC to investigate its ability to provide such routing pursuant to the Interconnection Tariffs (Decision No. C96-655). In the First Report and Order, the FCC determined that customized routing functions are to be included and made available as part of the local switching element. Since we will not reopen issues determined by effective FCC rules,¹⁰³ the request of AT&T is granted. The agreement shall incorporate language to the effect that customized routing of operator and directory assistance to AT&T operator platforms, through the use of line class codes, shall be provided to the extent technically feasible. To the extent additional hardware or software costs, outside of the customized routing capabilities inherent in the existing local switch, are incurred by USWC, these should be recovered from AT&T through the BFR process.¹⁰⁴ The pricing of the customized

¹⁰² Exhibit 54, pp 297-299 and Tr. 10/3/96, pp 228-231.

¹⁰³ We note that this particular interpretation of the Act by the FCC is not subject to the review of the 8th Circuit Court of Appeals.

¹⁰⁴ For example, to provide additional line class codes than that normally equipped within a LAESS switch environment.

routing feature within the basic switching function as well as required operator trunks shall be determined in Docket No. 96S-331T.

P. Pricing for Unbundled Elements, Interconnection, and Col-location

Geographically Deaveraged Loop Rates

a. AT&T endorses a method of deaveraging loop rates proposed by Staff during the course of this proceeding. We decline to grant geographic deaveraging of loop prices in this docket. We note that during the interim tariff proceeding, Docket No. 233T, no party requested that the rate for the unbundled loop element be geographically deaveraged.¹⁰⁵ Notably, AT&T's endorsement of deaveraged loop rates relies exclusively upon the FCC's pricing directives--directives which are now stayed. We conclude that the actual rates for unbundled loops--indeed whether prices should be deaveraged¹⁰⁶--should be determined upon full consideration of cost studies and other evidence regarding just and reasonable rates in Docket No. 96S-331T.

Q. Resale

¹⁰⁵ See footnote 47, page 66 of Decision No. C96-655.

¹⁰⁶ The recent stay of the FCC's rules apparently permits State commissions to reject veraging concept imposed in the First Report and Order.

1. Available Services

a. AT&T requests that USWC make available for resale, any services the Company currently provides, or may hereafter offer at retail. AT&T lists a number of specific services that it requests that USWC be required to offer for resale in its Attach-ment 2 of Exhibit 15.

b. Section 251(c)(4) imposes certain duties upon ILECs, including the duty:

(A) to offer for resale at wholesale rates any tele-communications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service . . .

The Act also imposes on State commissions, certain responsibility for implementation of its provisions. This includes the obligation and authority to arbitrate disputes under 252(b) and (c). Under 252(c), the Commission, in arbitrating the disputes between AT&T, and USWC, must ensure that the requirements of 251 (e.g., the provisions regarding resale) are met.

c. Given the directives in the First Report and Order, USWC shall offer for resale any of its services that are currently offered at retail.

2. Requirements for Specific Services and Service Func-tions

a. AT&T requests that the Commission approve its suggested requirements regarding the resale of specific USWC services listed in its Revised Exhibit 6, Attachment 2, 6, specifically IntraLATA toll, private line services, Centrex, CLASS and custom features, Voluntary Federal Customer Financial Assistance Programs, E911/911 Services, Telephone Relay Services, and Voice Mail. AT&T also requests that the Commission approve a requirement that USWC offer for resale certain Service Functions contained in its Revised Exhibit 6, Attachment 2, 9, specifically including Electronic Interface, Number Assignment Administration, Lifeline/Link-Up Services, Work Order Processes.

b. To the extent any of these services or functions are currently offered by USWC at retail, USWC must offer them on a wholesale basis for resale. In addition, as to an available specific service or service function that is not currently offered at retail or as an unbundled network element, AT&T may request and USWC shall make available, such service or function through the BFR process.

3. Duration of Promotional Services

a. AT&T opposes an extension of the duration established by the FCC for excepting promotional offerings.

b. The FCC in its First Report and Order concluded that promotions of up to 90 days do not establish retail rates for the underlying service subject to resale.¹⁰⁷ We find no reason to disagree within this conclusion. Any USWC promotional offering that has a duration longer than 90 days shall be considered a retail service and shall be offered at wholesale rates for resale.

4. Resale Restrictions

a. In its Revised Exhibit 6, Attachment 2, 2.3, AT&T requests that the Commission disallow any use or user restrictions on the resale of services, except for a prohibition of reselling Lifeline Assistance and Link-Up to customers other than those directly eligible. AT&T discusses specifically, USWC's opposition to the aggregation of Centrex service, features and services, and the resale of other USWC telecommunications services by resellers.

b. We conclude that the limited restrictions placed on the resale of USWC services in the Interconnection Tariff incorporated in the Agreement disposes of this issue, and any modifications made in the permanent tariff in Docket

¹⁰⁷ First Report and Order at 948-953.

No. 96S-331T will be incorporated therein.

5. Packages for Resale

a. AT&T requests that any service, including packaged services, that USWC makes available at retail be provided at whole-sale prices. We agree with AT&T, this is consistent with the FCC rules.¹⁰⁸

6. Deposits

a. AT&T requests that the Commission adopt a no-deposit rule for the purchase of services for resale by AT&T, arguing that in its position no deposit is necessary.

b. We disagree with AT&T since our current rules allow for deposit requests by USWC according to its tariff,¹⁰⁹ and any exemption for AT&T would be discriminatory.

7. Construction Charges and Other Additional Charges

a. AT&T requests that the Commission not allow USWC to impose construction charges or any other cost of compliance that it does not similarly bill its own retail customers.

b. USWC contends that when a CLEC requests additional unbundled elements, requires the construction of additional facilities for resale, or desires other special construction in connection with collocation or otherwise, it should pay the full costs. USWC requests, at a minimum, that

¹⁰⁸ See 51.605 and 51.613 of the FCC rules.

¹⁰⁹ See Rule 3.4 of the Commission's Rules for the Resale of Telecommunications Exchange Services, CR 723-40-3.4.

the Commission require a long-term commitment to insure full cost recovery over time. Staff believes that a construction charge provision to cover unusual or custom construction should be included in the contracts.

c. We find that the current provisions for construction charges contained in the Interconnection Tariff, incorporated by reference into the agreement, addresses the issue of custom or special construction charges. The Interconnection Tariff provides for the application of the USWC construction charge tariff in cases where USWC is required to extend facilities. We also incorporate the tariff provisions in the USWC Access Service Tariff for construction related to unbundled network elements and collocation requested by the CLEC. We clarify that such charges do not apply to interconnection between USWC and a CLEC.¹¹⁰

8. Resale Requirements - Notification

a. AT&T requests that USWC be required to advise AT&T of any changes, at least 45 days prior to their effective date, in any terms and conditions under which telecommunications services are offered at retail for USWC subscribers, including introduction or discontinuation of features, functions, services, or promotions.

¹¹⁰ We also believe that this clarification is consistent with the intent of the conditions in special construction charges apply as listed on pages 4 and 5 of 5.1.3 of the Access Service Tariff of USWC.

b. We agree that AT&T should be provided notice of changes affecting terms, conditions, or charges for wholesale services. Without notice, the wholesale rates could change before a reseller would have an opportunity to adjust its own rates and charges accordingly. The notice period should be as provided by the Interconnection Tariff, currently the 30-day statutory period.

9. Equal Quality Features and Functions

a. AT&T requests the Commission to order USWC to provide call types, features, and functions to AT&T end users with no loss of features or functionality. Specifically, AT&T lists dial tone, ringing, dial pulse, flat and measured service, speech recognition, 1+ IntraLATA toll calling, intraLATA calling, international calling, lines and trunks, analog and digital private line, off-premise extensions, and Centrex and ISDN as services and functions for which it requests no loss of functionality.

b. The Colorado Resale Rules and the FCC Interconnection Rules require that a LEC must provide services for resale equal in quality to services provided to its end users.¹¹¹ We agree that to the extent that USWC provides such a call type, feature, or function to itself, it must offer it to AT&T at equal quality.

¹¹¹ See Rule 723-40-3.3.1 of the Resale Rules and Rule 51.603(a) of the FCC's Interconnection Rules.

10. Customer Eligibility Information

AT&T requests that the Commission require USWC to provide customer eligibility information, in electronic format, when a customer under any Federal Customer Aid Program moves from USWC to AT&T. We agree if the information can be provided in elec-tronic format in accordance with our present decision on elec-tronic interfaces, USWC shall do so.

11. Feature Class Purchases

AT&T requests that it be allowed to purchase from USWC, an entire class or subset of custom features and functions. AT&T also requests that USWC provide a list of features available by central office within ten days of the effective date of the con-tract. Additionally, AT&T requests notification of any changes in feature lists within 45 days of their effective date. We find AT&T's proposal as to feature purchases to be consistent with the First Report and Order (see 877) and our rules (4 CCR 723-40-3.6) since it constitutes the provision of services on a nondiscriminatory basis. We direct that they be incorporated into the agreement.

12. Customer Usage Data

a. AT&T requests that the Commission require USWC to provide AT&T with all customer usage data recorded by USWC for local service and intraLATA toll. AT&T also requests that USWC adopt adequate safeguards to protect AT&T Customer

Proprietary Network Information ("CPNI"), according to CPNI guidelines. AT&T states that it will work jointly with USWC to provide protection against fraud with respect to AT&T's company assets.

b. Each of these AT&T requests are reasonable to the extent USWC accords similar treatment to its own data and customers. If USWC records usage data for a given AT&T customer, USWC shall provide such data to AT&T. Similarly, both AT&T and USWC are bound by the CPNI rules of this Commission and the FCC.¹¹² Therefore, we agree with AT&T on this issue. Finally, we agree that both AT&T and USWC should include mutual provisions for protection against fraud with respect to each company's assets.

13. Resale Billing

AT&T requests that USWC recognize AT&T as the customer of record for all customers of AT&T and to send all notices, bills, or other pertinent information directly to AT&T, unless otherwise specified by Petitioner. AT&T also requests that it have the capability of providing blocking, screening, and other applicable functions available for hospitality lines, at parity with USWC. We find this request to be reasonable and we will require USWC to comply with these requirements.

¹¹² See Rules 723-7 (Privacy Rules) and 723-12 (Open Network Architecture Rules) for definitive treatment of customer data.

14. Notification for Reduced Rate Treatment

AT&T requests that USWC provide information to AT&T to certify subscribers exempt from charges, taxes, or reduced tele-communications rates. To the extent that USWC has the knowledge and the capability of providing such information, it shall provide the necessary information to AT&T.

R. Electronic Interfaces

1. Scope of Interfaces and Parity

a. AT&T requests that USWC, in cooperation with AT&T, provide real-time electronic access through a gate-way system under nationally recognized standards for pre-ordering, ordering, provisioning, maintenance, repair and testing, and billing.

b. AT&T also wants USWC to use certain electronic interfaces such as Integrated Access Billing System ("IABs") (billing), Electronic Data Interface ("EDI") Version 6.0 (ordering). In addition, AT&T proposes that USWC migrate to the Electronic Bonding-Trouble Administration for a provisioning/maintenance interface by July of 1997.¹¹³ AT&T requests that the Commission require the parties to continue to explore USWC's Web site proposal as an interim interface

¹¹³ These systems are currently used by AT&T as noted in Exhibit 10a.

solution. It also requests access to these systems that is essentially equivalent and comparable to that which USWC employs for itself.

c. USWC believes its operational support system proposal is the only viable option for meeting the FCC deadline of January 1, 1997. It argues that its private version of Web technology will be able to perform certain functions in the same manner that USWC does for itself. It notes that national standards are still in development.

d. Based on the record in this proceeding, it does not appear that definitive national standards for electronic interfaces for operational support systems are in place today. In fact, the First Report and Order indicates that the FCC itself may engage in further rulemaking on this issue.¹¹⁴ The agreement shall provide that both USWC and AT&T shall work towards and participate in standards-setting proceedings to further development of applicable national standards. When such national standards are available, the parties shall proceed to implement them within their operational support systems.

e. While interfaces such as IABs or EDI may reflect current trends toward such national standards, they are not yet considered to be the nationally recognized

¹¹⁴ See 528 of the First Report and Order.

interface standard. We note that the record reflects ongoing standards development, which may take one to two years to complete. Based on these findings, a reasonable target date for full implementation of national inter-face standards within all of these operational support systems for use in the Agreement shall be July 1, 1998, unless modified further by FCC rulemaking on this issue.

f. Since the FCC has prescribed January 1, 1997 as the date for implementation of electronic interfaces for operational support systems, we agree with USWC that its Web site/Customer Records Information System ("CRIS") proposal is the most reasonably available means of meeting that schedule.

By its testimony, USWC can now provide billing services through CRIS for resale functions and was at the time of this proceeding in the process of adding billing of unbundled elements to CRIS. Moreover, we conclude that AT&T's proposal to provide unbundled element bill-ing through IABs would delay the application to implementation of this interface. We do not believe that requiring USWC to use an alternative billing format at this time would be consistent with the intent of the FCC to bring these interfaces on line by January of 1997.

g. However, the Agreement shall incorporate the full availability of these interfaces at the date set by the FCC, unless a subsequent waiver is granted.

h. We also note that USWC's intent to provide some parts of the operational support function on a manual basis does not meet the nondiscriminatory requirements of the Act or the First Report and Order.¹¹⁵ All interfaces shall provide access that is essentially equivalent and comparable to that which USWC enjoys. This is a requirement of parity and nondiscriminatory treatment. Among other things, the means of access, the intent of the information¹¹⁶ and the timeliness exchange shall be essentially equal. The agreement shall contain language that parity with the USWC internal operational support processes shall be provided to AT&T within the schedule established by the FCC.

2. National Gateway

AT&T requests that the Commission require USWC to commit to developing national uniform gateway interfaces over the long term. We note that USWC also believes that use of national standards would be beneficial in the long term.¹¹⁷ As previously discussed, we direct the parties to include language in the agreement that operational interfaces will be promptly moved to national standards as they are developed.

3. Billing Interfaces

¹¹⁵ See 523 of the Final Report and Order.

¹¹⁶ Related to telecommunications services pursuant to the Act.

¹¹⁷ Exhibit 50 pp 27-28.

a. AT&T requests that billing connectivity data be transmitted to it once per month and that usage data be transmitted daily. It also requests data in a Billing Output Specifications ("BOS") format through IABS.

b. We note that USWC has agreed that usage data of the same level and accuracy available to itself will be provided daily.¹¹⁸ The format of this transmittal has been previously discussed in this decision. The request for daily transmittal of usage data is approved and shall be incorporated into the agreement. If AT&T requires specific billing detail of a different level or accuracy than available to USWC, it shall use the BFR process.¹¹⁹

4. Outages and Network Notices

a. AT&T requests that USWC be required to provide it with a real time notice of network outages and other problems associated with network reliability. USWC responds that it is willing to provide a 24-hour-per-day, seven-day-a-week support line. USWC is also willing to provide availability reports.¹²⁰

b. We assume that AT&T desires real time notice of the status of the electronic interface systems under this

¹¹⁸ Exhibit 50, p 18.

¹¹⁹ Exhibit 3, p 8.

¹²⁰ Tr. 10/1/96 pp 103, 201.

request. We note the willingness of USWC to provide a full-time telephone support line plus status reports. To the extent out-ages are scheduled in advance, USWC can and should supply that information through the interfaces. We believe that the pro-posals of USWC are sufficient in this regard, including the pro-vision of electronic notice of scheduled-in-advance outages. These provisions shall be included within the agreement.

5. Audit

a. AT&T requests that USWC be required to adopt mediation mechanisms and/or automated audit procedures to deter improper system access. USWC responds that the gateway mechanism it proposes will incorporate security by using log-in controls and other control mechanisms.¹²¹ USWC also intends to develop procedures to internally limit access to CLEC customer data.¹²²

b. We agree with AT&T that mechanisms should be built into the gateways and where necessary into software to deter improper access. We also note that internal access CLEC customer data within USWC shall be limited to those areas and individuals necessary to perform the functions required by the CLECs.

¹²¹ Tr. 10/1/96, p 102.

¹²² Tr. 10/1/96 p 186.

6. Parity

AT&T requests that USWC be required to provide all interfaces which would allow it to perform pre-ordering, order-ing, provisioning, repair/maintenance, and billing at parity with USWC. The request for parity is reasonable and is adopted pur-suant to the above discussion.

S. Access To Rights of Way

1. Scope, Reciprocity, and Space (Attachment 4, 3)

a. AT&T states that USWC must provide nondiscrimi-natory access to rights-of-way and related facilities on the same terms and conditions that USWC provides to itself or third par-ties. AT&T requests that the Commission adopt Attachment 4, 3 and all its subparts.

b. In AT&T's Attachment 4, 3, there is provided an extensive list of requirements concerning access to poles, ducts, conduits, and rights-of-way. Included is a requirement that USWC produce current detailed engineering, and other plant records, cost data, facility maps, and drawings of conduit, poles and other rights-of-way, within no more than two business days following AT&T's request.

c. We have reviewed the suggested language proposed in Attachment 4, Section 3 of AT&T's Exhibit No. 15. concerning access to poles, ducts, conduits, and rights-of-

way, and USWC's alternative in the MFS/USWC Agreement.¹²³

Based on our review, we believe that the language on page 50 of Exhibit 68 is more reasonable and should be included in the AT&T agreement. The title of Section XVII should be modified by including the word "Nondiscriminatory" before the word "Access".

2. Facility Modifications (Attachment 4, 3.2.17)

a. AT&T proposes that "USWC shall remove any retired cable from conduit systems or poles to allow for the efficient use of conduit space and pole spaces. USWC must expand its facilities, including placement of taller poles or additional conduits, if necessary, to accommodate AT&T's request and shall do so within a reasonable period of time."

b. While we concur that USWC should follow good engineering practices in the placement of its plant and the removal of retired cable from conduit systems or poles, we believe that the BFR process will accommodate expansion of USWC's facilities at AT&T's request. Therefore, we will not adopt AT&T's Attachment 4, 3 and its subparts.

¹²³ See Section XVII of Exhibit 68.

3. Licenses (Attachment 4, 3.2.4)

a. AT&T requests the use of rights-of-way obtained by USWC from a third party, to the extent the third party agreement does not prohibit such use.

b. As discussed previously, we direct that USWC provide AT&T non-discriminatory access to its rights-of-way. This shall include rights-of-way obtained from third parties, to the extent such agreement does not prohibit USWC from granting such rights to AT&T.

4. Standard Terms (Attachment 4, 3.2.21 to .23)

a. In its Attachment 4, 3.2.21 to .23, AT&T has proposed a number of provisions dealing with modifications or alterations of rights-of-way, conduits, or pole attachments that contain AT&T's facilities.

b. As stated, USWC is directed to provide non-discriminatory access to its rights-of-way, poles, or conduits. The costs associated with rearrangements, modifications, or maintenance of conduits, poles, and rights-of-way should be addressed through the BFR process. The portions of 3.2.21 and 3.2.23 that address notification or emergency repair provisions proposed by AT&T, appear to be reasonable. Therefore we direct that USWC notify AT&T of its intent to modify any rights-of-way, conduits, or poles containing AT&T facilities, and that AT&T have access to perform emergency repairs as stated in portions of 3.2.23 of

AT&T's Attachment 4.

T. Dialing Parity

1. Numbering Resources - Central Office Code Assignment

a. AT&T requests that the Commission require USWC to provide it with a fair allocation of central office codes (NPA-NXXs) and to administer its numbering resources in a competitively neutral manner. AT&T cites the following specific examples: USWC should process NPA-NXX code requests in a timely manner in compliance with Industry Central Office Code Assignment Guidelines. USWC should not charge new entrants for code assignments or for programming switches to accommodate new NPA-NXX codes for its competitors. USWC should notify AT&T, and other new entrants, of meetings held to reach industry consensus on a relief plan designed to address pending exhaustion of numbers in an existing NPA. To provide for protection of provider-specific usage data, USWC should utilize an independent data service to consolidate all competitors' forecasts of NXX usage prior to making use of those forecasts in connection with NPA relief studies.

b. The 1996 Act grants exclusive jurisdiction to the FCC over Numbering Administration.¹²⁴ However, the FCC has allowed states, to the extent they desire to do so, to perform area code relief planning now and after transfer of central office code administration by the LECs to the new North

¹²⁴ See 251(e) of the 1996 Act.

American Numbering Council ("NANC") administrator.¹²⁵ The FCC declined to delegate to the states on a permanent basis oversight of central office code administration and code assignment functions.¹²⁶ The FCC order delegated authority for central office code allocation to the NANC.¹²⁷

c. In general, we agree with the proposed language presented by AT&T to provide for the competitively neutral, non-discriminatory, and fair allocation of central office codes. However, the federal law and the resulting FCC order provide definitive guidance on this issue. To the extent that it does not conflict with the aforementioned FCC order and the NANC, we adopt the AT&T proposed language.

2. Dialing Parity - Local Dialing Parity

a. AT&T requests that its customers be able to dial the same seven-digit pattern for local calls as that dialed by a USWC customer.

b. The 1996 Act requires that all telecommunications providers must provide dialing parity to competing providers of telephone exchange service.¹²⁸ The FCC has concluded that dialing parity is defined as the ability to dial the same

¹²⁵ See FCC Decision No. 96-333, *Second Report and Order and Memorandum Opinion and Order*, Adopted the FCC on August 8, 1996 at 315 and 319.

¹²⁶ *Id.*

¹²⁷ *Id.* at 321.

¹²⁸ See 251(b)(3) of the 1996 Act.

number of digits to make a local telephone call within the same defined local calling area.¹²⁹ Although the FCC also recognizes that true local dialing parity will not be achieved until per-manent local number portability is implemented, we do not find it necessary to allow for anything other than seven-digit dialing for all CLECs, including AT&T. USWC must offer service to AT&T such that no additional digits or carrier access codes as compared to dealing by a USWC end user are necessary to reach an AT&T customer on a local call.

Only if USWC should convert in the future to a dialing plan that requires more than seven digits for its own customers, may it impose similar additional dialed digits on its competitors.

3. Dialing Parity - Central Office Codes for AT&T

a. AT&T requests that a central office code be dedicated to its own use in each central office. As we understand this request, AT&T desires to have a unique NPA-NXX assigned to it for each USWC central office in which it has customers. Alternatively, AT&T might simply be requesting the assignment of a unique NPA-NXX in each of its own central offices. We will address both alternatives.

b. If AT&T were to have a unique NPA-NXX in every USWC central office, Colorado would exhaust the available

¹²⁹ See FCC Decision No. 96-333 at 67.

central office codes in a very short time. This would especially be true if all CLECs desire similar treatment. Other than a possible perceived need for market identification, there is no basis for such a request. If this is what AT&T is requesting, we find that this request is not in the public interest and we deny AT&T's proposal.

c. A unique NPA-NXX in each CLEC central office (or RSU), is a reasonable request. Since the current routing of local and toll calls through the Local Exchange Routing Guide uses the six-digit NPA-NXX to route calls, certain network inefficiencies would ensue without a separate NPA-NXX assignment for CLEC switches. If CLEC customers were assigned a telephone number using the existing NPA-NXX of USWC, at least in the absence of long-term local number portability, all calls would be routed through the USWC office and forwarded back through the USWC network to the CLEC. If AT&T has its own separate NPA-NXX for each of its central offices, calls to customers in those offices that have been assigned a telephone number by AT&T will route directly to the AT&T switch. The agreement should provide for a separate central office code for each AT&T central office.

4. Dialing Parity for IntraLATA Toll Calls

a. AT&T requests the elimination of access codes for intraLATA toll calls by the new entrants. AT&T further requests that all new entrants offer one-plus intraLATA

presubscription, dialing parity, and automatic routing of directory assistance and operator service calls to new entrant platforms. AT&T recommends that changes in a local provider should occur by letter of authorization, 800 number electronic authorization, oral verification by a third party, or use of an information package with postcard response.

b. The FCC Dialing Parity Decision¹³⁰ requires that all LECs provide both interLATA and intraLATA toll dialing parity no later than February 8, 1999. Moreover, the FCC requires that all LECs offer dialing parity (*i.e.*, specifically, interLATA equal access presubscription) concurrently with its offering of in-region interLATA or interstate toll services. The Act does not allow a State commission to require USWC to provide intraLATA toll dialing parity prior to USWC's ability to provide in-region interLATA toll services under 271 checklist provisions, or February 8, 1999, whichever is earlier.¹³¹ USWC could voluntarily offer intraLATA toll dialing parity at any time, just as AT&T could. The FCC is permissive in its order regarding the ability of a CLEC to voluntarily offer intraLATA toll dialing parity at any time sooner than February 8, 1999.

c. AT&T apparently does not ask that the

¹³⁰ *Id.* at 59.

¹³¹ *See* 271(e)(2)(B) of the 1996 Act.

Commission order USWC to offer intraLATA toll dialing parity, nor could we do so. Neither could the Commission order any other new entrants to offer intraLATA toll dialing parity in this docket. If AT&T desires to offer intraLATA dialing parity to its own customers, there is nothing in federal or state statute, FCC Commission rules, or Colorado rules that would prevent it from doing so.

d. With regard to AT&T's request that specific procedures be adopted for changing local telephone service providers, the Commission rules provide those procedures. Rule 723-2-25 of the Commission's Rules Regulating Telecommunications Service Providers and Telephone Utilities (4 CCR 723-2) provides specific methods for the transfer of customers. The agreement between AT&T and USWC should comply with these rules.

U. Ancillary Services and Branding

1. Operator Services and Directory Assistance Unbundling

a. AT&T requests that the Commission approve 6 of Attachment 3 of its Revised Exhibit 6 in its entirety. This section describes AT&T's recommendations for the unbundled Operator Systems element. In general, the functions listed in 6 describe the functions performed by USWC operator services.

b. The FCC requires that USWC provide nondiscriminatory access to its operator services.¹³² This Commission requires that USWC provide unbundled access to its operator systems.¹³³ The same Commission rules define operator systems as "systems that provide for live or mechanized operator functions that assist end-users with call completion or directory assistance."¹³⁴

c. USWC suggests pricing of operator systems be done on an individual case basis. USWC recognizes that the operator functions with regard to call handling are essentially the same as those defined by AT&T.

d. We will not order the adoption of the language provided by AT&T in its Revised Exhibit 6, 3, 6 in

¹³² See FCC Decision No. 96-333 at 114.

¹³³ See *Rules on Interconnection and Unbundling*, 4 CCR 723-39-6.2.6.

¹³⁴ *Id.* at 723-39-2.15.

its entirety. USWC is required to provide unbundled access to operator services and directory assistance. If AT&T requires further unbundling than that offered under the interim tariffs approved in Docket No. 233T, it may use the BFR process. If rates offered in the interim USWC tariffs are unacceptable, AT&T should present its case in the permanent tariff docket.

2. Branding of Operator and Directory Services

a. If it is technically feasible, AT&T requests that USWC brand all operator services and directory services with the AT&T brand. If it is not technically feasible, AT&T requests that USWC provide "unbranded" services.

b. USWC has agreed to provide unbranded or branded directory assistance to MFS.¹³⁵ The Company claims that the unbranding requirement is onerous,¹³⁶ but recognizes that it is in the FCC order.¹³⁷

c. We find the AT&T request to be reasonable to the extent that USWC can offer branding of operator and directory services. This is in accordance with both FCC and Colorado rules. If USWC cannot offer branded operator services or directory services, it should offer unbranded services. In either case, prices for the unbundled elements

¹³⁵ See Exhibit 68 at 46.

¹³⁶ See USWC Closing Brief at 24.

¹³⁷ Testimony of Brian Johnson, Exhibit 54 at 299-315 and FCC Decision No. 96-333 at 128.

should be cost-based. If the current prices for unbundled operator services elements do not reflect the costs of branding or "unbranding" the parties should make their case for appropriate cost recovery in the per-manent tariff docket.

3. Trunking Provision for Operator and Directory Service

AT&T requests that USWC provide unbundled operator services and directory services through a separate trunk group to AT&T. This appears to be normal practice in the industry, and we adopt AT&T's recommendation.

4. Call Completion Services

a. AT&T requests Commission approval of Attachment 3, 6 of its Revised Exhibit 6. In particular, AT&T requests unbundling of call completion services as described in Attachment 3, 6.2, and that the cost of unbundling such service should be recovered through prices established under a TELRIC methodology. USWC agreed to unbundle all of these items assuming AT&T pays for the specific elements.¹³⁸

b. As discussed previously, USWC is required to provide unbundled access to operator services and directory assistance. If AT&T requires further unbundling than that offered under the Interconnection Tariff, it may use the BFR process to obtain it. If rates different from those offered in the interim USWC tariffs are unacceptable, AT&T should present its case in the permanent tariff docket.

5. Access to Directory Assistance Database

a. AT&T has requested that USWC unbundle

¹³⁸ See Testimony of Brian Johnson, Exhibit 54.

directory assistance databases and provide AT&T access to those databases. AT&T recommends that the cost of those services be recovered through prices based on TELRIC. Also, AT&T requests access to USWC's master subscriber system database via electronic data transfer acceptable to AT&T, with changes to such database updated daily. USWC agreed to provide online access to its directory assistance database in its agreement with MFS.¹³⁹

b. The provision by USWC of nondiscriminatory access to directory assistance databases is a requirement of the Act,¹⁴⁰ the FCC rules,¹⁴¹ and Colorado Commission rules and should be included in the AT&T agreement.¹⁴² USWC must provide service to AT&T such that AT&T can provide service to its end use customers at the same quality as that provided by USWC to its customers. The FCC concluded that CLECs must be able to obtain at least the same quality of access to these services as the ILEC itself enjoys.¹⁴³ We deny AT&T's request that we adopt specific sections of its Exhibit 15. We also reject AT&T's request that USWC be required to share with AT&T revenues received from the sale of subscriber listing

¹³⁹ Exhibit 68, page 46.

¹⁴⁰ See 251(b)(3) of the 1996 Act.

¹⁴¹ See FCC Decision No. 96-333 at 133-137.

¹⁴² See Rules on Interconnection and Unbundling (4 CCR 723-39-3.2).

¹⁴³ See FCC Decision No. 96-333 at 142.

information.

6. Busy Line Verification and Interrupt

a. AT&T requests that it be allowed to connect its operator systems to the USWC's Busy Line Verification and Inter-rupt ("BLV/I") systems and databases to allow AT&T operators to perform these services in a seamless manner for AT&T customers. AT&T also requests that USWC be required to engineer its BLV/I facilities to accommodate the anticipated volume of BLV/I calls during the busy hour.

b. Under the USWC/MFS Agreement,¹⁴⁴ USWC will provide MFS with BLV/I capability at least from a mutual exchange of services. USWC opposes unbundling of BLV/I as requested by AT&T.¹⁴⁵ It appears that AT&T is requesting direct access to customer lines, which the MFS Agreement does not provide.

c. We agree with AT&T that it should be allowed to access BLV/I services in a nondiscriminatory manner. If AT&T's request involves something greater than that already provided, AT&T should use the BFR process. We also agree with AT&T regarding the request that USWC engineer its BLV/I facilities to meet the number of calls arising during the busy hour. We find this to be good standard engineering practice.

7. Customer Address and Number Changes

¹⁴⁴ Exhibit 68, page 43.

¹⁴⁵ See Testimony of Brian Johnson at 316-317.

a. AT&T requests that it have real time access to USWC customer information systems to allow AT&T representatives to perform the following tasks: obtain customer profiles; obtain relevant end-office feature and service information; enter order for desired features and services; assign telephone numbers; establish directory listings; determine services needed to install a line or service; provide service availability dates to customer; provide dispatch and installation schedule information; order intraLATA toll and long distance access in one order; and perform suspension, termination, or restoral of service functions.

b. As previously discussed, USWC shall provide operational interfaces and access to customer data on parity with that available to its customer representatives. To The extent a USWC customer representative can perform each of the tasks set forth, then provision shall be made for the AT&T representative to perform the same tasks within the same time frame.

8. Directory Listings

a. AT&T requests that the Commission require USWC to provide directory listings in accordance with its Attachment 2, 3 and Attachment 4, 5 of its Revised Exhibit 6. AT&T requests that USWC be required to provide one white and one yel-low page (for business customer only) listing at

no cost to AT&T or AT&T's customers. AT&T desires to sell enhanced white or yellow page listings. AT&T also suggests Phase I and II processes for the sale of yellow pages advertising and a provision for receiving a 20 percent commission.

b. USWC supports only the provision of a white page listing for each customer. USWC believes that if AT&T wants a yellow page listing or advertising, it should deal directly with a publisher of yellow pages, *e.g.*, U S WEST Direct.¹⁴⁶

c. The Commission's rules (4 CCR 723-39), require that white page listings be provided by USWC on behalf of the CLEC. However, no Commission rule directly addresses the issue of provision of yellow page listings.

d. For the most part, we agree with AT&T regarding its ability to provide directory listings to its customers. AT&T should be the customer interface for the provision of both white and yellow page (basic and enhanced) listings. USWC shall be required to provide the appropriate interface between AT&T and USWC's directory publisher. The Commission's rules expect that cost recovery of directory services provided by USWC will be addressed in the Interconnection Tariff. To the extent that such services are

¹⁴⁶ See Exhibit 68 at 48-49.

not described in the interim tariff, provision shall be made under the BFR process or delayed until included in the permanent tariff docket.

9. E911/911

a. AT&T requests that the Commission adopt Attach-ment 3, 13.7.2.5 of Revised Exhibit 6 and all of its subparts. Specifically, AT&T asks that USWC provide E911/911 call routing to the appropriate Public Safety Answering Point for all of AT&T's customers. AT&T also requests that USWC use its service order process to update and maintain the AT&T customer service in the Automatic Location Identification/Database Management System used to support E911/911 services such that AT&T customers will enjoy the same quality of emergency services as USWC customers.

b. Since we require that AT&T provide equivalent emergency services as that provided by USWC, we agree with the list of proposed requirements in Attachment 3, 13.7.2.5 of AT&T's Revised Exhibit 6.

V. Quality Standards

1. AT&T requests approval of Attachment 11 of Exhibit 15 in its entirety including: 1) AT&T Supplier Performance Quality Management System; 2) Metrics and Gap Closure Plans; and 3) DMOQs. AT&T also requests that USWC be required to credit the monetary amounts shown in Attachment 11.

2. The issue of the acceptability of the AT&T proposed DMOQs and monetary credits has been discussed above. (See "Performance Standards and Liquidated Damages.") The "Metrics and Gap Closure Plans" language contained on page 7 of Attachment 11 seeks a reporting of performance results and correction plans to AT&T. This is similar in purpose to the language contained in the USWC/MFS agreement.¹⁴⁷ While we do not adopt the AT&T language, the Agreement shall incorporate the MFS language for reporting USWC performance.

3. We also do not adopt the AT&T proposed language within the "Quality Manual". However, the concept of disaster recovery plans for network infrastructure and operational support systems contained within this material has merit. We note that USWC included within one of its proposed interconnection agreement documents filed in this proceeding development of disaster recovery/restoration plans for network

¹⁴⁷ See B. through D. on pages 80 through 81 of Exhibit 68.

infrastructure and operational support systems, which include timely notification of such incidents.¹⁴⁸ The agreement shall incorporate language regarding development and implementation by USWC of disaster recovery/restoration plans for all operations infrastructure and operations support systems affecting AT&T, which plans shall provide timely notice of outages to AT&T.

V. Alternative Dispute Resolution

1. Finally, AT&T requests Commission approval, in its entirety, of Attachment 1 to Exhibit 15 entitled "Alternative Dispute Resolution" and requests that fees and expenses be paid by the losing party.

2. The AT&T proposed dispute resolution process has been previously addressed in this decision. We decline to approve the proposed language.

II. ORDER

A. The Commission Orders That:

1. The issues presented in the Petition for Arbitration filed by AT&T Communications of the Mountain States, Inc., on July 30, 1996, are resolved as set forth in the above discussion.

¹⁴⁸ See 1-10 in Appendix E of the document, "Replacement of U S WEST Proposed Interconnect Agreement as Filed in Response to Petitions for Arbitration" which is part of Exhibit B5.

2. Within 30 days of the effective date of this Order, AT&T Communications of the Mountain States, Inc., and U S WEST Communications, Inc., are directed to submit a complete proposed interconnection agreement for approval by the Commission, pursuant to the provisions of 252(e) of the Telecommunications Act of 1996. The proposed agreement shall comply with this Order.

3. The 20-day period provided for in 40-6-114(1), C.R.S., within which to file applications for rehearing, reargu-ment, or reconsideration begins on the first day following the Mailed Date of this Decision.

4. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING November 27, 1996.

(S E A L)

ATTE ST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF
COLORADO

ROBERT J. HIX

VINCENT MAJKOWSKI

R. BRENT ALDERFER

Commissioners

BM:srs