

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration)	
of an Interconnection Agreement Between)	DOCKET NO. UT-960309
)	
AT&T COMMUNICATIONS OF THE PACIFIC)	
NORTHWEST, INC. and U S WEST)	ARBITRATOR'S REPORT
COMMUNICATIONS, INC.)	AND RECOMMENDATIONS
)	
Pursuant to 47 USC Section 252)	
)	
.....)	

I. INTRODUCTION

A. Procedural History

On July 25, 1996, AT&T Communications of the Northwest ("AT&T") filed a request for arbitration with U S WEST Communications, Inc. ("U S WEST") in the above matter, pursuant to 47 U.S.C. § 252(b)(1). A hearing on a proposed interconnection agreement between U S WEST and AT&T was held October 1-3, 1996, in Olympia, Washington before the Washington Utilities and Transportation Commission ("Commission"). On November 27, 1996, the Commission, through Arbitrator ffitich, issued its Arbitrator's Report and Decision ("Decision") and ordered the parties to submit an interconnection agreement ("Agreement") complying with the Decision by December 27, 1996. The Commission granted the Parties several extensions to file the Agreement. After the Parties filed respective contracts earlier this year, on March 12, 1997, the Commission directed the Parties to negotiate a single agreement, to be filed within sixty days. On April 9, 1997, the Parties reported to the Commission regarding the status of their negotiations. The Commission directed the Parties to meet before the arbitrator to facilitate resolution of disputed issues prior to the May 9, 1997, filing deadline.

The Parties, with the assistance of the substituted Arbitrator, Mr. Larry Berg, met on several occasions to negotiate the remaining terms of the Agreement and were able to resolve many open issues. On May 7, 1997, after reviewing both Parties' status letters of May 5, 1997, the Commission set forth a schedule for completing negotiations and to file the Agreement. On May 19, 1997, the parties presented oral arguments to the arbitrator regarding unresolved issues. The deadline for the Parties to file an interconnection agreement with the Commission was subsequently extended to June 12, 1997.

B. The Post-Arbitration Process

The post-arbitration process was conducted pursuant to agreements between the Parties regarding process and procedure. The Parties were involved in multi-state negotiations throughout the process, and the parties continued to resolve issues in dispute throughout the working sessions with the arbitrator leading right up to the final drafting of the Arbitrator's Report and Recommendations ("Recommendations"). The working sessions were conducted as a mediated negotiation between the parties. At the conclusion of the mediated negotiation, the parties agreed to present their unresolved contract language disputes to the arbitrator for his recommendations.

The parties submitted directions to the arbitrator regarding the type of decision to be made on an issue-by-issue basis. The arbitrator was directed to either choose between the Parties' proposed provisions or to exercise his best judgment. The parties submitted directions to the arbitrator in a document entitled "Washington Issues Matrix" which is attached hereto as Attachment A. The type of decision which was made is stated in parenthesis in the heading of each issue. Attachment A includes all issues originally submitted to the arbitrator, including those which were subsequently resolved by the Parties. The Parties submitted briefs in support of their language proposals.

The Parties also submitted proposed contract language relevant to the unresolved issues. Attachment B to the Recommendations sets forth that contract language which pertains to the issues which are addressed by the arbitrator. The Parties are to be commended on the high degree of professionalism and competence which they demonstrated throughout this process. The fact that the Parties were unable to agree on the resolution of the issues which were submitted to the arbitrator should not detract from the fine job which they did in resolving so many other issues between themselves.

C. Relationship Between Arbitrator's Decision and Recommendations

The Arbitrator's Recommendations is to be given the same force and effect as the initial Arbitrator's Decision, and the parties are entitled to make objections and requests for modification to the same extent that they were previously entitled to do so. The Arbitrator's Recommendations operate as an addendum to the Arbitrator's Decision. Accordingly, all conditions set forth in the Introduction and Conclusion of the Arbitrator's Decision are operable herein as well.

II. RECOMMENDATIONS

ISSUE NO. 29-32: Branding; Part A, Section 8.1-8.4, 8.10 (Mediated)

U S WEST Position. U S WEST will rebrand directory assistance, operator services, and announcements at AT&T's expense, consistent with the Arbitrator's Decision which adopted the U S WEST position. The issue of payment for unbranding was not agreed-upon. At page three of the Decision, the Arbitrator stated that "adoption of one party's position generally implies that the parties should use that party's contract language incorporating the advocated position in preparing a final agreement." Inasmuch as U S WEST's advocated position included recovery of costs for unbranding, that language should be included. AT&T proposed language giving AT&T the unfettered ability to demand branding or unbranding without bearing any financial burden was not adopted by the Arbitrator and must be rejected.

TELRIC is not the appropriate method of calculating the cost of rebranding. TELRIC prices should only apply to the costs of interconnection and unbundled network elements, as provided in the FCC rules. AT&T improperly seeks to expand TELRIC pricing to any and all other services that it may purchase from U S WEST. If AT&T wishes to purchase branding from U S WEST, or have U S WEST rebrand a service, the cost should not be based on TELRIC. At a minimum, if TELRIC prices are adopted, the price should be subject to true-up.

AT&T Position. The Arbitrator previously decided that U S WEST must rebrand operator services (OS), directory assistance (DA) and announcements in accordance with FCC Rules. The very concern that led the Arbitrator to rule in favor of AT&T with respect to DA, OS and announcements applies equally to all similar customer contacts. AT&T cannot at the current time identify the entire range of customer contact services that U S WEST might deploy in its network on a branded basis. For that reason, the Arbitrator should adopt AT&T's general language. U S WEST's narrow interpretation of its obligation to rebrand are inconsistent with the Act's prohibition of discriminatory restrictions, limitations or prohibitions on resale and nondiscriminatory access to unbundled network elements. 47 U.S.C. § 251(c).

Consumers are entitled to clear brand signals. An AT&T customer should not have to wonder whether a carrier other than their selected local service provider is actually carrying their calls. AT&T asks the Arbitrator to impose an unbranding option (except for uniforms and vehicles) where rebranding is not technically feasible. In opposing unbranding, U S WEST has argued that AT&T or other CLECs could brand their own directory assistance services in the marketplace, while U S WEST would remain subject to an unbranding requirement. This argument

only makes sense if one assumes that U S WEST itself fails to keep up with upgrades that CLECs themselves have installed.

AT&T has no objection to paying the appropriately determined cost associated with rebranding. AT&T proposes that it pay for rebranding at a price established under TELRIC methodology. There should be no incremental charge tied to unbranding because AT&T is not obtaining any service. Unbranding simply requires U S WEST to omit the branding of a service it would otherwise continue to provide to itself. AT&T should not have to pay for realizing the Act's goal of competitive neutrality when that neutrality is achieved by terminating the branding of a service to the incumbent and not providing any new branding of service to the new entrant.

Discussion. The Arbitrator takes notice of discussion regarding branding in the FCC Order:

Brand identification is likely to play a major role in markets where resellers compete with the incumbent LECs for the provision of local and toll service. This brand identification is critical to reseller attempts to compete with incumbent LECs and will minimize consumer confusion. Incumbent LECs are advantaged when reseller and users are advised that the services to be provided by the reseller is the primary competitor. We therefore conclude that where operator, call completion, or other directory assistance service is part of the service or service package incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller branding requests presumptively constitutes an unreasonable restriction on resale. This presumption may be rebutted by an incumbent LEC proving to the state commission that it lacks the capability to comply with unbranding or rebranding requests. We recognize that an incumbent LEC may incur costs in complying with a request for unbranding or rebranding. Because we do not have a record on which to determine the level of fees or wholesale pricing offsets that may reasonably be assessed to recover these costs, we leave such determinations to the state commissions. FCC Order at ¶ 971.

Three basic situations are presented: the delivery of unbranded services; the delivery of branded services; and the imposition of unbranding on incumbent LEC delivery of services to its own customers in furtherance of policies which are intended to deter unfair discriminatory practices. The U S WEST position on the recovery of costs for unbranding goes beyond the scope of the previous Arbitrator's Decision. CLEC's should not be expected to purchase operator, call completion, or directory assistance services for resale which are branded with the incumbent LEC identification. Where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers

for sale, they should be provided upon request in an unbranded status at no additional cost, unless the incumbent LEC proves to the Commission that it lacks the capability to comply with the unbranding request. Operator, call completion, or directory assistance services for resale are singled out because of the potential for consumer confusion which arises in the context of online communications.

When a co-carrier seeks to attach its own branding to any service or to unbrand a service other than operator, call completion, or directory assistance service, it should pay for that branding or unbranding.

An incumbent LEC should not be required to unbrand its service to its own customers. The burden on an incumbent LEC to prove to that it lacks the capability to comply with unbranding or rebranding requests is not trivial. These determinations must be made on a case-by-case basis. The ability of a CLEC to brand its own directory assistance, as argued by AT&T, does not address the ability of an incumbent LEC to brand the services of another LEC in addition to branding its own services. U S WEST should not be required to disrupt its established relationship with its customers based upon its lack of capability to brand or unbrand its services in the context of a three-year interconnection agreement. Technological innovation continues to advance at a rapid rate and even if the capability to brand or unbrand does not exist at the outset of the agreement, the capability may occur during the term of the agreement, in which case an incumbent LEC would be obligated to comply with relevant requests.

The cost of branding or unbranding is not strictly subject to incremental charges. Where U S WEST is entitled to compensation for branding or unbranding, the actual cost should be properly recovered. A determination of actual cost is not limited to TELRIC.

AT&T should be entitled to provide its own branded materials for distribution in every instance where U S WEST utilizes its own branded materials. When AT&T reserves the right to prior review and approval of all non-AT&T business materials to be provided to AT&T subscribers, it is not necessary to otherwise state conditions for its approval.

Arbitrator's Decision. The language of the disputed sections to be inserted in the interconnection agreement which incorporates the discussion of this issue or is otherwise recommended is as follows:

8. Branding

- 8.1 Where operator, call completion, or directory assistance service is part of the service or service package U S WEST offers for resale, they should be provided upon request in an unbranded status at no additional cost, unless U S WEST proves

to the Commission that it lacks the capability to comply with the unbranding request. If U S WEST meets its burden of proof, U S WEST is relieved of its duty to comply with the request for unbranding.

- 8.2 When AT&T requests branding as its own service or unbranding of a service other than operator, call completion, or directory assistance service, AT&T shall pay for the cost of that branding or unbranding, unless U S WEST proves to the Commission that it lacks the capability to comply with the unbranding request. If U S WEST meets its burden of proof, U S WEST is relieved of its duty to comply with the request for branding or unbranding.
- 8.3 For those services during the provision of which U S WEST interacts with AT&T Customers, and which services are the subject matter of this Agreement, U S WEST shall, at AT&T's sole discretion, brand any and all such services at all points of subscriber contact exclusively as AT&T service, or otherwise as AT&T may specify, or such service shall be provided with no brand as AT&T shall determine, **except as provided below with respect to uniforms and vehicles**. U S WEST may not unreasonably interfere with branding by AT&T.
- 8.4 Branding includes front-end branding, back-end branding, and unbranding to be determined by AT&T. AT&T shall have the option of providing its own branding materials.
- 8.5 AT&T shall provide the exclusive interface to AT&T subscribers except as AT&T shall otherwise specify. U S WEST shall inform M/A Customers that resold repair and maintenance service is being provided on behalf of AT&T.
- 8.6 Except as otherwise specifically provided herein, all forms, business cards or other business materials furnished by U S WEST to AT&T subscribers shall be provided by AT&T unless otherwise agreed by AT&T in its sole discretion, in which case, any such subscriber materials shall be subject to AT&T's prior review and approval.
- 8.7 U S WEST is not required to remove the U S WEST brand from services offered by U S WEST to its Customers except as otherwise required by this Agreement.
- 8.8 **U S WEST will not be required to rebrand uniforms and vehicles.**¹

¹ Per Order at page 21, Issue 30.

- 8.9 U S WEST shall inform AT&T customers that resold repair and maintenance is being provided on behalf of AT&T. AT&T shall prepare the printed material that provides information about AT&T's service that U S WEST employees leave with AT&T customers in association with repair and maintenance calls.²
- 8.10 U S WEST shall provide, for AT&T's review, the methods and procedures, training and approaches to be used by U S WEST to assure that U S WEST meets AT&T's branding requirements.
- 8.11 This Section 8 shall confer on U S WEST no rights to the service marks, trademarks and trade names owned by or used in connection with services by AT&T or its Affiliates, except as expressly permitted by AT&T.
- 8.12 At the request of AT&T and where technically feasible, U S WEST will rebrand operator services and directory assistance and announcements in AT&T's name.³
- 8.13 Until such time as the Commission determines final pricing pursuant to its cost docket, AT&T shall pay the actual costs, if any, of branding or unbranding in accordance with the Act or Commission orders.

ISSUE NO. 40: Limitation of Liability; Part A, Section 19 (Defer)

U S WEST Position. U S WEST's language reflects the traditional limitations of liability as set forth in the U S WEST tariffs. In fact, AT&T has filed similar language in its tariffs for its intrastate services. AT&T's request that a "repeated breach of any one or more of [U S WEST's] material obligations under this Agreement" would give rise to unlimited liability is unreasonable and inappropriate in a complex commercial contract. AT&T is concerned that proving intentional or gross negligence will be too high a burden. Courts, however, have found this burden to be appropriate in light of the potential consequences of not limiting a party's liability. U S WEST strongly questions AT&T's assertion that such language is common in commercial contracts and believes that such a provision is not appropriate at all in this Agreement. If a party's liability is not to be limited, it should be based on a high level of proof. If AT&T is concerned about U S WEST repeatedly breaching material obligations under this Agreement, it certainly will have sufficient recourse.

AT&T Position. The provision for "repeated" breaches of contract addresses AT&T's concern that U S WEST could evade its obligations under the Act by engaging in a pattern of seemingly *de minimis* contract breaches which, in the aggregate, constitute a serious impairment of rights. AT&T should not be put to the

² Per Order at page 21, Issue 30.

³ Per Order at page 21, Issue 30.

difficult burden of proving "willful" misconduct or gross negligence by U S WEST simply in order to achieve the benefit of its bargain under the agreement.

The second issue under the category of limitation of liability is a proposed cap on any liability that may arise under the agreement. U S WEST wants to cap the liability of both parties to a total amount that would have been charged for the allegedly improper service. AT&T proposes no such limitation, believing the parties are better off relying on well developed principles of common law of damages. Given the incentives U S WEST will have to defeat the business goals of new entrants, its cap on liability could frustrate the purposes of the Act. Private enforcement of contract breaches can be an effective means of enforcing the Act and bringing its benefits more quickly to the consuming public. Without some degree of effective contractual enforcement, there may be no deterrent to control the incentives U S WEST will have to avoid its obligations under the contract and the Act.

Discussion. The issues here are the extent of damages for acts of negligence and the burden of proof required to establish gross negligence. AT&T seeks to establish gross negligence on the basis of a "repeated breach of any one or more of its material obligations" under the agreement. A repeated breach could conceivably consist of two incidents. The parties should not expect that the interconnection of their networks will be immaculate from the outset. AT&T's proposal also necessitates a determination of what constitutes a "material obligation." While it is readily apparent that the parties do not completely trust each other, it would be speculative to expect that the private enforcement of contract breaches would constitute any greater deterrent than otherwise provided for under the terms of the proposed agreement and U S WEST's limitation of liability language.

The parties deserve an opportunity to work the bugs out of their systems, and their respective corporate cultures need an opportunity to fully adjust to the new competitive environment. Repeated breaches of the same obligation imposing substantial adverse consequences on AT&T, which go uncorrected after proper notice to U S WEST and a reasonable opportunity to rectify the cause of the breach, should be presented as a claim for gross negligence. The three-year term of the proposed agreement is an appropriate period of time for the parties to assess whether the limitation of liability for acts of negligence or the operative definition of gross negligence should be modified.

Arbitrator's Decision. The provisions proposed by U S WEST relating to Issue No. 40, as set forth in Exhibit B, are recommended.

ISSUE NO. 135: Directory Listings; Part A, Sections 44.1.12, 44.1.17 (Defer)

U S WEST Position. AT&T's argument that it is entitled to 20% of DEX's revenue from the directory advertising business is not reasonable. AT&T offers no

support in the Act, FCC rules or the Commission's rules for this position. AT&T is not entitled to an advertising company's revenues by virtue of offering local service. Furthermore, the Commission in docket UT-950200 specifically rejected the concept of a portable yellow page subsidy. AT&T, by its proposed language, is attempting to reopen this issue by asking for a portion of the yellow page revenues.

AT&T Position. Section 44.1.12 is critical to the fulfillment of the nondiscrimination policy of the Act. If U S WEST's directory publisher were allowed to exclude AT&T customers from purchasing advertising space, AT&T customers would have a powerful disincentive to sign up with or remain with AT&T. A split of advertising revenues is reasonable. U S WEST receives the benefit of accessing the market of AT&T's customers, and U S WEST avoids incurring certain costs of handling customer accounts.

Under Section 44.1.15, AT&T asks that customers be notified that the directory contains listings of AT&T customers. There is nothing quite so ubiquitous as the "phone book" -- excluding AT&T's logo from the cover would handicap AT&T in a manner directly contrary to the purpose of the Act. Moreover, consumers should not have to guess whether the directory contains sought-after information; the directory cover can easily clarify which carriers are included.

Discussion. The issue here is not the exclusion of AT&T customers from purchasing advertising space; rather, the issue is whether U S WEST should be compelled to act as AT&T's agent for the placement of any such purchases. The sale of directory advertising is a competitive segment of the advertising, and numerous competitors began as in-house sales personnel for the incumbent LECs. If U S WEST chooses not to enter into an agency relationship with AT&T for the placement of directory advertising space, then AT&T should be able to develop a win-win relationship with some other enterprise.

It is in the public interest, convenience, and necessity that all local exchange carrier customers be listed in at least one directory for their relevant service area, and that the cover of all directories prominently indicate, without charge, all LECs whose customer listings are included. The prominent indication of LECs whose customer listings are included may be achieved by the display of logos along with a collective tag line which refers to the inclusion of LEC customer listings other than U S WEST. If U S WEST's directory publisher intends to meet this requirement with display text, then it should give other LECs adequate notice and allow them an opportunity to display their logo on the cover for a reasonable charge.

Arbitrator's Decision. The deletion of AT&T proposed Section 44.1.12 is recommended. The recommended text for Section 44.1.15 is as follows:

44.1.15 At no charge, U S WEST shall ensure that its directory publisher prominently indicates on each directory cover that AT&T customer listings are included in such directory. If AT&T's logo shall not be displayed in compliance with this section, then U S WEST shall provide AT&T with adequate notice and U S WEST shall ensure that its directory publisher provides AT&T with an opportunity to display its logo on the cover for a reasonable price.

ISSUE NO. 62: U S WEST Customer Database; Part A, Section 44.2.1 (Defer)

U S WEST Position. The revenues to this database are not unbundled elements, and AT&T has other means to sell its listings other than through the U S WEST database. Consequently, AT&T is not entitled to revenues of the sale by U S WEST of the U S WEST Directory Assistance database. U S WEST will not charge AT&T for any AT&T listing in the U S WEST database. However, AT&T's argument that U S WEST will unfairly benefit from the sale of AT&T's listings is without merit: AT&T is free to build, maintain and market its own database to the same providers for inclusion into the same directories, just as is U S WEST. Therefore, AT&T is not at a competitive disadvantage by not receiving revenue from the sale of the U S WEST Directory Assistance database, regardless of whether AT&T's listings are included. U S WEST has agreed that it will be responsible for maintaining listings, including entering, changing, correcting, rearranging and removing listings in accordance with AT&T orders. It would not be equitable for AT&T to make such demands on U S WEST as a "service bureau" and then expect to be paid. Finally, the Washington Commission has already established the compensation mechanism for the DA database, and it does not include the sharing of revenues, as AT&T seeks.

AT&T Position. The important confidentiality and privacy rights of AT&T's customer must be preserved. AT&T cannot "bargain away" these rights of its customers. Our customers may elect to have their names included in lists sold by U S WEST to others and, in that event, it is only fair and appropriate for the pro rata value of the list be paid to AT&T, rather than allow U S WEST to retain all of the money for itself.

Discussion. At the same time that AT&T states that it is protecting the important privacy rights of its customers, AT&T states that if those customers opt in, then AT&T is entitled to share revenues. AT&T does not argue that its customers are entitled to payment. Thus, this issue is about who owns information. Due to the public interest, convenience, and necessity regarding the maintenance of an integrated directory assistance database, U S WEST should not be permitted to exclude listings information compiled by other LECs. Furthermore, U S WEST is prohibited from

providing or selling listings in such a manner as to segregate end users by carrier. Insofar as AT&T has reserved the option to make its own, separate agreements with third parties and directory publishers for all uses of its listings beyond U S WEST directory assistance, then AT&T is in a position to negotiate independent compensation for the use of its listings without regard to the source of the data. While AT&T's compensation will be less if it relies upon U S WEST to manage its database for which U S WEST is also entitled to compensation, AT&T is entitled to withhold authorization from U S WEST to use its listings and to provide those listings directly to third parties and directory publishers. The fact that this may impact the overall marketability of AT&T's listings does not detract from U S WEST's entitlement to compensation for maintaining its own listings database. As AT&T's database increases in size, its value will increase as well.

Arbitrator's Decision. The language proposed by U S WEST relating to Issue No. 62, as set forth in Exhibit B, is recommended.

ISSUE NO. 63: Tariffs - Limitation of Liability; Part A, Section 44.2.2 (Defer)

U S WEST Position. U S WEST currently has an obligation in Washington to publish a white page directory that list customers in its serving area. U S WEST has specific tariff limitation of liability protection approved by the Commission in conjunction with errors and omissions associated with publishing this list. This limitation in part recognizes that with literally millions of phone numbers in Washington alone, and constant moves and disconnects, a totally error free white pages is impossible. The manner in which these errors are handled are addressed in the state tariffs which limit U S WEST's liability with respect to listings. AT&T has requested that it's listings be added to other listings and published by U S WEST. This proposed language makes clear that U S WEST 's tariff addressing liability when publishing white pages will apply to AT&T listings as it does to all other customer listings in the book. AT&T should not be entitled to different terms and conditions for errors effecting it's listings than for other customers appearing in the book.

AT&T Position. U S WEST proposes a single-purpose liability clause which seeks to import an external mandate (i.e., tariff requirements applicable to U S WEST as a regulated monopoly) to a private agreement between market competitors. This approach is the wrong precedent and should be rejected. This liability cap constitutes an advantage which U S WEST obtained in the monopoly tariff environment, and it has no bearing in the new world of telecommunications competition. In fact, to import these tariff restrictions into U S WEST's relationship with a new entrant would only serve to perpetuate the anti-competitive restrictions the Act seeks to eliminate.

Discussion. To the extent that tariff requirements applicable to U S WEST as a regulated monopoly remain in effect and limit U S WEST's liability in conjunction with errors and omissions associated with its publishing obligations, that limitation of liability should apply to all LEC customer listings. AT&T has not established that this liability cap constitutes an advantage which was obtained in the monopoly tariff environment. However, in order to minimize any advantage which might arise in a competitive environment, this limitation of liability should not apply in instances where willful or intentional misconduct, including gross negligence, is established.

Arbitrator's Decision. The language of the proposed provision to be inserted in the interconnection agreement which incorporate the discussion of this issue is as follows:

44.2.2 To the extent that state tariffs limit U S WEST's liability with regard to Listings, the applicable state tariff(s) is incorporated herein and supersedes Section 19, "Limitation of Liability," of this Agreement with respect to Listings only. Nothing contained in this section shall limit either Party's liability to the other for willful or intentional misconduct, including gross negligence.

ISSUE NO. 75: Poles, Ducts, Conduits and ROW; Part A, Section 47.1 (Mediated)

U S WEST Position. U S WEST's language reflects the Act's requirements that all telecommunications service providers afford each other reciprocal access to their poles, ducts, conduits and rights of way. Section 251(b)(4) provides, under "OBLIGATIONS OF ALL LOCAL EXCHANGE CARRIERS," that each local exchange carrier has "the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms and conditions that are consistent with Section 224." While the language in § 251 is clear and unambiguous on its face, AT&T argues that it is negated by language in §224(3)(5) which states that a telecommunications carrier does not include any incumbent local exchange carriers. However, §224(1)(a)(1) amends the term "utility" to include any local exchange carrier - - a definition that would include both U S WEST and AT&T. Further, §224(7) establishes that the FCC will prescribe regulations assuring that a utility charges just and reasonable rates. Clearly the FCC did not intend to exclude incumbent telephone companies from such rules. Most importantly however, AT&T's attempt to read ambiguity into this language does not invalidate the Commission's authority to apply a fair and reciprocal standard for use of pole attachments, conduit and rights of way. Allowing AT&T to refuse U S WEST access to its right of way effectively precludes U S WEST from competing with AT&T or offering an alternative choice of telephone service provider to customers who are thereby served.

AT&T Position. Under the Act, a competitive local exchange carrier ("CLEC") is not required to open its local network to access by incumbent local exchange carriers ("ILECs") such as U S WEST. This conclusion is based on the express language of the Act and the public policy that informs it. Section 252(b)(4) of the Act requires a local exchange carrier to afford access on "rates, terms, and conditions that are consistent with section 224." Section 224 must therefore be read together with Section 252(b)(4) to ascertain whether an ILEC is entitled to reciprocal access. The governing provision of Section 224 provides:

A utility⁴ shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it. 47 U.S.C. § 224(f)(1).

Congress expressly excluded ILECs from the definition of "telecommunications carrier" for purpose of Section 224:

For purposes of this section, the term "telecommunications carrier" (as defined in section 3 of this Act) does not include any incumbent local exchange carrier as defined in section 251(h). 47 U.S.C. § 225(a)(5).

Thus, the duty to provide access is imposed on all "utilities," whereas the right to obtain access is extended only to a "cable television system" or a "telecommunications carrier." AT&T and U S WEST are both telecommunications carriers as defined in 47 U.S.C. § 153. However, for purposes of Section 224, an "incumbent local exchange carrier" is expressly excluded from the definition of "telecommunications carrier." Thus, under Section 224, U S WEST is not a telecommunications carrier and therefore has no right to insist on obtaining access to local exchange facilities owned or controlled by AT&T.

The distinction Congress made between the access rights to be afforded to competitive and incumbent LECS is grounded in a sensible public policy to eliminate the need for new entrants to build their own networks to compete against incumbent LECs. Such network construction would greatly disrupt the everyday operations of cities and towns across the country, causing economic dislocation and inconvenience on an enormous scale. Incumbent LECs, on the other hand, have well-established networks in place and therefore do not need to undertake widespread construction to compete. The Commission should fulfill the intent of Congress, as expressly stated in the Act, by denying U S WEST the right to gain access to local facilities that may be owned or controlled by AT&T.

⁴ The term "utility" includes "any person who is a local exchange carrier. . . ." 47 U.S.C. § 224(a)(1).

Discussion. Legislation should be interpreted in such a way to give full meaning to all of its terms and to avoid ambiguity. Sections 251, 224 and 225 of the Act are susceptible to interpretation which is not ambiguous. In its review of these sections of the Act, the FCC states:

In addition, incumbent LECs cannot use section 251(b)(4) as a means of gaining access to the facilities or property of a LEC. A LEC's obligation under section 251(b)(4) is to afford access "on rates, terms, or conditions that are consistent with section 224." Section 224 does not prescribe rates, terms, or conditions governing access by an incumbent LEC to the facilities or rights-of-way of a competing LEC. Indeed, section 224 does not provide access right to incumbent LECs. We cannot infer that section 251(b)(4) restores to an incumbent LEC access rights expressly withheld by section 224. We give deference to the specific denial of access under section 224 over the more general access provisions of section 251(b)(4). Accordingly, no incumbent LEC may seek access to the facilities or rights-of-way of a LEC or any utility under either section 224 or section 251(b)(4). FCC Order, ¶ 1231.

This FCC order is clear and persuasive. Customers who are served by poles, ducts, conduits, and ROW belonging to AT&T will not be precluded from alternative choices of telephone service providers.

Arbitrator's Decision. The provision proposed by AT&T relating to Issue No. 75, as set forth in Exhibit B, is recommended.

**ISSUE NO. 70: Reservation of Poles, Ducts, Conduits and ROW; Part A,
Section 47.4.10 (Defer)**

U S WEST Position. U S WEST proposes deleting this section, and alternatively proposes language for this section. U S WEST does not believe that AT&T should be able to reserve the capacity without paying an appropriate fee. AT&T's proposed language permits AT&T to reserve all spare conduit and rights of way on its own behalf, without paying, while retaining a "right of first refusal" to commence paying a yet-to-be-determined reservation fee rather than make that capacity available to one of its competitors. Spare capacity should be available to all providers on a non-discriminatory basis. Whenever any Party seeks capacity, it should purchase the capacity at the Commission-determined price for poles and conduit. These requests should be handled on a first come, first serve basis, much as floor space for collocation is handled. AT&T would not have a right of first refusal over other CLECs' use of the

space. Any poles, conduit or right of way AT&T purchases would not be considered "spare." AT&T's position would create a "land grab" environment where all CLECs would seek to reserve all available spare capacity prior to actual use.

AT&T Position. AT&T has proposed a mechanism for the reservation of poles, ducts and other facilities for interconnection. The Act imposes an obligation on U S WEST to cooperate reasonably and in good faith to implement practical measures to facilitate interconnection. Without some reasonable mechanism for reserving facilities, AT&T will be put at a competitive disadvantage in its planning and mobilization process. This provision is a practical and fair mechanism for exercising (or not exercising) access rights during the 90 days after U S WEST confirms the availability of the facilities. To avoid any prejudice to U S WEST, AT&T has agreed to pay a "reservation fee" when the confirmed facility is requested by another carrier. AT&T should not have to pay for simply reserving facility when that facility constitutes excess and unused inventory of U S WEST. The "reservation fee" to be paid by AT&T is a reasonable recognition of the opportunity cost imposed on U S WEST for reserving facility when another customers requests the facility, analogous to a right of first refusal.

Discussion. There are several practical problems which arise from AT&T's proposal. What may seem like excess and unused inventory today can become a hot commodity tomorrow. The very consideration of the reservation issue acknowledges that there a potential scarcity of inventory that can arise within a 90-day period. A property that is subject to a first right of refusal is less marketable and has less value than a property that is unrestricted. Furthermore, AT&T proposes that its first right of refusal is triggered by a bona fide offer to purchase the use of the asset without any prior reservation, a situation which AT&T states is unacceptable in the first place. Lastly, in the event of a bona fide offer, AT&T proposes payment of a reservation fee, something less than full price.

This is an issue of managing the risks of doing business. AT&T has the choice of proceeding with its planning and mobilization process without securing rights to access the resources that it may need in order to proceed with implementation, or else it needs to factor the cost of reserving those resources into its process. This risk exists for both CLECs and incumbent LECs. Section 224(f)(1) of the Act prohibits the discriminatory reservation of space for local exchange service by an incumbent LEC to the detriment of a would-be entrant. An option to purchase a resource is a common commercial practice. Insofar as U S WEST has a period of time within which to respond to the Request by AT&T pursuant to Section 47.4.9 with its Confirmation, AT&T's reservation shall begin at the time of the Request; however, its obligation to pay a reservation fee shall begin at the Confirmation. The alternative language proposed by U S WEST provides that the parties will mutually agree to the amount of a reservation fee. If the parties are unable to agree, a reasonable reservation fee should be established pursuant to the dispute resolution process. U S WEST's proposed language contains terms that are relevant to Issue No. 155 which should be deleted.

Arbitrator’s Decision. The language of the disputed section which is recommended in order to incorporate the discussion of this issue is as follows:

47.4.10 For the period beginning at the time of the Request and ending ninety (90) days following Confirmation, U S WEST shall reserve such poles, ducts, conduit and ROW for AT&T and shall not allow any use thereof by any Party, including U S WEST. AT&T shall elect whether or not to accept such poles, ducts, conduit and ROW within the ninety (90) day period following Confirmation. AT&T may accept such facilities by sending written notice to U S WEST (“Acceptance”). If AT&T requests reservation of poles, ducts, conduits, or rights of way, U S WEST may charge a reservation fee in an amount mutually agreed upon by the Parties. AT&T’s obligation to pay a reservation fee shall begin on the date of the Confirmation. If the parties are unable to agree on a reasonable reservation fee, the fee shall be established pursuant to the dispute resolution process provided for in this Agreement.

ISSUE NO. 155: Payment for Existing Poles, Ducts, Conduits and ROW; Part A, Section 47.4.12 (Defer)

U S WEST Position. After the expiration of the reservation period, AT&T must either begin paying the approved rate or access, whether or not it has actually installed conduit or cable, or release its reservation.

AT&T Position. AT&T contends payment for use of existing facilities should begin at the time of first use. Under U S WEST's mechanism, there is a very real possibility that U S WEST would receive double payment. If the facility is confirmed but not put to use by AT&T within 90 days, AT&T would have to start making payment and U S WEST would continue to receive payments through its rates based on the assumption that the facility continues to be carried on its books as a cost. To avoid this anomaly, the arbitrator should adopt AT&T's position, which provides a seamless payment stream to U S WEST for the facility while avoiding the problem of double payment. AT&T simply should not have to pay for something it has not begun to use.

Discussion. Pursuant to Issue No. 70, AT&T would be required to pay a reasonable reservation fee during the Confirmation period. If AT&T fails to timely send its Acceptance, its reservation should terminate. It would be inconsistent to impose a reservation fee during the Confirmation period, but no fee subsequent to Acceptance. It would be inconsistent to limit post-Acceptance compensation to the reservation fee rate, because that would be a de facto extension of the Confirmation period. In light of the terms contained in Section 47.4.11 relating to the time periods within which AT&T is required to begin and complete attachment and/or installation of its facilities, AT&T should begin payment on the date of its timely Acceptance.

Arbitrator's Decision. The language of the disputed section which is recommended in order to incorporate the discussion of this issue is as follows:

AT&T shall begin payment for the use of existing poles, ducts, conduits and ROW upon the date of its timely Acceptance. If AT&T fails to send a timely Acceptance, its reservation shall be released.

ISSUE NO. 156: Expansion of Facilities; Part A, Section 47.4.15 (Defer)

U S WEST Position. None stated.

AT&T Position. AT&T's provision would impose on U S WEST the obligation to take reasonable steps to expand its facilities to accommodate requests by AT&T for access to facilities. This provision is supported by the FCC:

A utility is able to take the steps necessary to expand capacity if its own needs require such expansion. The principle of nondiscrimination established by § 224(f)(1) requires that it do likewise for telecommunications carriers and cable operators.

...

We interpret §§ 224(f)(1) and (f)(2) to require utilities to take all reasonable steps to accommodate requests for access in these situations.
FCC Order at ¶¶ 1162, 1163.

Discussion. The FCC Order declines to craft a specific rule that prescribes when an incumbent LEC must replace or expand existing facilities; however, the order does make clear that lack of capacity on a particular facility is not an automatic basis for denial. AT&T's proposed language requiring that all *reasonable* steps be taken within the relevant time frames is consistent with the Act and the Arbitrator's Decision on Issue No. 55, at Page 29.

Arbitrator's Decision. The proposed language by AT&T relating to Issue No. 156, as set forth in Exhibit B, is recommended.

**ISSUE NO. 105: Operator Services - Instant Credit; Part A,
Section 50.3.3.3(o) (Mediated)**

U S WEST Position. The issue here is not the credit that a customer receives when they call the operator with a complaint. U S WEST would offer a credit to the AT&T end user. U S WEST would record the request similar to the way it records the request for its own customers. U S WEST would pass that information on to

AT&T. Whether or not a credit is issued to an AT&T customer, AT&T should still pay for the underlying operator service that U S WEST provided on its behalf. U S WEST provides credits to its customers out of good-will, but still incurs the cost of performing the service. Likewise, AT&T's customers can be entitled to a credit, but U S WEST believes that AT&T still should pay for the services provided. The charge to AT&T for the operator service, which is a TELRIC rate, is 36 cents for each local call. AT&T should pay the underlying 36 cents for the service performed without regard for the reason the end user received the credit.

AT&T Position. When AT&T purchases a service for resale, AT&T should receive a credit on similar terms to the credits afforded by U S WEST to its own customers. Affording credits to U S WEST's customers, but denying them to AT&T's end users, would create an obvious competitive disadvantage. AT&T would have to make good to its end user for the error committed by U S WEST, but would receive no credit from U S WEST for the error. Likewise, refunds are appropriate in the unbundling context to provide a remedy for breach of contract. This is not, as U S WEST might posit, a dispute over a performance standard. U S WEST is already obligated under the agreement to perform operator services in an appropriate manner. The credit is an appropriate enforcement mechanism for breach of contract and should be adopted. The credit is also a means of avoiding double recovery to U S WEST. The cost of credits awarded by U S WEST should be built into its rate base in the ordinary course.

Discussion. While U S WEST may not impose a stringent standard upon claimants for refunds, it is inaccurate to refer to refunds as an act of good will. All claimants must state some basis upon which they believe themselves to be entitled to a refund. By way of analogy, a money-back product guarantee is less than what it claims to be when original shipping and handling charges are retained. Processing claims for inadequate service should not be susceptible to becoming a potential profit center. While the source of inadequate service may not be readily ascertainable, the full costs of providing refunds should be borne by U S WEST in a resale environment unless AT&T can be reliably identified as the cost causer.

Arbitrator's Decision. The language proposed by AT&T relating to Issue No. 105, as set forth in Exhibit B, is recommended.

ISSUE NO. 138: Reservation of Dark Fiber; Part A, Section 51.5 (Defer)

U S WEST Position. Allowing access to dark fiber is comparable to allowing access to capacity on poles, conduit or rights-of-way. U S WEST's proposed language captures the intent of the FCC with respect to poles, conduit, and right-of-way in limiting an incumbent local exchange carriers ability to reserve spare capacity. AT&T should not be permitted to reserve dark fiber without paying for it, and then retain a "right of first refusal" to commence paying a yet-to-be-determined reservation fee

rather than make that fiber capacity available to one of its competitors. This is totally contrary to the spirit and intent of the FCC's language. Unused Transmission Media should be available to all providers on a non-discriminatory basis. Whenever any Party seeks capacity, it should purchase the capacity at the Commission-determined price for poles and conduit. These requests will be handled on a first come, first serve basis, much as floor space for collocation is handled. AT&T would not have a right of first refusal over other CLECs' use of the space. Any Transmission Media which purchases would not be considered "unused". Because poles, conduit and rights-of-way are an analogous service, U S WEST's should be granted the same allowance for maintenance and emergency spare for dark fiber as for conduit. U S WEST is not required to provide Unused Transmission Media, other than dark fiber; however, AT&T may, subject to the agreement of U S WEST lease other Unused Transmission Media.

AT&T Position. AT&T has proposed a mechanism for the reservation of Unused Transmission Media (including dark fiber), akin to poles, ducts and other facilities for interconnection. To avoid any prejudice to U S WEST, AT&T has agreed to pay a "reservation fee" when the confirmed Unused Transmission Media is requested by another carrier. AT&T should not have to pay for simply reserving Transmission Media when that facility constitutes excess and unused inventory of U S WEST. The "reservation fee" to be paid by AT&T is a reasonable recognition of the opportunity cost imposed on U S WEST for reserving Unused Transmission Media when another customer requests the Transmission Media, analogous to a right of first refusal.

Discussion. The principles discussed in Issue No. 70, Reservation of Poles, Ducts, Conduits and ROW, are equally applicable to this issue. U S WEST should be entitled to a similar allowance for maintenance and emergency spare for dark fiber as for conduit. If U S WEST agrees to provide Unused Transmission Media other than dark fiber to AT&T, it should do so on the same terms and conditions as stated in this section.

Arbitrator's Decision. The language of the disputed section which is recommended in order to incorporate the discussion of this issue is as follows:

47.4.10 For the period beginning at the time of the Request and ending ninety (90) days following Confirmation, U S WEST shall reserve such Dark Fiber for AT&T and shall not allow any use thereof by any Party, including U S WEST. AT&T shall elect whether or not to accept such Dark Fiber within the ninety (90) day period following Confirmation. AT&T may accept such Dark Fiber by sending written notice to U S WEST ("Acceptance"). If AT&T requests reservation of Dark Fiber, U S WEST may charge a reservation fee in an amount mutually agreed upon by the Parties. AT&T's obligation to pay a reservation fee shall begin on the date of the Confirmation. If the parties are unable to agree on a reasonable

reservation fee, the fee shall be established pursuant to the dispute resolution process. AT&T shall begin payment for the use of Dark Fiber upon the date of its timely Acceptance. If AT&T fails to send a timely Acceptance, its reservation shall be released. If U S WEST agrees to provide Unused Transmission Media other than Dark Fiber to AT&T, it shall do so on the same terms and conditions as stated in this section.

U S WEST may not reserve future capacity of its Dark Fiber for its own use, with the exception of maintenance and emergency spare.

ISSUE NO. 126: Services Available For Resale - Voice Mail and Inside Wiring; Attachment 2, Section 1.5 (Baseball)

U S WEST Position. U S WEST's position is that the Act only requires that those services which are "telecommunications services" be offered for resale. Inside wire is not a telecommunications service and thus U S WEST will not make it available for resale. The Arbitrator's Decision examined whether voice mail must be offered as a telecommunications service and cautiously concluded that "[f]or purposes of the resale requirements in this arbitration, I am unwilling to conclude that voice mail is not a telecommunications service." U S WEST still maintains that voice mail is not a service that must be offered for resale. Furthermore, if a service need not be offered for resale, U S WEST should be under no obligation to resell the service at any rate, even retail, if it does not choose to do so. AT&T's proposed language, that U S WEST offer inside wire for resale at retail rates, conflicts with the Arbitrator's Decision that such services need not be offered for resale.

AT&T Position. AT&T asks that U S WEST resell its inside wire installation service to the same extent those services are sold to any other U S WEST customer. AT&T is not asking for a resale wholesale discount, but only that AT&T be allowed to contract for these service as any other retail customer. The nondiscrimination provisions of the Act would seem to require such an accommodation. AT&T recognizes that the FCC considers the maintenance and installation of inside wire to be a detariffed function. In deregulating inside wire, the FCC intended to "increase competition in the provision of installation and maintenance of inside wiring, to promote new entry into the inside wiring market" and generally to create an unregulated competitive marketplace environment for the development of communications. FCC Order ¶ 6. This is not to say, however, that AT&T should be denied the right to purchase inside wire services at ordinary retail costs. The fact of the matter is that the market today for installation and maintenance of inside wire continues to be dominated by U S WEST in its service area.

reservation fee, the fee shall be established pursuant to the dispute resolution process. AT&T shall begin payment for the use of Dark Fiber upon the date of its timely Acceptance. If AT&T fails to send a timely Acceptance, its reservation shall be released. If U S WEST agrees to provide Unused Transmission Media other than Dark Fiber to AT&T, it shall do so on the same terms and conditions as stated in this section.

U S WEST may not reserve future capacity of its Dark Fiber for its own use, with the exception of maintenance and emergency spare.

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AT&T Position. AT&T asks that U S WEST resell its inside wire installation service to the same extent those services are sold to any other U S WEST customer. AT&T is not asking for a resale wholesale discount, but only that AT&T be allowed to contract for these service as any other retail customer. The nondiscrimination provisions of the Act would seem to require such an accommodation. AT&T recognizes that the FCC considers the maintenance and installation of inside wire to be a detariffed function. In deregulating inside wire, the FCC intended to "increase competition in the provision of installation and maintenance of inside wiring, to promote new entry into the inside wiring market" and generally to create an unregulated competitive marketplace environment for the development of communications. FCC Order ¶ 6. This is not to say, however, that AT&T should be denied the right to purchase inside wire services at ordinary retail costs. The fact of the matter is that the market today for installation and maintenance of inside wire continues to be dominated by U S WEST in its service area.

The Arbitrator's Decision concluded that voicemail is a telecommunications service based on the practical reality that voicemail could not be viable without related information transmission functions. This conclusion should not be reversed. Voicemail is intensely intertwined with consumers' expectations of complete telecommunications service. If voice messaging was not subject to the resale requirements, customers would be inhibited from switching carriers from U S WEST to AT&T or any other competitive new entrant. The absence of voice messaging resale would thus constitute a barrier to entry in violation of Section 253(a).

Discussion. The Arbitrator's Decision concluded that voice mail was a telecommunications service, and that inside wire is not a "transmission" service. Insofar as inside wire is not a transmission service, it is a deregulated or non-tariffed service. Any modifications to the Arbitrator's Decision must be presented to the Commission at the time that the Decision is presented for adoption along with the submission of an interconnection agreement for approval. The Act contains no provisions for compelling an incumbent LEC to make deregulated or non-tariffed services available at any rate. Nondiscrimination provisions in the Act only pertain to products or services which an incumbent LEC is required to provide to other telecommunications carriers. AT&T has not made a substantive showing that the market today for installation and maintenance of inside wire continues to be dominated by U S WEST in its service area. If a remedy exists for the alleged discriminatory practice of U S WEST not selling inside wire services to AT&T at retail rates, it must be based upon some legal authority other than the Act.

Neither party proposed language which complies with the Arbitrator's Decision in this docket, and both proposals are rejected. In that circumstance, the recommendation provided herein shall not be constrained by the designation of baseball-style issue resolution by the parties.

Arbitrator's Decision. The language of the disputed sections which is recommended in order to incorporate the discussion of this issue is as follows:

- 1.5 **U S WEST shall not be required to make inside wire services available to AT&T for resale.**
- 1.6 **U S WEST shall be required to make voice mail services available to AT&T for resale.**

ISSUE NO. 140: Wholesale Discount for Coin Line, PAL and PAL Coinless Features Offered for Resale; Attachment 2, Section 4.10.1 (Baseball)

U S WEST Position. U S WEST agrees to sell to AT&T for its own retail pay phone use, all PAL services, under the same terms and conditions, that U S WEST provides to itself or any other party, including volume discounts. U S WEST agrees to provide to AT&T for resale to pay phone providers, all tariffed PAL services, at a wholesale discount to be determined by the Commission.

AT&T Position. U S WEST should sell to AT&T all PAL services under the same terms and conditions that U S WEST provides such services to itself or any other Person, including volume and wholesale discounts, or as otherwise approved by the Commission.

Discussion. AT&T's purchase of PAL services for its own retail pay phone use or for resale are both wholesale functions, and they should not be treated differently.

Arbitrator's Decision. The provisions proposed by AT&T relating to Issue No. 140, as set forth in Exhibit B, are recommended.

ISSUE NO. 142: Shared Transport; Attachment 3, Section 5 (Defer)

U S WEST Position. AT&T's proposal for shared transport is inconsistent with the Act's and the FCC's definition of an unbundled network element, presents serious technical efficiency and operational problems that can affect the subscribers of U S WEST and other CLECs, and is not timely raised. To the extent AT&T requires such a service, it may do so through the BFR process or further negotiations. As an initial matter, AT&T's use of the term "shared facilities" is not consistent with the FCC's definition of a network element. 47 U.S.C. 153 § 3(44) defines "network element" as a "facility or equipment used in the provision of a telecommunications service." AT&T's use of the term "shared facilities" does not involve a discreet, identifiable component of the network, but rather a complex service that delivers telecommunications services through many alternative paths based on available routes at any given moment.

The FCC's use of the word "shared" involves more than one company utilizing a dedicated transmission facility. By stating that "transport routing shall be on an identical basis as routing is performed by U S WEST, providing the same efficiencies that U S WEST employs for itself," [AT&T proposed language at 5] AT&T is no longer seeking a dedicated facility or to share that facility with others, but is seeking "common transport." Several significant problems arise from AT&T's position. First, this language would place the responsibility of designing and managing AT&T's local

telecommunications network on U S WEST. U S WEST should not have to bear this responsibility. AT&T should accurately forecast its needs with respect to its customers on its network and therefore purchase the unbundled elements necessary to meet its needs. The actual functionality AT&T seeks, namely the delivery of traffic from an AT&T customer served by unbundled switching to any other customer served by a different entity such as U S WEST or another CLEC, may be completed through AT&T's purchase of unbundled network elements (namely, dedicated and shared transport). This arrangement is consistent with the definition of unbundled elements, minimizes the impact on end users, is consistent with the pricing proposed by the parties in the cost docket and assigns appropriate responsibility for the design of interoffice transport facilities to AT&T.

Second, because "common transport" is not a network element, the design and management of the network goes far beyond the TELRIC pricing of a discreet facility or piece of equipment. AT&T should not be permitted to insert its language under the section on unbundled elements for "common transport." AT&T has proposed no pricing for such a complex service in any hearings to date.

Third, in establishing the prices for unbundled elements, the Commission has looked to the cost of the underlying facility that is being used. Since "common transport" involves the design and construction of alternative routes and the capacity to handle overflow traffic on these alternative routes, the identification of the unbundled facility or "network element" involved cannot be made.

Finally, AT&T failed to raise this issue during the arbitration or cost dockets. It presented no witnesses nor testimony prior to this mediation. Because it did not raise or preserve this issue during the appropriate stages of this process, it should be precluded from attempting to do so now. Should the Commission undertake a study for network management and design and providing additional capacity associated with common transport, it should do so in a separate cost docket.

AT&T Position. Common local transport (defined as an interoffice transmission path between an ILEC's network elements that is shared by carriers) is provided by two primary means -- (1) direct trunk transport that does not pass through an intervening switch, and (2) tandem switched transport which routes calls through a tandem switch. The price for tandem switched transport includes not only an interoffice transmission charge but also a charge for the tandem switch itself, making it considerably more expensive than direct trunk transport which contains no switch charge. Under U S WEST's proposed contract, traffic initiated by AT&T's customers would be relegated to more expensive, less efficient tandem switched transport while U S WEST would be free to route its traffic through cheaper, more efficient common transport. These provisions patently violate the Act on at least two grounds. In an efficiently built, least-cost-oriented network, all traffic would be routed through the most practical path. The majority of the time the traffic would flow over shared transport lines, eliminating the extra price point of the switch. Tandem switched transport would

properly be relied upon only for overflow, peak usage or those cases where it is in fact the most efficient means of transport. U S WEST's proposal reverses this routing priority by consigning AT&T's traffic in the first instance to the more costly transmission path in violation of the nondiscrimination mandates of the Act.

U S WEST's proposal also seeks to shunt AT&T's traffic to a bottlenecked switch, choking service quality. Trunks to and the capacity of their existing tandem is already constrained and difficult to forecast. If AT&T's traffic is forced to be routed through these facilities, it would place an additional burden on the tandem switches and customers would invariably encounter service delays and interruptions associated with the system's inability to handle the flow of traffic.

Shared transport, by contrast, is and should be the primary medium of transmission of all local traffic, including AT&T's. With shared facilities, traffic flows would maintain much of the same path and volumes as today. At the point where such shared transport facilities can no longer tolerate additional traffic, the overflow traffic can and should be routed on an equal basis through tandem switched routes -- but only at that point. Put another way, AT&T should have access to the capacity of the local shared transport facility on an equal basis with U S WEST and other CLECs. When those facilities are full, either new facilities should be built by U S WEST or the excess traffic should be routed on an equal, nondiscriminatory basis to the more costly alternative route. In order to competitively provide a customer with a variety of service provider options it is necessary for U S WEST to provide unbundled access to their transmission facilities on a call basis with the costs allocated on the transmission path the call takes.

Discussion. At the outset, it should be recognized that while AT&T's conceptualization of a shared network may be more efficient than the status quo, it represents a radical technological departure from the present interconnection environment. As such, in order to make a fully informed decision in favor of such a proposal would require a much more intensive evidentiary presentation than was provided for by the parties in this post-arbitration hearing process. On that basis alone, AT&T's proposal should be rejected.

For the sake of future discussion some observations may be relevant at this time. First of all, in conventional terms AT&T seems to be seeking tandem functionality in end office switches. The unfairness which AT&T perceives in the status quo is a function of demand on the parties respective local networks. If U S WEST were to initiate local exchange service in GTE's service area it would encounter the same operational dilemma. AT&T is not being forced to make any specific purchases; AT&T is essentially stating that it will probably have to route traffic to the tandem switch because its low volume does not justify dedicated facilities, and because of the unknown destination of its traffic. While AT&T's desire to avoid the overhead expense of low fill factors in transport facilities is understandable, the Act does not require U S WEST to solve this problem for AT&T. U S WEST is not being required to undergo

divestiture, but it is being required to provide interconnection to its network as presently configured.

Arbitrator's Decision. The language proposed by U S WEST relating to Issue No. 142, as set forth in Exhibit B, is recommended.

**ISSUE NO. 143: Coin Phone Signaling; Attachment 3, Section 10.2.2.1.2
(Baseball)**

U S WEST Position. U S WEST's position is supported by the FCC in a ruling which stated that the unbundling of pay phones should not be subject to the unbundling provisions of the Act. The FCC ruled that the Sections 251 unbundling requirement did not apply to pay phones. AT&T's request that coin phone signaling capability be provided as part of the unbundling of the loop has already been rejected by the FCC. FCC Order 96-128, ¶ 16 at p.8. There, the FCC ruled that its pay phone orders "do not require that LECs unbundle more features and functions from the basic pay phone line by April 15, 1997 than the LEC provides on an unbundled basis." All that U S WEST is required to provide is "tariffed, non discriminatory basic pay phone services that enable competitive providers to offer pay phone services using either instrument-implemented 'smart pay phones' or 'dumb' pay phones that utilize central office coin services, or some combination of the two in a manner similar to the LECs." FCC Order 96-439, ¶ 162. Since U S WEST provides coin telephone service to itself on an integrated whole (access line, sent paid call rating, coin signaling), that is all that is required by the FCC.

The FCC ruled that the unbundling of pay phones should not be subject to the unbundling provisions of the Act. The FCC ruled that the Sections 251 unbundling requirement did not apply to pay phones:

We decline to require, as proposed by AT&T, that the pricing regime under Sections 251 and 252 apply to all Section 276 pay phone services offered by incumbent LECs. . . . In addition, Section 276 does not refer to or require the application of Sections 251 and 252 to LEC pay phone services.
FCC Order 96-388 at p.75, ¶ 147.

U S WEST's current pay phone services complies with FCC Orders and therefore its proposed language should control this issue.

AT&T Position. In the resale context, U S WEST should provide all coin signaling provisions required by the FCC, contained in its filed tariffs or contained in any contract with any other carrier. In the context of unbundling, pay phone signaling is an

imbedded functionality of switches owned by U S WEST. As such, AT&T is entitled to obtain access to all features, functions and capabilities of U S WEST's switches through the purchase of unbundled switching. U S WEST has not presented any technical feasibility issue with providing coin phone signaling on an unbundled basis.

Discussion. U S WEST is not required to unbundle pay phone signaling pursuant to the terms of the Act and FCC Orders.

Arbitrator's Decision. The provisions proposed by U S WEST relating to Issue No. 143, as set forth in Exhibit B, are recommended.

ISSUE NO. 144: Performance Requirements; Attachment 3, Section 18.2 (Mediated)

U S WEST Position. The performance of all Network Functions and Ancillary functions AT&T orders from U S WEST to provide local service will be at least equal to that it provides to itself, to any subsidiary, affiliate, or any other party for which it provides a like service.

AT&T Position. AT&T's proposed performance standards should be included as benchmarks for measuring the level of service AT&T believes it is entitled to receive. AT&T does not ask U S WEST to concede that these standards are enforceable requirements.

Discussion. The essential purpose of a contractual agreement is to set forth the respective obligations and rights of the parties. The parties disagree regarding what constitutes industry standards. Unless AT&T is entitled to enforce its performance expectations they should not be incorporated into the interconnection agreement between the parties. This issue was effectively addressed in the Arbitrator's Decision, Issue No. 69, Pages 34-36.

Arbitrator's Decision. The language proposed by U S WEST relating to Issue No. 144, as set forth in Exhibit B, is recommended.

ISSUE NO. 115: Points of interconnection; Attachment 4, Section 2.2 (Mediated)

U S WEST Position. For the most expedient and effective trunk engineering, and to avoid the requirement of back hauling traffic, both parties should designate a single POI within each local calling area.

AT&T Position. Section 251(c)(2)(b) expressly permits AT&T to interconnect at "any" technically feasible point. AT&T should not have to incur the

discriminatory and inflated costs of entry associated with U S WEST's burdensome point of interface proposal. Under the U S WEST approach, AT&T would have to interconnect at hundreds of different points in the state.

Discussion. Section 251(c)(2) of the Act requires ILECs to provide interconnection at any technically feasible point. The Act does not permit U S WEST to object to any particular point of interconnection based on cost or efficiency. U S WEST's objection to any proposed point of interconnection based on costs or efficiency concerns could act as a barrier to competitive entry by AT&T.

Arbitrator's Decision. The language proposed by AT&T relating to Issue No. 115, as set forth in Exhibit B, is recommended.

ISSUE NO. 116: Installation Intervals; Attachment 4, Section 12.2 (Baseball)

U S WEST Position. U S WEST does not object to the standard that installation be provided to AT&T in the same time frames that U S WEST provides installation to itself or any other Person. However, U S WEST does object to the arbitrary selection of a ten day interval that AT&T seeks, regardless of whether facilities already exist or no relation to the quantity of services ordered. Some installations would require far greater intervals, particularly if construction of new facilities are required or if equipment needs to be ordered or installed.

AT&T Position. AT&T prevailed on this issue in Issue 2, p. 4 of the Arbitrator's Decision. AT&T's proposal is a reasonable means of ensuring specific time frame are followed for ordering of services. AT&T asks that U S WEST be held to a benchmark schedule for installation. As proposed by U S WEST, there is no benchmark but only an open ended commitment to install the facility in the time U S WEST takes to install the facility for itself or another party. U S WEST's incentive is to preserve the *status quo* by not expanding the network (or expanding it as slowly as possible). The benchmark for facility installation is therefore a critical tool for mobilizing the expansion of the network and thus hastening the benefits of competition to customers.

Discussion. A one-size-fits-all installation interval to be imposed if U S WEST does not provide the same installation to itself or any other person does not meet a reasonableness test. While some generalized installation intervals may be appropriate, neither the record nor the baseball-style dispute resolution process supports any other determination.

Arbitrator's Decision. The language proposed by U S WEST relating to Issue No. 116, as set forth in Exhibit B, is recommended.

ISSUE NOS. 149, 150, 151, and 156: Performance Measurement/Reporting, Service Standards, and Cycle Time Measurements; Attachment 5, Sections 3.5, 5.4 - 5.5, 6.5, and 7.3 (Defer)

U S WEST Position. U S WEST proposes that this language be deleted from the Agreement. The Arbitrator's Decision stated that U S WEST must offer AT&T the same level of service that U S WEST offers its own customers, and if AT&T seeks a higher level of service, it must do so through the Bona Fide Request Process. The Act requires that U S WEST provide interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." 47 U.S.C. § 251(c)(2)(B). AT&T's language goes far beyond what U S WEST provides itself or others.

AT&T Position. AT&T's proposed provisions regarding performance measurements, service standards, and cycle time measurements are goals and not enforceable standards.

Discussion. The essential purpose of a contractual agreement is to set forth the respective obligations and rights of the parties. The parties disagree regarding what constitutes industry standards. Insofar as AT&T is not entitled to enforce its performance expectations, they should not be incorporated into the interconnection agreement between the parties. This issue was effectively addressed in the Arbitrator's Decision, Issue No. 69, Pages 34-36. To the extent that the provisions stated in Section 7.3 are not goals, the record does not enable the Arbitrator to make specific decisions as to the reasonableness of the numerous time frames which are stated.

Arbitrator's Decision. Deletion of AT&T's proposed provisions is recommended.

ISSUE NO. 153: Date of Implementation; Attachment 7 (Defer)

U S WEST Position. U S WEST proposes that this section be deleted. As with the previous discussions surrounding DMOQs and performance standards, U S WEST should be held to the standard as set forth in the Act, namely, that it will provide service to AT&T in the same manner and at the same level of service that U S WEST provides to itself or any other Person. AT&T is seeking to impose further DMOQs and standards not required by the Act or by the Arbitrator's Decision. U S WEST further objects to the time-frames proposed by AT&T and requests that any implementation schedule be agreed-upon by both Parties.

AT&T Position. Attachment 7 is the proposed implementation schedule. The issue is: what triggers the running of the time frames and deadlines contained in the implementation schedule? AT&T believes the time frames should be triggered at the time AT&T makes a request for service. State commissions have the authority to adopt implementation schedules. 47 U.S.C. § 25.2(c)(3). AT&T, as the new entrant, should be given discretion to implement its competitive strategy in a flexible manner. To be a viable competitor, AT&T or any new entrant needs to be able to make choices regarding implementation in a changing and often unpredictable environment.

Discussion. The positions of the parties as stated in their briefs do not coincide. To the extent that Attachment 7 seeks to impose DMOQs and performance standards, U S WEST is required to provide service to AT&T in the same manner and at the same level of service as it provides to itself or any other Person. To the extent that the interconnection agreement establishes specific obligations and rights between the parties, those obligations and rights are subject to the approval of the agreement by the Commission and to any other conditions which the Commission imposes upon its operational effective date at the time of approval.

Arbitrator's Decision. Deletion of AT&T's proposed provisions is recommended.

III. CONCLUSION

The foregoing resolution of the disputed issues in this matter meets the requirements of 47 USC § 252(c).

The time in which parties shall file an agreement in conformity with the arbitrator's recommendations, and shall also file requests for approval, objections, and requests for modification of the recommendations is June 12, 1997. Requests for approval, objections, and requests for modification of the recommendations shall be considered in the same manner and at the same time as requests for approval, objections, and requests for modification of the Arbitrator's Report and Decision which were previously filed by the parties. The time in which the parties may file oppositions to requests for approval, objections, and requests for modification of the recommendations is June 16, 1997.

The Commissioners will consider all requests for approval, objections, and requests for modifications at an open meeting on June 25, 1997, at 1:30 p.m., in the Commission Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

Confidentiality

1. Requests for approval and accompanying documentation are subject to the Washington public disclosure law, including the availability of protective orders. The Commission interprets 47 USC § 252(h) to require that the entire agreement approved by the Commission must be made available for public inspection and copying. For this reason, the Commission will ordinarily expect that proposed agreements submitted with a request for approval will not be entitled to confidential treatment.

2. If a party or parties wishes protection for appendices or other materials accompanying a request for approval, the party shall obtain a resolution of the confidentiality issues, including a request for a protective order and the necessary signatures (Exhibits A or B to standard protective order) prior to filing the request for approval itself with the Commission.

Approval Procedure

1. The request will be assigned to the Commission Staff for review and presentation of a recommendation at the Commission public meeting. The Commission does not interpret the approval process as an adjudicative proceeding under the Washington Administrative Procedure Act. Staff who participated in the pre-arbitration mediation process for the agreement will not be assigned to review the agreement.

2. Any person wishing to comment on the request for approval may do so by filing written comments with the Commission no later than 5 days after date of request for approval. Comments shall be served on all parties to the agreement under review. Parties to the agreement file written responses to comments within 5 days of service.

3. The request for approval will be considered at a public meeting of the Commission. Any person may appear at the public meeting to comment on the request for approval. The Commission may in its discretion set the matter for consideration at a special public meeting.

4. The Commission will enter an order, containing findings and conclusions, approving or rejecting the interconnection agreement within 30 days of request for approval in the case of arbitrated agreements, or within 90 days in the case of negotiated agreements. Agreements containing both arbitrated and negotiated provisions will be treated as arbitrated agreements subject to the 30 day approval deadline specified in the Act.

Fees and Costs

1. Each party shall be responsible for bearing its own fees and costs. Each party shall pay any fees imposed by Commission rule or statute.

DATED at Olympia, Washington and effective this 6th day of June 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

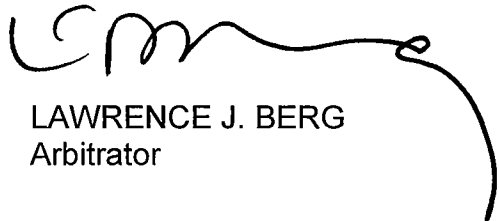

LAWRENCE J. BERG
Arbitrator

EXHIBIT "A"

**WASHINGTON ISSUES MATRIX
AT&T / U S WEST INTERCONNECTION**

Type of Decision:

This matrix identifies, by issue, the type of decision requested by the Parties, as follows:

Baseball – Please choose between the Parties' proposed provisions.

Mediated – Please choose between the Parties' proposed provisions or draft a new provision, if you feel it is appropriate.

Defer – Please choose between the Parties' proposed provisions or draft a new provision, if you feel it is appropriate. A designation of "Defer" indicates either that the Parties do not agree whether to request a Baseball or Mediated type of decision or that the Parties do not have a strong preference for either type of decision.

Part A

WA	Issue	Section – Part A	Type of Decision
1	Affiliate	Intro; Definitions	Mediated
133	AT&T Definition	Intro; Definitions	Moved to Section 47.1
28	Intellectual Property	5	Baseball
29	Branding	8.1-8.2	Mediated
30	Branding	8.2	Mediated
31	Branding	8.3	Mediated
32	Branding	8.4	Mediated
37	Costs of rebranding/unbranding	8.10	Mediated
40	Limitation of Liability	19	Defer
42	Notice of Tariff Changes	23.2	Baseball
134	Dispute Resolution	27	Mediated
53	Revenue Protection -- Flex ANI	38.1	Mediated
135	Directory Listings	44.1.12 and 44.1.17	Defer
62	USW Customer Database	44.2.1	Defer
63	Tariffs – Limitation of Liability	44.2.2	Defer
136	Directories	45 (WA)	Defer
136	Dex Issues	46	Defer
75	Poles, Ducts, Conduits and ROW	47.1	Mediated
70	Reservation of Poles, Ducts, Conduits	47.4.10	Defer
155	Payment for Existing Poles, Ducts,	47.4.12	Defer
156	Expansion of Facilities	47.4.15	Defer
77	Audit Process -- Examination	49.9	Defer
93	DA -- Inspection and Call Monitoring	50.2.3.7	Defer
105	Operator Services – Instant Credit	50.3.3.3(o)	Mediated
137	Operator Services – Inspection and Call	50.3.8	Defer
138	Reservation of Dark Fiber	51.5	Defer
114	Service Standards	52.5	Baseball
114	Service Standards	52.6 – now in first	Baseball

**WASHINGTON ISSUES MATRIX
AT&T / U S WEST INTERCONNECTION**

Attachment 1 : Pricing

WA	Issue	Section – Attachment 1	Type of Decision
139	Prices for DA Database	7.3	-- Closed --

Attachment 2 : Resale

WA	Issue	Section – Attachment 2	Type of Decision
126	Services not Available for Resale – Inside	1.5	Baseball
140	Wholesale Discount for Coin Line, PAL	4.10.1 (last paragraph)	Baseball
141	SemiPublic Coin Features for Resale	4.10.6	Baseball

Attachment 3 : Unbundled Network Elements

WA	Issue	Section – Attachment 3	Type of Decision
142	Shared Transport	5	Defer
143	Coin Phone Signaling	10.2.2.1.2	Baseball
144	Performance Requirements	18.2	Mediated

Attachment 4 : Interconnection

WA	Issue	Section – Attachment 4	Type of Decision
115	Points of Interconnection	2.2	Mediated
116	Installation Intervals	12.2 - 12.3	Baseball

Attachment 5 : Business Processes

WA	Issue	Section – Attachment 5	Type of Decision
145	Service Warranties and Incentives	2.1.4.8	Defer
146	Notice of Planned Services	2.3.2.5	Defer
147	Interim Interfaces	3.2.16.1	Defer
148	Permanent Access to Interfaces	3.3.2	Defer
149	Performance Measurement/Reporting	3.5	Defer
150	Service Standards	5.4 - 5.5	Defer
151	Cycle Time Measurements	6.5	Defer

WASHINGTON ISSUES MATRIX
AT&T / U S WEST INTERCONNECTION

Attachment 6 : Electronic Interface Agreement

WA	Issue	Section – Attachment 6	Type of Decision
152	Reservation of Rights	4.3	Baseball
154	Completion Date for Electronic Interface	8.1, 14.2 and 17.7	Defer

Attachment 7 : Implementation Schedule

WA	Issue	Section – Attachment 7	Type of Decision
153	Trigger of Implementation (Effective date)	Entire Attachment	Baseball

EXHIBIT "B"

PART A

Issues No. 29 - 37 – Branding**8. Branding****[AT&T proposed language]**

- 8.1 For those services during the provision of which U S WEST interacts with AT&T Customers, and which services are the subject matter of this Agreement, U S WEST shall, at AT&T's sole discretion, brand any and all such services at all points of subscriber contact exclusively as AT&T service, or otherwise as AT&T may specify, or such service shall be provided with no brand as AT&T shall determine, **except as provided below with respect to uniforms and vehicles**¹. U S WEST may not unreasonably interfere with branding by AT&T.
- 8.2 Branding includes front-end branding, back-end branding, and unbranding to be determined by AT&T. AT&T shall have the option of providing its own branding materials. AT&T may request comprehensive unbranding of a service when the cost of rebranding such service is unreasonably expensive and the failure to comprehensively unbrand is competitively discriminatory.
- 8.2 AT&T shall provide the exclusive interface to AT&T subscribers except as AT&T shall otherwise specify. U S WEST shall inform M/A Customers that resold repair and maintenance service is being provided on behalf of AT&T.
- 8.4 Except as otherwise specifically provided herein, all forms, business cards or other business materials furnished by U S WEST to AT&T subscribers shall be provided by AT&T unless otherwise agreed by AT&T in its sole discretion, in which case, any such subscriber materials 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 or its affiliates or such other brand as AT&T, in its sole discretion, shall determine.

[USWC proposed language]

- 8.1 This section describes U S WEST's obligations to offer branded and unbranded services to AT&T.
- 8.2 Where technically feasible, U S WEST will offer AT&T unbranded directory assistance and operator services. U S WEST is not required to remove the U S WEST brand from services offered by U S WEST to its Customers except as otherwise required by this Agreement.
- 8.3 *(Intentionally left blank to preserve numerical consistency)*
- 8.4 *(Intentionally left blank to preserve numerical consistency)*
- 8.5 U S WEST will not be required to rebrand uniforms and vehicles.**²

¹ Per Order at page 21, Issue 30.

² Per Order at page 21, Issue 30.

[AT&T proposed provision]

- 8.6 U S WEST shall inform AT&T customers that resold repair and maintenance is being provided on behalf of AT&T. AT&T shall prepare the printed material that provides information about AT&T's service that U S WEST employees leave with AT&T customers in association with repair and maintenance calls.³**
- 8.7 U S WEST shall provide, for AT&T's review, the methods and procedures, training and approaches to be used by U S WEST to assure that U S WEST meets AT&T's branding requirements.**
- 8.8 This Section 8 shall confer on U S WEST no rights to the service marks, trademarks and trade names owned by or used in connection with services by AT&T or its Affiliates, except as expressly permitted by AT&T.**
- 8.9 At the request of AT&T and where technically feasible, U S WEST will rebrand operator services and directory assistance and announcements in AT&T's name.⁴**

[AT&T proposed provision]

- 8.10 Until such time as the Commission determines final pricing pursuant to its cost docket, AT&T shall pay the expense, if any, of rebranding in accordance with TELRIC pricing methodology and as appropriate under the Act or Commission rules.**

Issue No. 40 – Limitation of Liability**19. Limitation of Liability****[AT&T proposed provision]**

- 19.1 Neither Party shall be liable to the other for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing limitation, a Party's liability shall not be limited by the provisions of this Section 19 in the event of its willful or intentional misconduct, its gross negligence, or its repeated breach of any one or more of its material obligations under this Agreement. A Party's liability shall not be limited with respect to its indemnification obligations.**

[U S WEST proposed provisions]

- 19.1 Except as otherwise provided in the indemnity section, no Party shall be liable to the other Party for any Loss, defect or equipment failure caused by the conduct of the other Party, the other Party's agents, servants, contractors or others acting in aid or concert with the other Party.**
- 19.2 Except for indemnity obligations, each Party's liability to the other Party for any Loss relating to or arising out of any**

³ Per Order at page 21, Issue 30.

⁴ Per Order at page 21, Issue 30.

negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to the total amount that is or would have been charged to the other Party by such negligent or breaching Party for the service(s) or function(s) not performed or improperly performed.

- 19.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation to indemnify, defend and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third party. Nothing contained in this section shall limit either Party's liability to the other for (i) willful or intentional misconduct (including gross negligence); (ii) bodily injury, death or damage to tangible real or tangible personal property proximately caused by such party's negligent act or omission or that of their respective agents, subcontractors or employees nor shall anything contained in this section limit the Parties' indemnification obligations, as specified above.

Issue No. 135 – Directory Listings

44. Directory Listings

[AT&T proposed provision]

The publication of directories, directory listings, directory databases and associated related services shall be governed by the terms and conditions contained within Docket No. UT-941464 & UT-94146. To the extent not inconsistent therewith, the following Section 44 shall apply.⁵

44.1 Directory Listings General Requirements

44.1.1 This Section 44 pertains to Directory Listings requirements for the appearance of AT&T end user directory listings in directory assistance service or directory product.

44.1.2 U S WEST shall include in its master directory listing database all list information for AT&T Customers.

44.1.3 U S WEST shall not sell or license, nor allow any third party, the use of AT&T Customer listings without the prior written consent of AT&T. U S WEST shall not disclose nor allow any third party to disclose non-listed name or address information for any purpose other than what may be necessary to complete directory distribution.

44.1.4 AT&T Customer listings in the U S WEST Directory Assistance database and directory listing database shall be co-mingled with listings of U S WEST and

⁵ Per Order at page 32, Issues 66-67.

other CLEC Customers.

44.1.5 Each AT&T Customer Primary Listing shall be provided, at no charge, the same white page listings that U S WEST provides its Customers.

44.1.6 Each AT&T business Customer Primary Listing shall be provided, at no charge, the same yellow page classified courtesy listings that U S WEST provides its Customers.

44.1.7 U S WEST shall also ensure that its directory publisher publishes all types of listings for AT&T Customers that are available to U S WEST Customers under the same terms, and conditions, including but not limited to:

- (a) Foreign listings*
- (b) Reference listings*
- (c) Information listings*
- (d) Alternate call listings*
- (e) Multi-line listings*
- (f) Multi-line/Multi-owner listings*

44.1.8 AT&T end user listings properly identified by AT&T as State, Local, and Federal government listings shall be appropriately coded in the U S WEST Directory Listing database. U S WEST will provide government code information to AT&T.

44.1.9 The listing and handling of AT&T listed and non-listed telephone numbers shall be at least at parity with that provided by U S WEST to its own Customers, including AT&T customers who have ported telephone numbers from U S WEST.

44.1.10 U S WEST shall ensure that its directory publisher publishes AT&T sales, service, billing, and repair information for business and residential Customers, along with the AT&T logo in the customer information/guide pages of each directory at no charge to AT&T.

44.1.11 U S WEST is responsible for maintaining listings, including entering, changing, correcting, rearranging and removing listings in accordance with AT&T orders. Upon request, and at least one month prior to a given white page directory close, a method of reviewing and correcting listings will be provided.

[AT&T proposed provision. U S WEST proposes deletion of this paragraph.]

44.1.12 For white pages and yellow pages advertising, U S WEST shall ensure that (i) U S WEST's directory publisher will use its advertising sales force and processes as AT&T's agent to sell such advertising on a nondiscriminatory basis to AT&T Customers, (ii) charges for such advertising will be billed by U S WEST's directory publisher, and (iii) AT&T will receive a twenty percent (20%) commission on all revenue generated by such advertising.

44.1.13 U S WEST will permit AT&T Customers to place orders for Premium Listings and privacy listings. AT&T will be charged for Premium Listings and privacy listings at U S WEST's general exchange tariff rates less the wholesale discount rate. The Premium and privacy listing charges will be billed to AT&T and itemized at the telephone number sub-account level.

44.1.14 *U S WEST shall ensure a third party distributes appropriate alphabetical and classified directories (white and yellow pages) and recycling services to AT&T Customers at parity with U S WEST end users, including providing directories, a) upon establishment of new service; b) during annual mass distribution; and c) upon Customer request..*

[AT&T proposed provision. U S WEST proposes deletion of this paragraph.]

44.1.15 At no charge, U S WEST shall ensure that its directory publisher prominently indicates on each directory cover that AT&T customer listings are included in such directory.

44.1.16 *U S WEST will provide the option of having CENTREX users listed when AT&T purchases CENTREX type services for resale.*

44.2 Scope

44.2.1 *AT&T grants U S WEST a non-exclusive license to incorporate Listings information into its directory assistance database. AT&T shall select one of two options for U S WEST's use of Listings and dissemination of Listings to third parties.*

EITHER:

a *Treat the same as U S WEST's end user listings - No prior authorization is needed for U S WEST to release Listings to directory publishers or other third parties. U S WEST will incorporate Listings information in all existing and future directory assistance applications developed by U S WEST. AT&T authorizes U S WEST to sell and otherwise make Listings available to directory publishers. U S WEST shall be entitled to retain all revenue associated with any such sales. Listings shall not be provided or sold in such a manner as to segregate end users by carrier.*

OR:

b. *Restrict to U S WEST's directory assistance services -- Prior authorization required from AT&T for all other uses. AT&T makes its own, separate agreements with U S WEST, third Parties and directory publishers for all uses of its listings beyond DA. U S WEST will sell or provide Listings to directory publishers (including U S WEST's publisher affiliate) or other third Parties only after the third party presents proof of AT&T's authorization. Listings shall not be provided or sold in such a manner as to segregate end users by carrier.*

[U S WEST proposed language]

c. U S WEST shall be entitled to retain all revenue associated with any sales pursuant to subparagraphs (a) and (b) above.

[AT&T proposed language]

c. AT&T shall receive its pro-rata share of any amounts paid to U S

WEST by third parties for any sales pursuant to subparagraphs (a) and (b) above.

[U S WEST proposed provision. AT&T opposes the inclusion of this paragraph.]

44.2.2 To the extent that state tariffs limit U S WEST’s liability with regard to Listings, the applicable state tariff(s) is incorporated herein and supersedes Section 19, “Limitation of Liability”, of this Agreement with respect to Listings only.

Issues No. 70 and 75 – Reservation of Poles, Ducts, Conduits and ROW

47. Access to Poles, Ducts, Conduits, and ROW

[AT&T proposed provision]

47.1 **U S WEST shall provide AT&T equal and non-discriminatory access to poles, space, ducts, conduit, entrance facilities, ROW and any other pathways on terms and conditions equal to that provided by U S WEST to itself or to any other Person. Further, U S WEST shall not preclude or delay allocation of these facilities to AT&T because of the potential needs of itself or of any other Person except a maintenance spare may be retained as described below.**⁶

[U S WEST proposed provision]

47.1 Each Party shall provide the other Party nondiscriminatory access to its poles, ducts, rights-of-way and conduits it controls on terms, conditions and prices as described herein. While the language in Section 47 describes the provision of poles, ducts, rights-of-way and conduits by U S WEST to AT&T, the language in this Section shall apply reciprocally to the provision of poles, ducts, rights-of-way and conduits by AT&T to U S WEST. **[AT&T proposed language, if U S WEST proposed provision for Section 47.1 of Part A is adopted by the Commission].** For purposes of this Section 47 of this Part A, the obligations of AT&T shall be limited to those poles, ducts, rights of way and conduits of AT&T Corp. that are used exclusively for the purposes of providing local services under the terms of this Agreement.

Way] [ISSUE 70 – Reservation of Poles, Ducts, Conduits and Rights of

[AT&T proposed provision]

47.4.10 For the period beginning at the time of the Request and ending ninety (90) days following Confirmation, U S WEST shall reserve such poles, ducts, conduits and ROW for AT&T and shall not allow any use thereof by any Party, including U S WEST. AT&T shall elect whether or not to accept such poles, ducts, conduits

⁶ Per Order at pages 28-29, Issues 53-54.

and ROW within the ninety (90) day period following Confirmation. AT&T may accept such facilities by sending written notice to U S WEST ("Acceptance"). From the time of the Request pursuant to Section 47.4.9 above until ninety (90) days after Confirmation, U S WEST shall reserve any such requested poles, ducts, conduits and/or ROW for AT&T's use, provided, however, that if another party makes a bona fide request in writing to use any such requested poles, ducts, conduits and/or ROW, including U S WEST, U S WEST shall so inform AT&T. U S WEST shall not allow the requesting party, including itself, to use the requested poles, ducts, conduits and/or ROW without first giving AT&T the right to continue its reservation of such poles, ducts, conduits and/or ROW by paying U S WEST a reservation fee in an amount to be mutually agreed for the right to continue its reservation.

[Issue 155 – Payment for Existing Poles, Ducts, Conduits and ROW]

[U S WEST proposed language]

AT&T shall begin payment for the use of existing poles, ducts, conduits and ROW within ninety (90) days following Confirmation.

[AT&T proposed language]

AT&T shall begin payment for the use of existing poles, ducts, conduits and ROW commencing on the date AT&T first utilizes the pole, duct, conduit or ROW.

47.4.13 *AT&T may, at its option, install its facilities on poles, ducts, conduits and ROW and use AT&T or AT&T designated personnel to attach its equipment to such U S WEST poles, ducts, conduits and ROW.*

47.4.14 *If available, U S WEST shall provide AT&T space in manholes for racking and storage of cable and other materials as requested by AT&T.*

[Issue 156 – Expansion of Facilities]

47.4.15 *U S WEST shall rearrange, modify and/or make ready any conduit system or poles with retired cable by removing such retired cable from conduit systems or poles to allow for the efficient use of conduit space and pole space. [AT&T proposed language] U S WEST shall take all reasonable steps to expand its facilities to accommodate AT&T's request, and shall do so in accordance with the timeframes set forth in this Section 47. Before denying access based on a lack of capacity, U S WEST must explore potential accommodations with AT&T.*

Issue No. 105 – Operator Services – Instant Credit

50.3.3.3 *U S WEST shall provide the following minimum Operator Service capabilities to AT&T Customers:*

[AT&T proposed language]

Under the circumstances that U S WEST grants credit to its customers for a U S WEST failure to provide directory assistance services as required by U S WEST tariffs or as U S WEST otherwise grants credits on a discretionary basis to U S WEST customers, U S WEST will, on a non-discriminatory basis, (i) in connection with resold services, provide an equivalent credit to AT&T or (ii) in connection with non-resold services, provide AT&T a credit in the amount paid by AT&T for the unbundled service.

[U S WEST proposed language]

- (o) When a AT&T customer requests a U S WEST operator to provide instant credit on an operator services call, the U S WEST operator will record the request, similar to the way U S WEST records such requests for its own customers, and the request for credit shall be passed on to AT&T through the AMA record. U S WEST will not credit the AT&T account, except as may be provided by the Commission's service quality rules and regulations.

Issue No. 138– Dark Fiber – Reservations**[AT&T proposed language]****51.5 U S WEST may not reserve future capacity of its Dark Fiber for its own use.**⁷

From the time of a Request, pursuant to Section 51.3.4 above, until ninety (90) days after Confirmation, U S WEST shall reserve such requested Unused Transmission Media for AT&T's use, provided however that if another party makes a bona fide request in writing to use such Unused Transmission Media, including U S WEST, U S WEST shall so inform AT&T. U S WEST shall not allow the requesting party, including itself, to use the Unused Transmission Media without first giving AT&T the right to continue its reservation of such Unused Transmission Media by paying U S WEST a reservation fee in an amount to be mutually agreed for the right to continue its reservation.

[U S WEST proposed language]**51.5 U S WEST may not reserve future capacity of its Dark Fiber for its own use,**⁸
with the exception of maintenance or emergency spare.**ATTACHMENT 2 : RESALE****Issues No. 126 - 127 – Services Not Available for Resale – Inside Wire and Voice Mail****1. Description**

⁷ Per Order at page 11, Issue 22.

⁸ Per Order at page 11, Issue 22.

[AT&T proposed provisions]

1.5 Inside Wire is not available for purchase at the wholesale rates described in Attachment 1 to this Agreement; provided, however, that nothing in this Agreement shall prevent AT&T from purchasing inside wire at the retail rates for resale.⁹

1.6 Voice mail services shall be available to AT&T for resale.¹⁰

1.6.1 U S WEST shall make available the SMDI-E ("Station Message Desk Interface-Enhanced"), where available, or SMDI (Station Message Desk Interface), where SMDI-E is not available, feature capability allowing for Voice Mail Services. U S WEST shall make available, where available, the MWI (Message Waiting Indicator) stutter dialtone and message waiting light feature capabilities. U S WEST shall make available CF-B/DA (Call Forward on Busy/Don't Answer), CF/B (Call Forward on Busy), and CF/DA (Call Forward Don't Answer) feature capabilities allowing for Voice Mail services.

[U S WEST proposed language]

1.5 Voice mail and inside wire, as with all non telecommunications services, are not available for resale.¹¹

1.5.1 Voice Mail

U S WEST shall make available the SMDI-E ("Station Message Desk Interface-Enhanced"), where available, or SMDI (Station Message Desk Interface), where SMDI-E is not available, feature capability allowing for Voice Mail Services. U S WEST shall make available, where available, the MWI (Message Waiting Indicator) stutter dialtone and message waiting light feature capabilities. U S WEST shall make available CF-B/DA (Call Forward on Busy/Don't Answer), CF/B (Call Forward on Busy), and CF/DA (Call Forward Don't Answer) feature capabilities allowing for Voice Mail services.

⁹ Per Order at page 15, Issue 27.

¹⁰ Per Order at pages 13-15, Issue 27.

¹¹ See Order at page 15, Issue 27.

Issues No. 140 – Payphone Services**4.10 Payphone Services**

[U S WEST proposed language]

4.10.1 U S WEST agrees to sell to AT&T for their own retail use, all PAL services, under the same terms and conditions, that U S WEST provides to itself or any other party, including volume discounts. U S WEST agrees to provide to AT&T for resale to payphone providers, all tariffed PAL services, at a wholesale discount to be determined by the commission.

[AT&T proposed language]

4.10.1 U S WEST agrees to sell to AT&T all PAL services under the same terms and conditions that U S WEST provides such services to itself or any other Person, including volume and wholesale discounts, or as otherwise approved by the Commission, if at all.

ATTACHMENT 3 : UNBUNDLED NETWORK ELEMENTS**Issue 142 – Shared Transport*****Section 5. Shared Transport***

[U S WEST proposed language]

U S WEST will provide unbundled access to shared transmission facilities between end offices and the tandem switch. Further, U S WEST will provide unbundled access to dedicated transmission facilities between its Central Offices or between such offices and those of competing carriers. This includes, at a minimum, interoffice facilities between end offices, IXC POPs, end offices or tandems of U S WEST, and the end offices of U S WEST and requesting carriers. In addition, U S WEST will provide all technically feasible transmission capabilities, such as DS-1, DS-3, and Optical Carrier levels (e.g. OC-3/12/48/96) that AT&T could use to provide Telecommunications Services.

[AT&T proposed language]

U S WEST will provide unbundled access to U S WEST transmission facilities between end offices, end offices and the tandem switch, and the tandem switch and end offices for completing local calls. Such transmission facilities would be shared with U S WEST and as applicable with other CLECS. Transport routing shall be on an identical basis as routing is performed by U S WEST, providing the same efficiencies that U S WEST employs for itself. Costs will be allocated appropriately based upon the transmission path taken by each call. Shared transport shall meet the technical specifications as itemized below for Common Transport.

Issue 143 – Coin Phone Signaling**Section 10. Local Switching****10.2.2 Interface Requirements:**

10.2.2.1 U S WEST shall provide the following interfaces to Loops:

10.2.2.1.1 Standard Tip/Ring interface ,including loopstart or groundstart, on-hook signaling (e.g., for calling number, calling name and message waiting lamp);

[AT&T proposed language]

10.2.2.1.2 Coin phone signaling capability;

[U S WEST proposed language]

10.2.2.1.2 Coin phone signaling as part of a public access line (PAL);

10.2.2.1.3 Basic Rate Interface ISDN adhering to ANSI standards Q.931, Q.932 and appropriate Bellcore Technical Requirements;

10.2.2.1.4 Two-wire analog interface to PBX to include reverse battery, E&M, wink start and DID;

10.2.2.1.5 Four-wire analog interface to PBX to include reverse battery, E&M, wink start and DID;

10.2.2.1.6 Four-wire DS-1 interface to PBX or subscriber provided equipment (e.g., computers and voice response systems);

10.2.2.1.7 Primary Rate ISDN to PBX adhering to ANSI standards Q.931, Q.932 and appropriate Bellcore Technical Requirements;

10.2.2.1.8 Switched Fractional DS-1 with capabilities to configure Nx64 channels (where "n" = 1 to 24); and

10.2.2.1.9 Loops adhering to Bellcore TR-NWT-08 and TR-NWT-303 specifications to interconnect Digital Loop Carriers.

Issue 144 – Performance Requirements

[Part A, Sections 1.3.1 and 1.3.2, agreed upon provisions, are provided for context]

- 1.3 *Each Party is solely responsible for the services it provides to its Customers and to other Telecommunications Carriers.*
- 1.3.1 *The Parties recognize that equipment vendors may manufacture telecommunications equipment that does not fully incorporate and may deviate from industry standards referenced in this Agreement. Due to the manner in which individual equipment manufacturers have chosen to implement industry standards into the design of their products, along with differing vintages of individual facility components and the presence of embedded technologies pre-dating current technical standards, some of the individual facility components deployed within U S WEST's network, including, without limitation, Network Elements and associated business processes and the and the standards associated with the equipment providing such Network Elements (collectively, "Network Components"), may not adhere to all the specifications set forth and described in the Bellcore, ANSI, ITU and other technical and performance standards outlined in this Agreement. Within forty-five (45) days after the Effective Date of this Agreement, the Parties will develop processes by which U S WEST will inform AT&T of deviations or planned deviations, and the implementation date of such planned deviations, from standards referenced in this Agreement for Network Components that may be ordered by AT&T. In addition, the Parties agree that those deviations from such standards documented by U S WEST to AT&T shall, to the extent permitted by FCC and Commission rules and regulations, supersede sections of this Agreement referencing technical standards otherwise applicable for the affected Network Elements.*
- 1.3.2 *U S WEST agrees that in no event shall it intentionally allow any Network Component provided by U S WEST to AT&T under this Agreement to perform below the standards or deviations therefrom reflected in Section 1.3.1, except where requested by AT&T. U S WEST shall minimize any degradation to its equipment relative to currently applicable service, where reasonable in view of industry adopted performance standards and technological developments. Written notice (the "Change Notice") of any planned changes in standards for any Network Component which could impact that Network Component will be provided at least ninety 90 days (or at the make/buy point) prior to the planned implementation. If AT&T notifies U S WEST of how the proposed change may adversely impact AT&T or its Customers within fourteen (14) calendar days after receipt of U S WEST's Change Notice, U S WEST and AT&T will schedule joint discussions to address and attempt to resolve the matter, including without limitation consideration of proposed alternatives. In addition, if U S WEST learns that any Network Component purchased by AT&T under this Agreement has been permitted (even if not intentionally) to fall materially below the level or specification in effect as of the Effective Date, U S WEST shall inform AT&T immediately.*

[Issue 144 Language]

18. Additional Requirements

This Section 18 of Attachment 3 sets forth the additional requirements for unbundled Network Elements which U S WEST agrees to offer to AT&T under this Agreement.

18.1 Cooperative Testing

...

18.2 Performance

18.2.1 Scope

[AT&T proposed provisions]

This section addresses performance requirements for Network Elements and Ancillary Functions to provide local service. It includes requirements for the reliability and availability of Network Elements and Ancillary Functions, and quality parameters such as transmission quality (analog and digital), and speed (or delay). In addition, an overview of service performance requirements is given.

[U S WEST proposed provisions]

The performance of all Network Elements and Ancillary functions AT&T orders from U S WEST to provide local service will be at least equal to that it provides to itself, to any subsidiary, affiliate, or any party for which it provides a like service.

18.2.1.1 The General Performance Requirements in this section apply to all aspects of Network Elements and Ancillary Functions. Additional requirements are given in this performance section and in the individual Network Elements sections.

18.2.1.2 U S WEST shall work cooperatively with AT&T to determine appropriate performance allocations across Network Elements.

18.2.5 Specific Performance Requirements for Network Elements and Ancillary Functions

[AT&T proposed provision]

18.2.5.1 The following Sections set forth performance parameters for Network Elements and Ancillary Functions. U S WEST shall provide performance equal to or better than all of the requirements set forth in this Section. Unless otherwise noted requirements and objectives are given in terms of specific limits. This means that all tests (acceptance and ongoing performance) shall meet the performance limit(s) in order to satisfy these performance requirements.

[AT&T proposed language]

18.2.5.2 Within ninety (90) days after the Effective Date of this Agreement,

U S WEST will respond with any deviations from the following performance requirements listed in Sections 19.2.5(b) through 19.2.6(ii). Deviations from the following standards within Section 18.2.5 will be governed by the processes outlined in Sections 1.3.1 and 1.3.2 in Part A of this Agreement.

[U S WEST proposed language]

18.2.5.2 Within ninety (90) days of the Effective Date of this Agreement, U S WEST will analyze the following performance criteria with respect to the standards identified herein and document the U S WEST deviations consistent with the processes outlined in Sections 1.3.1 and 1.3.2 in Part A of this Agreement.

[AT&T proposed provision]

18.2.5.3 Transmission path impairments may be classified as either analog or digital, and will depend on the nature of the signal transmitted across the Network Element. Analog impairments are introduced on any analog portion of the loop, typically between the NID portion of Loop Distribution and the analog to digital (A/D) conversion, and are usually correlated with the length of the physical plant. Digital impairments are introduced by A/D conversion and by interfaces between digital Network Elements. In addition, noise can be introduced by either analog transmission or the A/D conversion.

18.2.5.4 Loop Combination Architecture Constraints

18.2.5.4.1 The following constraints will limit not only the variety of Loop Combination architectures that may be considered, but also the architectures U S WEST may consider to deliver any Ancillary Function or Network Element provided by USWC to AT&T unless otherwise specified by AT&T. These constraints apply to the entire path between the NID portion of Loop Distribution and the U S WEST switch. Any exceptions to these restrictions shall be specifically requested or approved by AT&T in writing.

18.2.5.4.1.1 No more than one (1) pair of A-D conversion.

18.2.5.4.1.2 No more than one (1), 2-to-4-wire hybrid.

18.2.5.4.1.3 No voice compression.

18.2.5.4.1.4 No echo canceled or suppressers.

18.2.5.4.1.5 One (1) digital loss pad per PBX.

18.2.5.4.1.6 No digital gain.

18.2.5.4.1.6 No additional equipment that might significantly increase intermodulation distortion.

18.2.5.5 Transmission Impairments

18.2.5.5.1 *Analog Impairments*

18.2.5.5.1.1 Analog impairments are those introduced on portions of the end-to-end circuit on which communications signals are transmitted in analog format. These portions of the transmission path would typically be between NID and an A/D conversion, most commonly on the metallic loop. The performance on the analog portion of a circuit is typically inversely proportional to the length of that circuit.

18.2.5.5.1.2 *Loss*

18.2.5.5.1.2.1 Electrical loss is measured using a 1004 Hz test tone at zero (0.0) db at one milliwatt into a 900 ohm termination.

[AT&T proposed language]

18.2.5.5.1.2.2 Off-hook electrical loss between the NID and the switch shall be no more than 8.0 dB for any line, and the mean value for all lines shall be 3.5 dB \pm 0.5 dB. On-hook electrical loss between the NID and the switch shall be no more than 4.0 dB above the off-hook electrical loss for any line.

18.2.5.5.1.3 *Idle Channel Circuit Noise*

18.2.5.5.1.3.1 Idle channel circuit noise (C-message) is added by analog facilities, by the A/D conversion of signals, by digital processing equipment (e.g., echo cancelers, digital loss pads), robbed bit signaling, and errors on digital facilities.

18.2.5.5.1.3.2 Idle channel circuit noise shall be less than or equal to 18 dBmC.

18.2.5.5.1.4 *Talker Echo*

18.2.5.5.1.4.1 The primary source of echo is improper impedance-matching at the 2-to-4 wire hybrid in the U S WEST network. The impact on subscriber perception is a function of both echo return loss and delay.

[AT&T proposed language]

18.2.5.5.1.4.2 Echo Return Loss (ERL) shall be greater than 26 dB to a standard termination (900 ohms, 2.16 1Fd), and greater than 14 dB to a telephone set off-hook. Singing Return Loss (SRL) shall be greater than 21 dB to a standard termination, and greater than 11 dB to a telephone set off-hook.

18.2.5.5.1.5 *Listener Echo*

Listener echo is a double reflection of a transmitted signal at two (2) different impedance mismatches in the end-to-end connection. While in extreme cases it can degrade voice transmission performance,

listener echo is primarily an issue for voiceband data. **[AT&T proposed language]** The requirements on Talker Echo shall apply to Listener Echo.

18.2.5.5.1.6 Propagation and Processing Delay

18.2.5.5.1.6.1 Propagation delay is the delay involved in transmitting information from one location to another. It is caused by processing delays of equipment in the network and delays associated with traveling across transmission facilities.

18.2.5.5.1.6.2 U S WEST shall cooperate with AT&T to limit total service propagation and processing delay to levels at parity with those within the U S WEST local network.

18.2.5.5.1.7 Signal-to-Noise Ratio

18.2.5.5.1.7.1 The Signal-to-Noise ratio (S/N) is a critical parameter in determining voiceband data performance. It is typically measured with a 1004 Hz tone.

[AT&T proposed language]

18.2.5.5.1.7.2 U S WEST must provide on the Loop Combination a signal-to-noise ratio of at least 37 dB between the NID and the end office.

18.2.5.5.1.8 C-Notched Noise

[AT&T proposed language]

Noise. The requirements for Signal-to-Noise Ratio shall apply to C-Notched

18.2.5.5.1.9 Attenuation Distortion

18.2.5.5.1.9.1 Attenuation distortion, also known as frequency distortion or gain slope, measures the variations in loss at different frequencies across the voice frequency spectrum (200 Hz - 3400 Hz). It is measured by subtracting the loss at 1004 Hz from the loss at the frequency of interest.

[AT&T proposed language]

18.2.5.5.1.9.2 Attenuation distortion from the NID to the switch shall be within the range ±0.5 dB for frequencies between 304 and 3004 Hz; from the switch to NID attenuation distortion shall be within the range ±0.5 dB for frequencies between 204 Hz and 3004 Hz. In addition, attenuation distortion shall remain within the range +1 dB/-3 dB for frequencies between 200 Hz and 3500 Hz.

18.2.5.5.1.10 Envelope Delay Distortion

18.2.5.5.1.10.1 Envelope Delay Distortion (EDD) measures the

difference in transit time of signals at different frequencies. EDD is measured relative to the transit time of a 1704 Hz tone, and is given in microseconds. EDD is used as an approximation of the group delay of the channel.

[AT&T proposed language]

18.2.5.5.1.10.2 EDD shall be: 1704 Hz to 604 Hz _ £ 350 1sec.;
1704 Hz to 2804 Hz _ £ 195 1sec.; 1704 Hz to 204 Hz
_ £ 580 1sec.; 1704 Hz to 3404 Hz _ £ 400 1sec.

18.2.5.5.1.11 Phase Jitter

18.2.5.5.1.11.1 Phase jitter measures the unwanted angular modulation of a signal. It is caused by noise or the actual modulation of the signal by another unwanted signal. It displaces the zero crossings of a signal. It is measured in terms of peak-to-peak deviations of a 1004 Hz tone from its nominal zero crossings, and in a particular frequency band (200-300 HZ and either 4-300 Hz or 2-300 Hz). Phase jitter impacts voiceband data performance and can make modems more susceptible to other impairments, including noise.

[AT&T proposed language]

18.2.5.5.1.11.2 From the NID to the interexchange carrier point of termination, phase jitter shall be < 1.5° point-to-point in the 0-300 Hz band, and < 1.8° point-to-point in the 4-300 Hz band.

18.2.5.5.1.12 Amplitude Jitter

18.2.5.5.1.12.1 Amplitude jitter is any deviation of the peak value of a 1004 Hz signal from its nominal value. Excessive amounts can impair voiceband data performance. It is primarily caused by noise but can also be caused by phase jitter, gain hits, or single frequency interference.

[AT&T proposed language]

18.2.5.5.1.12.2 In NID-interexchange carrier point of termination, £ 2.5% of amplitude jitter is permitted in the 20-300 Hz band and £ 2.9% in the 4-300 Hz band.

18.2.5.5.1.13 Intermodulation Distortion

18.2.5.5.1.13.1 Intermodulation distortion (IMD) measures non-linear distortions of a signal. It compares the power of harmonic tones to the power of the transmitted tones. It is measured for both the 2nd and 3rd harmonics of the transmitted tones. IMD is caused by compression or clipping and can impair voiceband data performance.

[AT&T proposed language]

18.2.5.5.1.13.2 Both 2nd and 3rd order IMD between the NID and end office must be ≥ 52 dB.

18.2.5.5.1.14 Impulse Noise

18.2.5.5.1.14.1 Impulse noise is a sudden and large increase in noise on a channel for a short duration of time. Impulse noise is measured as a count of the number of times a noise threshold is exceeded during a given time period (typically 5 or 15 minutes). It is caused by protection switching, maintenance activities, electromechanical switching systems, digital transmission errors, and line coding mismatches. Impulse noise sounds like clicking noises or static on voice connections. Impulse noise impairs voiceband data performance.

[AT&T proposed language]

18.2.5.5.1.14.2 The NID to interexchange carrier point of termination portions of connections shall introduce no impulse noise events within 6 dB of the received signal power on 93% of all 15 minute connections. In addition, there shall be no more than 1 impulse noise event within 6 dB of the received signal power during any 30-minute period.

18.2.5.5.1.15 Phase Hits

18.2.5.5.1.15.1 Phase hits are a sudden change in the phase of a signal lasting at least 4 milliseconds. Phase hits are measured using a threshold that indicates how much the phase of the signal has changed with respect to its nominal phase. Phase hits are caused by protection switching and slips or other synchronization errors. Phase hits can impair voiceband data performance.

[AT&T proposed language]

18.2.5.5.1.15.2 Between the NID and interexchange carrier point of termination, 99.75% of all 15-minute connections shall have no phase hits exceeding 10° . In addition, there shall be no more than one (1) phase hit exceeding 10° in any 30-minute period.

18.2.5.5.1.16 Gain Hits

18.2.5.5.1.16.1 Gain hits are sudden changes in the level of a signal that last at least 4 milliseconds. Gain hits are measured against a threshold of typically 2-5 dB relative to the signal's nominal level. Gain hits are usually caused by protection switches and can impair voiceband data performance.

[AT&T proposed language]

18.2.5.5.1.16.2 Between the NID and the interexchange carrier point of termination, 99.5% of all 15-minute connections shall have no gain hits exceeding 3 dB. In addition, there shall be no more than 1 gain hit exceeding 3 dB in any 30-minute period.

18.2.5.5.1.17 Dropouts

18.2.5.5.1.17.1 *Dropouts are drops in the level of a signal of 12 dB or more for at least 4 milliseconds. They are caused by protection switching events, radio fading, and conditions causing digital carrier systems to lose frame. Dropouts are critical for voiceband data performance but, if severe enough, will also affect voice quality.*

[AT&T proposed language]

18.2.5.5.1.17.2 Between the NID and the interexchange carrier point of termination, 99.9% of all 15-minute connections shall have no dropouts and in addition, no connection shall suffer more than one (1) dropout in any 60-minute period.

18.2.5.5.1.18 Frequency Shift

18.2.5.5.1.18.1 *Frequency shift measures any frequency changes that occur when a signal is transmitted across a channel. It is typically measured using a 1004 Hz tone. Frequency shift has very little impact on voice or voiceband data performance; however, round-trip frequency shifts can affect the ability of echo cancelers to remain converged.*

[AT&T proposed language]

18.2.5.5.1.18.2 No more than 0.2 Hz frequency shift shall be on any connection. In addition, 99.5% of all calls shall have frequency shift < 0.1 Hz.

18.2.5.5.1.19 Crosstalk

18.2.5.5.1.19.1 *Crosstalk is the presence of signals from other telephone connections on a circuit. Crosstalk can be either intelligible, when speech from other connections can be heard and understood, or unintelligible. Crosstalk is caused by inter-channel interference on the transmission system. Crosstalk is difficult to measure: it requires correlating signals on different circuits or using human listeners to identify its presence. Trouble reports may be used to estimate the probability of crosstalk.*

[AT&T proposed language]

18.2.5.5.1.19.2 Ninety-nine percent (99%) of Loop Combinations shall have probability \leq 0.1% of experiencing crosstalk exceeding -65 dBm0.

18.2.5.5.1.20 Clipping

18.2.5.5.1.20.1 *Clipping occurs when part of a transmitted signal is dropped and does not reach the receiving portion on a connection. It can be caused by Digital Speech Interpolation (DSI) equipment*

used in Digital Circuit Multiplication Systems (DCMS) which increase the amount of traffic that transmission facilities carry, and by echo cancelers or echo suppressers.

[AT&T proposed language]

18.2.5.5.1.20.2 No clipping incidents shall occur on any call.

18.2.5.5.1.21 Digital Impairments

Digital impairments occur in the signal wherever it is transmitted in digital format. These errors are usually introduced upon conversion of the signal from analog to digital, as well as at interfaces between digital components. While many digital impairments have little impact on subjective voice quality, they can impact data performance.

18.2.5.5.1.22 Signal Correlated Distortion

18.2.5.5.1.22.1 Signal correlated distortion (SCD) is unwanted noise or distortion introduced into a signal through the conversion of a signal from analog to digital format or through digital processing that changes the transmitted signal. SCD affects performance when a sign is being transmitted. The primary sources of SCD are signal encoders, echo cancelers, digital loss pads, and robbed bit signaling. SCD affects both voice and data performance.

18.2.5.5.1.22.2 The NID-to-end-office connection shall

allow:

[AT&T proposed language]

18.2.5.5.1.22.2.1 a maximum of 1 A/D conversion, using 64 Kbps 1-law (1=255) PCM;

18.2.5.5.1.22.2.2 no voice compression;

18.2.5.5.1.22.2.3 no echo cancellation; and

18.2.5.5.1.22.2.4 robbed bit signaling only if SS7 or ISDN are not used.

18.2.5.5.1.23 Slips

18.2.5.5.1.23.1 Slips occur when a frame of digital data is either deleted or repeated because of differences in the clocks used to synchronize digital facilities. Slips sound like clicks or pops on voice calls and have major impact on data performance.

[AT&T proposed language]

18.2.5.5.1.23.2 The NID-to-interexchange carrier point of termination portion of connections shall have fewer than 0.45 slips every twenty-

four (24) hours on average.

18.2.5.5.1.24 Digital Timing Jitter and Wander

18.2.5.5.1.24.1 Digital timing jitter is the unwanted phase modulation of digital signals at rates above 10 Hz. Wander is the unwanted phase modulation of digital signals at rates below 10 Hz. Digital timing jitter is caused by imperfections in the timing recovery process of regenerators and the stuffing synchronization process used by multiplexer/demultiplexers. Wander is caused by slowly varying changes in digital signal phase due to clock frequency offset and drift, changes in propagation delay of terrestrial facilities due to temperature changes and changes in the distance of satellites from the earth. These events have a major impact on data performance.

[AT&T proposed language]

18.2.5.5.1.24.2 The maximum digital timing jitter allowed in the 10 Hz to 8 kHz frequency band at any network interface or any terminal equipment in the network is 5 Unit Intervals (UI). The maximum digital timing jitter allowed in the 8 kHz to 40 kHz frequency band is 0.1 UI. The objective for wander is less than 28 UI at any network interface or terminal equipment.

18.2.5.5.1.25 DS-1 Errored Seconds

18.2.5.5.1.25.1 An Errored Second (ES) on a DS-1 facility is any second during which at least 1 bit is in error. The impact of an ES on performance depends on the number of errors that occur during a second. Typically, voice performance is not significantly impacted by ES but they can cause errors in data transmissions.

[AT&T proposed language]

18.2.5.5.1.25.2 Each U S WEST DS1 facility shall have less than 20 ESs per twenty-four (24) hour period.

18.2.5.5.1.26 DS-1 Severely Errored Seconds

18.2.5.5.1.26.1 A severely Errored Second (SES) is any second during which a DS-1 has an error rate exceeding 0.001. An SES can be caused by a loss of framing, a slip, or a protection switch. SESs have impacts on both voice and data performance. For voice, a SES will sound like a burst of noise or static. SESs that occur during a data transmission cause a significant burst of errors and can cause modems to retrain.

[AT&T proposed language]

18.2.5.5.1.26.2 The digital portion of each NID to POP connection shall have less than 2 SESs per twenty-four (24) hour period.

18.2.5.5.1.27 Short Failure Events

[AT&T proposed provisions]

18.2.5.5.1.27.1 A Short Failure Event (SFE) is a Loss of Frame (LOF) event of less than two (2) minutes' duration. An LOF event is declared when, on detection of a Loss of Signal (LOS) or Out-of-Frame (OOF), a rise-slope-type integration process starts that declares a LOF after 2.5 ± 0.5 sec. of continuous LOS or OOF. If the LOS or OOF is intermittent the integration process shall decay at a slope of $1/5$ the rise slope during the period when the signal is normal. Thus, if the ratio of a LOS or OOF to a normal signal is greater than $1/2$, a LOF will be declared. A LOS condition shall be declared when the Network Channel Terminating Equipment has determined that 175 ± 75 successive pulse positions with no pulses of either positive or negative polarity have occurred. An OOF condition shall be declared when either Network equipment or Digital Terminal Equipment detects errors in the framing pattern.

18.2.5.5.1.27.2 There shall be fewer than one (1) SFE per month.

18.2.5.6 Service Availability and Reliability

Availability refers to the time period during which the service is up and usable for its intended purpose. Reliability refers to the probability that a task, once begun, will be successfully completed.

18.2.5.6.1 Blocked Calls

18.2.5.6.1.1 Blocking is the fraction of call origination attempts denied service during a stated measurement period. Blocking occurs because of competition for limited resources within the network.

[AT&T proposed language]

18.2.5.6.1.2 For IntraLATA toll service and local exchange service, the blocking level from originating NID to terminating NID shall not exceed one percent (1%) in any hour, except under conditions of service disruption. For access to or egress from a long distance network, the blocking rate shall not exceed 0.5% in any hour.

18.2.5.6.2 Downtime

Downtime is the period of time a system is in a failed state.

[AT&T proposed provisions]

18.2.5.6.2.1 The average downtime for all subscriber Loop Combinations shall be less than forty-nine (49) minutes per year. The maximum downtime for ninety-nine percent (99%) of all subscriber Loop Combinations shall be less than seventy-four (74) minutes per year.

18.2.5.6.2.2 The average downtime for an end office switch shall be less than three (3) minutes per year. The average downtime for

individual trunks shall be less than twenty-eight (28) minutes per year. The average downtime for digital trunk groups shall be less than twenty (20) minutes per year. The average downtime for an individual line appearance at the switch shall be less than twenty-eight (28) minutes per year. The average downtime for a Remote Terminal (RT) shall be less than seventeen (17) minutes per year. The average downtime for an individual line on a Remote Terminal (RT) shall be less than thirteen (13) minutes per year.

18.2.5.6.2.3 The mean time to repair (MTTR) of any equipment at an attended site shall be less than three (3) hours. The mean time to repair (MTTR) of any equipment at an unattended site shall be less than four (4) hours. Ninety-five percent (95%) of all repairs to the NID shall be completed within twenty-four (24) hours.

18.2.5.6.2.4 There shall be no downtime due to power failures at the switch.

18.2.5.6.2.5 The probability of a stable call being cut off shall be less than twenty (20) cutoffs per one million one (1) minute calls.

18.2.5.6.2.6 The rate of ineffective machine attempts at the end office shall be less than 0.0005 (5 failures per 10,000 call attempts).

18.2.5.6.2.7 U S WEST shall meet all requirements for private line services in TR-NWT-000335, ANSI T1.512-1994.

18.2.5.6.3 Dial Tone Delay

18.2.5.6.3.1 Dial-Tone Delay is the time period between a subscriber off-hook and the receipt of dial tone from an originating end office. Dial-Tone Delay has a significant effect on subscriber opinion of service quality.

18.2.5.6.3.2 The average dial-tone delay shall not exceed 1.5% of calls delayed more than three (3) seconds. At most twenty percent (20%) of calls during the high day busy hour (HDBH) shall experience dial-tone delay greater than three (3) seconds.

18.2.5.6.4 Dial Tone Removal

18.2.5.6.4.1 Dial tone removal is the time between recognition of the first address digit to the removal of dial tone on the line.

[AT&T proposed language]

18.2.5.6.4.2 The maximum dial tone removal interval shall be 500 milliseconds.

18.2.5.6.5 Post Dial Delay

18.2.5.6.5.1 Post Dial Delay (PDD) is the amount of time a caller must

wait after entering or dialing the last digit of a Destination Telephone Number (DTN) before hearing a valid audible network response. The PDD for an end user is measured from the time the caller has pressed or dialed the last digit of a DTN until receipt of an audible network response.

18.2.5.6.5.2 The requirements given reflect an end-to-end CCS7 protocol for AT&T end users. Where a mixture of CCS7 and inband (MF) signaling protocols are employed, an increase in the PDD can be expected.

18.2.5.6.5.2.1 PDD 1 - A - Intra LSO

18.2.5.6.5.2.1.1 Intra-LSO calls do not employ external signaling protocols. The PDD for intra-LSO calls flows are dependent upon the processor cycle time and traffic load conditions. This PDD is assumed to be between subscribers on the same LSO, between the Remote Switch Modules (RSMs) on the same Host, or between an RSM and Host subscribers.

[AT&T proposed language]

18.2.5.6.5.2.1.2 The objective for intra-LSO PDD is less than 310 milliseconds for fifty percent (50%) of all calls and less than 460 milliseconds for ninety-five percent (95%) of all calls.

18.2.5.6.5.2.2 PDD1 - B - LSO to Another Local LSO

[AT&T proposed language]

18.2.5.6.5.2.2.1 The signaling protocols from an LSO to another LSO are assumed to employ out-of-band Common Channel Signaling System 7 (CCS7) format. Local calls, that is, calls from an LSO to another LSOs are assumed to have no more than one pair of Signaling Transfer Point Switches (STPs) and no more than one data base dip.

18.2.5.6.5.2.2.2 This PDD is expected to be better than the MCIT Long Distance objective with an average PDD of £ 8.70 seconds with ninety-five percent (95%) <1.34 seconds.

18.2.5.6.5.2.3 PDD1 - C - AT&T LSO to Other LSO

18.2.5.6.5.2.3.1 Calls from an AT&T LSO to other LSOs are dependent upon the interface Agreements between AT&T and the LSO service provider and may employ CCS7, inband (MF) or a combination of both protocols.

[AT&T proposed language]

18.2.5.6.5.2.3.2 Calls from an AT&T LSO to another LSO via the Public Switched Telecommunications Network (PSTN), using end-to-end CCS7 signaling protocols, can expect to meet the

AT&T PDD objectives of an average of 2.0 seconds with ninety-five percent (95%) in <2.5 seconds. Calls from an AT&T LSO via the PSTN to LSOs outside the local service area are assumed to use CCS7 signaling protocols to the AT&T switch. The egress signaling protocols from the MCIT Switched Network to the many different local telephone company service providers however does not necessarily utilize CCS7 signaling. There are three basic egress signaling configuration. They are:

18.2.5.6.5.2.3.2.1 Network Inter-Connect, CCS7 between AT&T and the LEC.

18.2.5.6.5.2.3.2.2 Inband Multifrequency (MF) signaling protocols without a U S WEST egress tandem in the connection.

18.2.5.6.5.2.3.2.3 Inband MF signaling protocols with a U S WEST egress tandem in the connection.

18.2.5.6.5.2.3.2.3.1 Calls from an AT&T LSO to other LSOs outside the local service area are assumed to have multiple STPs for 1 + traffic in the access and PSTN portion of the connection. The egress from the PSTN for 1 + traffic is again dependent upon the interface Agreements in that service area and may consist of CCS7 or inband MF protocols.

[AT&T proposed language]

18.2.5.6.5.2.3.2.3.2 Calls from an AT&T's LSO to another AT&T LSO with a mixture of CCS7 or all inband signaling protocols are expected to receive PDDs on the average of 2.9 seconds with ninety-five percent (95%) in <6.5 seconds.

18.2.5.6.5.3 Impact of Number Portability (NP)

[AT&T proposed language]

If a call forwarding option is used as an interim solution for NP, the delay due to additional switching in the local access shall not exceed 0.4 seconds (95th percentile) in addition to the PDDs described above.

18.2.5.6.5.4 Custom Local Area Subscriber Services (CLASS)

[AT&T proposed language]

CLASSSM features such as Calling Name Delivery can contribute to the PDD of a call. This delay is caused by the additional time (U S WEST option) before the ringing interval commences. This default delay is three (3) seconds. Optional settings are available in one (1) second intervals from one (1) to six (6) seconds. Calls to DTNs that have CLASSSM features, particularly with calling name delivery, can expect to experience

from one (1) to six (6) seconds (three (3) seconds default) of additional PDD compared to the PDDs shown for PDD1-C. AT&T will specify optimal settings.

18.2.5.6.5.5 Partial Dial Timing

18.2.5.6.5.5.1 The interval between each information digit from a subscriber's line, until the LSO or switching system has determined that the digit string is incomplete.

[AT&T proposed language]

18.2.5.6.5.5.2 For subscriber lines, partial dial timing shall be ≥ 16 seconds and ≤ 24 seconds. For trunks, inband signaling time-out shall be ≥ 35 seconds and ≤ 20 seconds.

18.2.5.7 Local Switching

[AT&T proposed language]

U S WEST shall provide performance equal to or better than the requirements for Local Switching set forth in Bellcore LSSGR TR-TSY-000511. Post dial delay for connections to AT&T local operator services shall be no worse than Operator Services provided by U S WEST. Additionally, post dial delay from the Operator Services to destination numbers shall be no worse than that provided by U S WEST. Post dial delay for connections to AT&T local directory services shall be no worse than directory services provided by U S WEST. Additionally, post dial delay from the directory system to destination numbers shall be no worse than that provided by U S WEST.

ATTACHMENT 4 : INTERCONNECTION

Issue 115 – Points of Interconnection

2. General Description

2.1 *U S WEST will provide interconnection at any technically feasible point, subject to negotiations between the Parties; such points may include, but not be limited to, a Meet Point, the line side distribution frame of the local switch, the trunk side distribution frame of the local switch, trunk interconnection points of the tandem switch, central office cross-connect points, and signaling transfer points necessary to exchange traffic and access call related databases.*

[AT&T proposed language]

2.2 AT&T shall designate at least one POI in the LATA in which AT&T originates local traffic and interconnects with U S WEST. *AT&T will be responsible for engineering and maintaining its network on its side of the POI. If and when the Parties choose to interconnect at a mid-span meet, AT&T and U S WEST will jointly provision the fiber optic facilities that connect the two (2) networks and shall share the financial*

and other responsibilities for that facility.

[U S WEST proposed language]

- 2.2 AT&T shall designate at least one POI in the local calling area in which AT&T originates local traffic and interconnects with U S WEST. *AT&T will be responsible for engineering and maintaining its network on its side of the POI. If and when the Parties choose to interconnect at a mid-span meet, AT&T and U S WEST will jointly provision the fiber optic facilities that connect the two (2) networks and shall share the financial and other responsibilities for that facility.*

- 2.3 *Within ten (10) business days of AT&T's request for any POI, U S WEST shall provide any information in its possession or available to it regarding the environmental conditions of the interconnection route or location including, but not limited to, the existence and condition of asbestos, lead paint, hazardous substance contamination, or radon. Information is considered "available" under this Agreement if it is in U S WEST's possession, or in the possession of a current or former agent, contractor, employee, lessor, or tenant of U S WEST's.*

- 2.4 *U S WEST shall allow AT&T to perform any environmental site investigations, including, but not limited to, asbestos surveys, AT&T deems to be necessary in support of its collocation needs. AT&T shall advise U S WEST in writing of its intent to conduct any such investigations, and shall receive written approval from U S WEST to proceed with the investigation which approval shall not be unreasonably withheld. AT&T shall indemnify U S WEST in accordance with the provisions of Section 19 of this Agreement for any loss or claim for damage suffered by U S WEST as a result of AT&T's actions during any site inspection.*

Issue 116 – Installation Intervals**12. Ordering**

12.1 *AT&T may order interconnection points using the access service request (ASR) process or other industry standard for local service ordering.*

[AT&T proposed language]

12.2 *U S WEST must provide installation to AT&T in the shorter of the time it provides installation to itself or any other Person. U S WEST must provide installation to AT&T within ten (10) business days if it does not provide the same installation to itself or any other Person.*

12.3 If AT&T requests a shorter installation time than required by the provisions of this Attachment, U S WEST may charge AT&T for any increased expense incurred for such installation.

12.4 *AT&T shall, on each order for local interconnection trunks, specify the AT&T NXXs that are assigned to the trunks.*

ATTACHMENT 5 : BUSINESS PROCESS REQUIREMENTS**Issue 149 – Performance Measurements/Reporting****3.5 Performance Measurements and Reporting****3.5.1 Cycle Time Measurements****[AT&T proposed provisions]**

Excepting expedited due date requests, the following order intervals shall constitute the basis for measuring U S WEST Service Order performance under this Agreement. AT&T may, at its discretion, modify such measurements from time to time:

3.5.1.1 U S WEST shall provide and acknowledge each and every AT&T service order within one (1) hour of receipt by U S WEST.

3.5.1.2 Until real-time, electronic interface is available, U S WEST agrees that U S WEST will immediately notify AT&T of any charges associated with necessary construction.

3.5.1.3 U S WEST shall process AT&T service orders and provide either Firm Order Confirmation (FOC) of a correct service order or notification of a rejected order and the detail of the errors contained within any data element(s) fields contained in such order, within four (4) hours of receipt of a Local Service Request (LSR) from AT&T.

3.5.1.4 U S WEST shall complete any Suspend/Block/Restore order no more than four (4) hours after receipt by U S WEST.

3.5.1.5 For expedited due date requests, U S WEST shall confirm to AT&T within two (2) business hours after U S WEST receipt of such request from AT&T whether U S WEST can complete an initially-submitted order within the expedited interval requested by AT&T. Confirmation may be provided by U S WEST via telephone call with follow up confirmation to be provided by U S WEST according to normal procedures and measurement intervals.

3.5.1.6 Subsequent to an order which has been initially submitted by AT&T to U S WEST, AT&T may require a new/revised due date that is earlier than the minimum defined interval.

3.5.1.6.1 For such requests, U S WEST shall confirm to AT&T within two (2) business hours after U S WEST receipt of the revised due date request from AT&T whether U S WEST can complete the order within the expedited interval requested by AT&T. Confirmation may be provided by U S WEST via telephone call with follow up confirmation to be provided by U S WEST according to normal procedures and measurement intervals.

3.5.1.7 U S WEST ordering and provisioning functions performed for AT&T shall meet the following cycle time intervals unless otherwise negotiated with AT&T. Any such negotiated cycle time intervals shall allow AT&T to provide services in the same interval that U S WEST provides service for itself or its end users.

3.5.1.7.1 Cycle time intervals for ordering and provisioning of all unbundled Network Elements shall be two (2) days from the time U S WEST receives an AT&T order. In the event an order is rejected for any reason agreed upon by U S WEST and AT&T, this interval time frame will restart when AT&T resubmits the order to U S WEST.

3.5.1.7.2 Cycle time intervals for ordering and provisioning of all resale services are described below:

Product or Service	Interval
INSTALLATION	
Lines/trunks with no premises visit:	
<i>Business</i>	
1-20 lines	3 business days
21-40 lines	7 business days
41-60 lines	12 business days
Over 60 lines	To be negotiated
<i>Residential</i>	within 24 hours of Service Order receipt by U S WEST
Lines/trunks with premises visit:	
<i>Business</i>	
1-20 lines	5 business days
21-40 lines	10 business days
41-60 lines	14 business days
Over 60 lines	Individual case basis
<i>Residential</i>	within 72 hours of Service Order receipt by U S WEST

Business lines/trunks; plant or other facilities not available	Individual case basis
Centrex station lines	
1-20 lines	5 business days
21-50 lines	8 business days
Over 50 lines	Individual case basis
FEATURE CHANGES	
Orders received before 12:00 p.m.	completed on day of receipt
Orders received after 12:00 p.m.	completed before 12:00 p.m. next business day

Product or Service	Interval
SERVICE DISCONNECTS	
With no premises visits	
<i>Business or Residential</i>	within 4 hours after receipt of Service Order
With CO change or Customer premises visit	
<i>Business or Residential</i>	within 24 hours after receipt of Service Order
Unbundled switching elements	
<i>Business or Residential</i>	Within 4 hours
Other unbundled elements	
<i>Business or Residential</i>	Within 24 hours

3.5.1.8 U S WEST shall provide switch translations within five (5) minutes after notification that a physical cut over has been completed.

3.5.1.9 U S WEST shall notify AT&T of the completion of an order within thirty (30) minutes of a completion.

3.5.1.10 U S WEST shall provide AT&T appointment times within a four (4) hour block of time.

3.5.2 Quality Measurements

[AT&T proposed provisions]

3.5.2.1 U S WEST ordering and provisioning functions performed for AT&T shall meet the following Performance Quality Measurements unless otherwise negotiated with AT&T, based on U S WEST’s provision of documentation related to its own Quality Measurements. Any such otherwise negotiated Performance Quality Measurements shall be at least the same as U S WEST’s measurement of its own performance for itself or its end users.

Provisioning Function	Performance Quality Measurement
Rejections of Service Caused by U S WEST for Resale Services	All Orders: <1%
Rejections of Service Caused by U S WEST for Unbundled Network Elements	All Orders: <1%
Resale Installation Provisioned Correctly in less than four (4) days	Residence: >99% met Business: >99.5% met
Unbundling Installation Provisioned Correctly in less than four (4) days	Residence: >99% met Business: >99.5% met
Missed Appointments for Resale Services	Residence: <1% Business: 0%
Missed Appointments for Unbundled Network Elements	Residence: <1% Business: 0%
Completion of Orders by Desired Due Date for Resale Services	All Orders: >90%
Completion of Orders by Desired Due Date for Unbundled Network Elements	All Orders: >90%
Completion of Orders by Committed Due Date for Resale Services	Residence: >99% Business: >99.5%
Completion of Orders by Committed Due Date for Unbundled Network Elements	Residence: >99% Business: >99.5%
Completion of Orders Without Error for Resale Services	All Orders: >99%
Completion of Orders Without Error for Unbundled Network Elements	All Orders: >99%
U S WEST Meeting of Response to Order Request Deadline for Resale Services (i.e., FOC/Rejection issuance)	All Orders: >99.5%
U S WEST Meeting of Response to Order Request Deadline for Unbundled Network Elements (i.e., FOC/Rejection issuance)	All Orders: >99.5%

3.5.2.2 U S WEST shall maintain provisioning service that results in less than one percent (1%) of orders resulting in one or more outages within thirty (30) days of installation.

3.5.2.3 U S WEST shall maintain provisioning service that results in less than one percent (1%) of orders resulting in one or more dispatches within thirty (30) days of installation.

3.5.2.4 U S WEST shall maintain provisioning service that results in less than one percent (1%) of orders resulting in one or more Customer calls within thirty (30) days of installation.

3.5.3 Reporting

[AT&T proposed provisions]

3.5.3.1 U S WEST shall provide, at a minimum, the following comparative reports to AT&T, both for AT&T orders and for U S WEST orders, presented by State, Area Code, NXX, Product Feature, and issue such reports on a monthly basis with daily informational detail:

- dates
- 3.5.3.1.1 Total number and percent of jeopardies
 - 3.5.3.1.2 Total number and percent of missed appointments
 - 3.5.3.1.3 Total number and percent of missed firm order confirmation
 - 3.5.3.1.4 Total number and percent of rejected orders
 - 3.5.3.1.5 Total number and percent of late rejection notifications
- 3.5.3.2 AT&T and U S WEST agree to negotiate further additional and/or modified reporting as business needs demand.

Issue 150 –Standards for Transmitting and Recording Usage Data

5.4 Standards for Transmitting and Recording Usage Data

[The parties are in the process of revising and agreeing to Section 5.4 but have not agreed to close the issue.]

5.4.2 Timeliness: U S WEST shall mechanically transmit, via CONNECT DIRECT, all usage records to AT&T Message Processing Center once (1) per day.

Measurement:

Rating	Criteria
Exceeds Expectations	>97% for the first 90 days, 98% for the next 90 days, and then 99.5%-99.75% from then on [Alan will look into the ability to go beyond 99.5%]records delivered one business day after the call was recorded
Meets Expectations	=99.94% of all messages delivered one business day after the call was recorded
Approaches Expectations	=99.94% of all messages delivered within 12 hours of the day the call was recorded
Does Not Meet Expectations	<99.94% of all messages delivered within 12 hours of the day the call was recorded

[U S WEST to provide an error suspense/status for the above provisions.]

5.4.3 Completeness: U S WEST shall provide all required Recorded Usage Data and ensure that it is processed and transmitted within eighteen days (18) days of the message create date.

Metric:

(Total number of Recorded Usage Data records delivered during current month
minus
Number of Usage Call Records held in error file at the end of the current month)
divided by
Total number of Recorded Usage Data Records delivered during current month]
times 100

Measurement:

Rating	Criteria
Exceeds Expectations	100% of all recorded records delivered
Meets Expectations	≥99.99% 99%/99.5%/99.75% from then on out [with Alan to review the outer amounts] of all recorded records delivered
Approaches Expectations	99.95% to 99.98% of recorded records delivered
Does Not Meet Expectations	<99.94% of all recorded records delivered

Note: Failure of U S WEST to transmit to AT&T 100% of all recorded messages may result in a liability by U S WEST to AT&T for the lost revenue.

5.4.4 Accuracy: U S WEST shall provide Recorded Usage Data in the format and with the content as defined in the current Bellcore document.

Metric:

$$\frac{\text{Total Number of Recorded Usage Data Transmitted Correctly}}{\text{Total Number of Recorded Usage Data Transmitted}} \times 100$$

Measurement:

Rating	Criteria
Exceeds Expectations	100% of all recorded records delivered
Meets Expectations	≥99.25%/99.5%/99.99% of all recorded records delivered
Approaches Expectations	99.95% to 99.98% of all recorded records delivered
Does Not Meet Expectations	≤ 99-94% of all recorded records delivered

[The parties agreed to delete the following on Data Packs Accuracy, but AT&T will have to review this and all proposed transmissions.]

5.4.6 Recorded Usage Data Accuracy: U S WEST shall ensure that the Recorded Usage Data is transmitted to AT&T error free. The level of detail includes, but is not limited to: detail required to Rating the call, Duration of the call, and Correct Originating/Terminating information pertaining to the call. The error is reported to U S WEST as a Modification Request (MR). Performance is to be measured at 2 levels defined below. AT&T shall identify the priority of the MR at the time of hand off as Severity 1 or Severity 2 [based on a percentage of call record types to make it less subjective]. The following are AT&T expectations of U S WEST for each:

[The parties shall develop definitions of Sev 1 and 2 and will discuss on Wednesday]

Measurement:

Severity 1:

Rating	Criteria
Exceeds Expectations	100% of the MR fixed in ≤24 hours
Meets Expectations	≥90% of the MR fixed in ≤24 hours and 100% of the MR fixed in ≤5 days
Does Not Meet Expectations	<90% of the MR fixed in ≤24 hours or <100% of the MR fixed in >5 days

Severity 2:

Rating	Criteria
Exceeds Expectations	100% of the MR fixed in ≤3 working days
Meets Expectations	≥90% of the MR fixed in 3 days and 100% of the MR fixed in ≤10 days
Does Not Meet Expectations	<90% of the MR fixed In ≤3 days or 100% of the MR fixed in >10 days

5.4.7 Usage Inquiry Responsiveness: U S WEST shall respond to all usage inquiries involving multiple messages within twenty-four (24) hours of AT&T request for information. It is AT&T expectation to receive continuous status reports until the request for information is satisfied.

- Individual inquiries shall be treated within 72 hours.
- Inquiries from government agencies shall be treated as a Severity 2 issue.
- Set up a Sev 1 and 2 process for this (24 hours vs. 48 hours).

Measurements:

Rating	Criteria
Meets Expectations	100% of the Inquires responded to within 24 hours
Does Not Meet Expectations	<99.99% of the Inquiries responded to within 24 hours

[Parties agreed to examine deletion of this section. AT&T will have to double check.]

[As the following section 5.4.9 is duplicative of the above paragraphs, the parties agreed to delete these.]

5.4.9

5.5 Reporting

[AT&T proposed provisions]

5.5.1 The Parties agree to develop reports to be used for local usage data performance measurement within ninety (90) days of the first transmission pursuant to this Agreement.

5.5.2 In addition to the reporting requirements stated above U S WEST shall produce and publish annually with respect to its network and service quality performance, a report which will provide evidence that U S WEST shows no undue discrimination by U S WEST amongst CLECs or between U S WEST retail and other CLECs with respect to quality of service.

5.5.2.1 The specific services to be included in the Performance Measurement Report, its format, measurement time frame, and initial implementation date shall be as required by AT&T.

- 6.5.3.2.6 Unplanned outages
 - 6.5.3.2.6.1 Total number
 - 6.5.3.2.6.2 As a percentage of total outages
- 6.5.3.2.7 Total number of trouble identified proactively
- 6.5.3.2.8 Total number of proactive troubles repaired
- 6.5.3.2.9 Total number of Customer affected by a network alarm
- 6.5.3.2.10 Total time to notify AT&T of a network alarm
- 6.5.3.2.11 Total number of service interruptions
- 6.5.3.2.12 Total number of mechanized loop tests performed
- 6.5.3.2.13 Total number of emergency network outages as defined by 5,000 or more blocked call attempts in a ten minute period
- 6.5.3.3 AT&T may, at its discretion, further require additional and/or modified reporting as business needs demand.

Issue
156 .

7. **Miscellaneous Services and Functions**

- 7.1 *[Intentionally left blank for numbering consistency]*
- 7.2 *[Intentionally left blank for numbering consistency]*
- 7.3 **Performance Measurements and Reporting**

[AT&T proposed provisions]

- 7.3.1 AT&T shall provide information on new Customers to U S WEST within one (1) business day of the order completion. U S WEST shall update the database within one (1) business days of receiving the data from AT&T. If U S WEST detects an error in the AT&T provided data, the data shall be returned to AT&T within two (2) business days from when it was provided to U S WEST. AT&T shall respond to requests from U S WEST to make corrections to database record errors by uploading corrected records within two (2) business days. Manual entry shall be allowed only in the event that the system is not functioning properly.
- 7.3.2 U S WEST shall provide to AT&T, at a minimum, performance metrics and service results regarding speed of answer, average work time, abandoned from queue measurements, and disaster recovery plans/procedures.
- 7.3.3 U S WEST shall notify AT&T forty-eight (48) hours in advance of any scheduled testing or maintenance affecting AT&T 911 service, and provide notification as soon as possible of any unscheduled outage affecting AT&T 911 service.
- 7.3.4 In a resale situation where it may be appropriate for U S WEST to update the ALI database, it must be updated with AT&T data in an interval no less than is

experienced by U S WEST Customers, or than for other carriers, whichever is faster, at no additional cost.

- 7.3.5 AT&T may, at its discretion, further require additional and/or modified reporting as business needs demand.

IMPLEMENTATION SCHEDULE

[AT&T proposed provisions]

1. Local Service Resale

1.1 Within 90 days after AT&T's request but no later than 10/1/97, the ILEC shall provide for resale all services designated in this contract. Once service is initiated in an area, the following processes shall be adopted:

- 1.1.1 Local service with no dispatch: within 24 hours of acceptance of service order;
- 1.1.2 Local service with dispatch: within 3 days of acceptance of service order;
- 1.1.3 Feature changes with no dispatch: 1 day after acceptance of service order;
- 1.1.4 Disconnect with no dispatch: 1 day after acceptance of the service order or a later date as specified; and
- 1.1.5 Disconnect with dispatch: 4 days after acceptance of service order or a later date as specified.

2. Unbundled Network Platform (All Network Elements in Combination)

2.1 Within 120 days after AT&T's request but no later than 11/1/97, the ILEC shall offer for resale all services, network elements and any combinations thereof designated in this contract. Once service is initiated in an area, the following processes shall be adopted:

- 2.1.1 Local service with no dispatch: within 24 hours of acceptance of service order;
- 2.1.2 Local service with dispatch: within 3 days of acceptance of service order;
- 2.1.3 Feature changes with no dispatch: 1 day after acceptance of service order;
- 2.1.4 Disconnect with no dispatch: 1 day after acceptance of the service order or a later date as specified; and
- 2.1.5 Disconnect with dispatch: 4 days after acceptance of service order or a later date as specified.

3. Interconnection Trunking for Local Service

3.1 Within 30 days after AT&T's request, the ILEC shall provide interconnection trunk groups necessary for the mutual exchange of traffic or combined trunk groups as necessary or required for efficiency and interconnection billing to locations specified by AT&T. Subsequent to this 30 days, interconnection trunk orders shall be processed in 5 days for T1.5, 8 days for T3, and 10 days for higher bandwidth facilities.

4. Ancillary Trunking

4.1 Within 90 days after AT&T's request or no later than 11/1/97, the ILEC shall provide:

- 4.1.1 E-911 Trunking;
- 4.1.2 SS7 Interconnection and Certification; and
- 4.1.3 Directory Listings Arrangements and Directory Assistance Interconnection.

5. Unbundled Loops

- 5.1 Within 120 days after AT&T's request, but no later than 12/1/97, the ILEC shall provide unbundled loops at designated end offices. Subsequent unbundled loops should be made available within 3 days of each order.

6. Collocation

- 6.1 Within 60 days after AT&T's request, the ILEC shall provide the procedures that will be used to obtain within 5 days of a request for equipment collocation, all necessary and relevant drawings concerning telephone equipment, location, type and cable termination requirements and detailed drawings covering the path for outside plant fiber ingress and egress into collocated space.

7. Rights of Way

- 7.1 Within 60 days after AT&T's request, the ILEC shall provide the procedures required that will be used to provide responses within 10 days to requests for detailed engineering record and drawings of conduit, poles, and other rights-of-way requested.

8. Interim Number Portability

- 8.1 Interim Number Portability capabilities, as specified in this Agreement, shall be made available in specified locations 90 days after the Effective Date of this Agreement and within appropriate service order windows thereafter. Interim Number Portability shall be capable of being ordered electronically no later than 11/1/97.

9. Operational Support System

- 9.1 Operational Support System shall be available for preordering, ordering, provisioning, maintenance, repair and billing under the following schedule:
- 9.1.1 Service Resale for POTS and Multiline Hunt Group up to 12 lines by 11/1/97;
 - 9.1.2 Complex Business services by 2/1/98;
 - 9.1.3 Interim Number Portability by 12/1/97;
 - 9.1.4 Unbundled Network Platform by 12/1/97;
 - 9.1.5 Unbundled Loops and Ports by 2/1/98; and
 - 9.1.6 Other elements within the contract by 5/1/98 or as agreed to by the parties.