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 COMMUNICATIONS, INC.	)	COMMISSION ORDER MODIFYING ARBITRATOR'S DECISION AND ARBITRATOR'S RECOMMENDATIONS,
Pursuant to 47 U.S.C. Section 252.	)	AND APPROVING INTERCONNECTION AGREEMENT
. . . . .	)	WITH MODIFICATIONS

MEMORANDUM

I. Procedural History

On March 1, 1996, AT&T Communications of the Pacific Northwest, Inc. ("AT&T") requested negotiations with U S WEST Communications, Inc. ("USWC") for an agreement relating to interconnection under terms of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56, codified at 47 U.S.C. Sec. 151 ff. (1996). In this decision we will refer to the law simply as "the Act" or as "the Telecom Act."

On July 25, 1996, AT&T filed with the Commission and served on USWC a petition for arbitration pursuant to 47 U.S.C. Sec. 252(b)(1). The petition was designated Docket No. UT-960309. On August 5, 1996, the Commission entered an Order on Arbitration Procedure appointing an arbitrator for the proceeding and establishing procedures. A hearing was held before Mr. Simon J. ffitch, Arbitrator, on October 21 and 22, 1996, at Olympia, Washington. AT&T was represented by Dan Waggoner, Patricia Raskin, and Susan Proctor, attorneys at law. USWC was represented by Edward T. Shaw, Lisa Anderl, and Doug Owens, attorneys at law. Following the hearing, the parties filed final briefs and final or "last best" offers on November 5, 1996.

On November 27, 1996, an Arbitrator's Report and Decision ("Decision") was issued in this docket. On December 6, 1996, AT&T filed a Petition for Partial Reconsideration of Arbitrator's Report and Decision. The arbitrator agreed to review the Decision to correct errors of fact or law, or ministerial errors. Two issues were identified as appropriate for reconsideration: (1) pay phone resale; and (2) customer transfer charges. The Arbitrator's Supplemental Order addressing these issues was filed on January 16, 1997. The deadline for the parties to submit an agreement incorporating the determinations in the Decision and the Supplemental Order was reset for January 27, 1997.

On January 22, 1997, the parties were allowed an extension of time to February 11, 1997, to file an arbitrated agreement and requests for approval. AT&T filed one agreement and USWC filed two agreements in response to the Arbitrator's directions. Each party also filed a request for approval of their respective agreements, expressing objections to the Arbitrator's Decision and Supplemental Order, the provisions of the resulting agreements, and requesting modifications of the Decision and agreements to coincide with their positions. Copies of the requests for approval were served on the Commission's service list for this proceeding to allow for comment by interested persons. On February 24, 1997, USWC filed comments in response to AT&T's filing. No other person filed comments. On March 3, 1997, AT&T filed a response to USWC comments and a revised interconnection agreement.

Commission Staff and the parties addressed the request for approval at an open public meeting on March 5, 1997. AT&T was represented by Dan Waggoner, attorney. USWC was represented by Lisa Anderl, attorney. The Commission reviewed the record of the proceeding; the Arbitrator's Decision and Supplemental Order; the agreements filed pursuant to the Decision and the requests for approval and modification; USWC's Comments; AT&T's Reply; the written Commission Staff report; and all oral comments made at the open meeting by Lisa Anderl for USWC, by Daniel Waggoner for AT&T, by Jeffrey Goltz of the Washington Attorney General's Office, and by Jing Roth and Glenn Blackmon of Commission Staff.

Staff recommended that the Decision by the arbitrator be modified to allow collocation of remote switching units ("RSUs") as requested by AT&T, but that all other requests for modification by the parties be denied. Following discussion, the Commissioners stated their tentative positions to adopt Staff's recommendation regarding requests for modifications. However, the Commission concluded that the agreements submitted by the parties contained negotiated language which was not agreed to and arbitrated language which did not fully and accurately comply with the arbitrator's Decision. Consequently the Commission rejected the agreements on public interest grounds, directed the parties to continue to negotiate in good faith, directed the parties to submit a single completed agreement within 60 days, and directed the arbitrator to assist the parties. The Commission deferred resolution on the requests of the parties for modification until such time that a single completed agreement ("Agreement") was submitted for approval. On March 12, 1997, the Commission issued and served Commission Order Modifying Arbitrator's Report; Rejecting Agreement; Identifying Deficiency; and Requiring Refiling.

The parties met with Larry Berg, Arbitrator, on several occasions to negotiate the remaining terms of the Agreement. The parties agreed to the post-hearing process which was to be followed, and 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. On May 7, 1997, after reviewing the status of post-hearing negotiations, the Commission established a schedule for completing negotiations and filing of the Agreement. On May 19, 1997, the parties presented oral arguments to the Arbitrator regarding additional unresolved issues. The Arbitrator's Report and Recommendations ("Recommendation") resolving those additional issues was filed and served on June 6, 1997. The Arbitrator's Recommendation was to be given the same force and effect as the initial Arbitrator's Decision, and it operated as an addendum to the Arbitrator's Decision. The parties were entitled to make objections and requests for modification to the same extent that they were previously entitled to do so. The deadline for the parties to file an interconnection agreement with the Commission was subsequently extended to June 12, 1997. On that date the parties filed the Agreement along with their respective requests for approval and modification of the Decision and the Recommendation.

Commission Staff and the parties addressed those requests for approval at an open public meeting on June 25, 1997. AT&T was represented by Daniel Waggoner and Rick Thayer, attorneys. USWC was represented by Larry Brotherson, attorney. The Commission reviewed the record of the proceeding; the Arbitrator's Decision, Supplemental Order, and Arbitrator's Recommendation; the agreement filed pursuant to the Decision and the requests for approval and modification; USWC's Comments; AT&T's Reply; the written Commission Staff reports; and all oral comments made at the open meeting by Larry Brotherson for USWC, by Daniel Waggoner and Rick Thayer for AT&T, by Jeffrey Goltz of the Attorney General's Office, and by Jing Roth, Glenn Blackmon, and David Griffith of Commission Staff.

At the conclusion of the open meeting, the Commission adopted the Arbitrator's Decision, Supplemental Order, and Arbitrator's Recommendation, and approved the Agreement subject to the modifications, language changes, and clarifications which were recommended by Commission Staff as discussed below. The Commission directed that a written order be prepared.

II. Modification of the Arbitrator's Decision and Arbitrator's Recommendation

In their requests for approval of interconnection agreement and modifications, the parties cumulatively challenged nearly every resolution of an issue by the arbitrators. In general terms, the Commission Staff supported the decisions of the arbitrators; however, when they determined that a decision by an arbitrator should be modified or clarified, Commission Staff specifically addressed the issue in one or the other of their memos. On June 25, 1997, the Commission Staff reaffirmed its memo dated March 5, 1997, and recommended that the Arbitrator's Decision be modified to

allow collocation of AT&T's RSUs on the condition that they not be employed to avoid carrier access charges, that all other requests for modification to the Decision be denied, and that the Decision be otherwise adopted by the Commission. AT&T also raised the RSU collocation issue as a request for modification.

Commission Staff stated that the denial of physical collocation would put a competing local exchange carrier ("CLEC") at a competitive disadvantage from both a cost and technical performance standpoint. Commission Staff concluded that RSUs were equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier; thus, physical collocation was required by the Act. USWC stated that it could concur with the Staff recommendation for modification based upon the condition that collocated RSUs not be employed to avoid carrier access charges.

AT&T requested that the Commission adopt its proposed implementation schedule pursuant to Section 253(C)(3) of the Act. AT&T stated that this was necessary because there were a number of implementation schedule points contained in its attachment 7 to the Agreement which were not found elsewhere in the body of the Agreement. Commission Staff the schedule proposed by AT&T was reasonable with the exception of service intervals which were included in attachment 7. On that basis, Commission Staff recommended that the proposed implementation schedule set forth in attachment 7 be adopted, conditioned upon the deletion of sections 1.2 and 2.2 which addressed service intervals.

AT&T requested that the Commission reverse the Arbitrator's Recommendation which limited damages for negligence to the cost of the negligently provided service, and sought clarification that the damage cap would not apply to gross negligence or willful misconduct. While Commission Staff supported the Arbitrator's Recommendation on this issue, it also recommended that the limitation of liability section be clarified by modifying the last sentence of Paragraph 19.3 of the Agreement to state, "Nothing contained in this section ***19*** shall limit either Party's liability to the other for ... willful or intentional misconduct (including gross negligence) ..." (Modified language in bold italics).

Considerable discussion ensued regarding AT&T's request for modification to allow shared transport between end offices. AT&T characterized shared transport as a network element and USWC characterized it as a service. In the alternative, AT&T sought to delete language in the Agreement which was proposed by USWC and ordered by the Arbitrator's Recommendation. AT&T stated that this language would preclude AT&T from pursuing its entitlement to shared transport as a network element under the bona fide request ("BFR") process as provided for in the Agreement. Commission Staff and Commission legal counsel stated that the USWC proposed language would not preclude AT&T from pursuing access pursuant to the BFR process and dispute resolution terms and conditions contained in the Agreement, because there are no express restrictions or exclusions regarding the provision of

shared transport in the Agreement. Furthermore, the Agreement expressly provides that any request for interconnection or access to an unbundled network element not already available via a price list tariff shall be treated as a request subject to the BFR process. The Agreement states that "network element" means

a facility or equipment used in the provision of a telecommunications service. Because the end office to end office interconnection is a facility or equipment used in the provision of a telecommunications service, it is a network element which is not available as a stand-alone item via price list or tariff. Commission Staff concluded that the BFR process would be triggered by AT&T's request under the terms and conditions of the Agreement.

Commission Staff recommended that the Arbitrator's Recommendation providing for the placement of AT&T's name or logo on the cover of the USWC phone directory be reversed. Staff took notice that the Commission has already required that each company provide a directory to its customers, that each directory include the listings of all customers without regard to which company serves them, and that each directory include contact information on all companies providing local exchange service in that area. Commission Staff concluded that insofar as AT&T can distribute a directory to its customers with its name solely on the cover without being unduly discriminatory, it is not appropriate to require USWC to place AT&T's name or logo on its directory cover; each company should determine what information appears on the cover of the directories which they distribute to their respective customers.

USWC objected to the Arbitrator's Decision regarding the provision of voice mail as a service available for resale. USWC stated that there are competitive providers of voice mail equipment and services. Commission Staff recommended that the Arbitrator's Decision be modified to approve USWC's request that voice mail be characterized as an enhanced service, and not as a telecommunications service. Commission Staff concluded that voice mail is not part of the transmission of information by the public switched telephone network; thus, it is not a "telecommunication service" as defined in federal law. Accordingly, Commission Staff also concluded that voice mail was not subject to resale under the Act.

The Commission Staff memo also recommended several clarifications in addition to the modifications which have been referred to. Staff concluded that USWC made an error in its proposed language regarding performance requirements which was adopted in the Arbitrator's Recommendation. Therefore, Staff recommended that the Commission grant USWC's request for clarification, in that only the first paragraph in section 18.2.1 be included in the Agreement.

The Arbitrator's Decision provided that sub-loop unbundling should be resolved through the BFR process, but it did not expressly address the pricing of sub-loop elements. Commission Staff stated that specific prices should not be adopted where the elements to which they would be applied have not yet been defined, and Staff recommended that the Commission adopt USWC's request that sub-loop element prices be established as part of the BFR process.

The Arbitrator's Decision provided that AT&T's prices based upon the Hatfield model should be adopted on an interim basis, except where no price was proposed. USWC argued that the its non-recurring charges for unbundled loops should be adopted insofar as AT&T did not propose a specific charge. AT&T proposed a price of zero for non-recurring charges on the basis that non-recurring costs are included in the monthly recurring charge. Staff found that neither USWC nor AT&T has proposed a reasonable charge, and recommended that the Commission adopt an interim rate for the unbundled loop equal to the existing retail non-recurring charge minus the avoided cost discount.[1]

The Arbitrator's Decision stated that USWC's prices for collocation should be adopted, except where USWC has not proposed a price in which case AT&T's prices were adopted. Both parties cited perceived inconsistencies with this decision. The Commission Staff stated that it was clear from the Arbitrator's Decision that USWC's prices should apply to the extent that any conflict in prices exist. USWC proposes that prices for cage and hard wall enclosures be determined on an individual case basis ("ICB"). AT&T argued that this did not constitute a price; therefore, AT&T's prices should be adopted. Commission Staff took notice that the Arbitrator found that AT&T did not provide cost support for its prices, and Staff concluded that it had no alternative other than to recommend ICB prices.

Commission Staff noted that there were too many requests for modification by the parties to address each one individually, but they represented that all other decisions and recommendations by the arbitrators were well founded and were consistent with state and federal law, and Commission orders and policies. In addition to the requests for modification and clarification which were specifically addressed by Commission Staff, they recommended that all other requests for modification and clarification by the parties be denied. Commission Staff recommended approval and adoption of the Arbitrator's Decision, Supplemental Order, and Arbitrator's Recommendation, subject to the specific modifications and clarifications which Commission Staff discussed.

III. Generic Pricing Proceeding

[1]Based upon Staff's recommendation, the residential non-recurring charge for an unbundled loop is provided in the tariff sheets for the 1FR rate ($31), and the business non-recurring charge would be the 1FB rate ($48).

On October 23, 1996, the Commission entered an order in this and other arbitration dockets declaring that a generic proceeding would be initiated in order to review costing and pricing issues for interconnection, unbundled network elements, transport and termination and resale.[2] The Commission stated that rates adopted in the pending arbitrations would be interim rates, pending the completion of the generic proceeding. Accordingly, the price proposals made in this arbitration have been reviewed with the goal of determining which offers a more reasonable interim rate, more closely based on what we believe to be accurately determined cost levels based on evidence specifically submitted in this docket, our recent prior actions regarding cost studies, and our expertise as regulators. The findings and conclusions with respect to price proposals and supporting information are made in this context and do not indicate Commission approval or rejection of cost and price proposals for purposes of the generic case.

IV. The Eighth Circuit Order and the FCC Rules

The FCC rules[3] implementing local competition provisions of the Telecom Act have been appealed and the rules relating to costing and pricing have been stayed by the United States Court of Appeals for the Eighth Circuit.[4] The Arbitrator's Report and Decision and the Commission in this order comply with those provisions of the FCC order and rules that are not subject to stay. Those provisions which are subject to stay do not require compliance pending resolution of the federal appeal. The stay however does not preclude reference by the Commission to the rational or analysis underlying those provisions, for whatever value such information may have on its own merits.

V. Full Consideration of the Record

Having considered the Arbitrator's Decision, the Arbitrator's Supplemental Order, the Arbitrator's Recommendation, the Agreement, requests for approval and modification filed by the parties to this arbitration, the entire record herein, and all written and oral comments made to the Commission, the Commission makes and enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

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[2] Order on Sprint's Petition to Intervene and to Establish Generic Pricing Proceeding (October 23, 1996; "Generic Pricing Order")

[3] *In the Matter of the Implementation of the Local Competition Rules of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (August 8, 1996), Appendix B- Final Rules.

[4] *Iowa Utilities Board et al. v. FCC*, No. 96-3321, Order Granting Stay Pending Judicial Review (8th Cir. Oct. 15, 1996). The order also stays the "MFN" rule in which the FCC interpreted the statutory provision regarding availability of contracted terms to other parties.

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate in the public interest the rates, services, facilities and practices of telecommunications companies in the state.

2. AT&T Communications of the Pacific Northwest, Inc. and U S WEST Communications, Inc. are each engaged in the business of furnishing telecommunications service with the state of Washington as public service companies.

3. The Washington Utilities and Transportation Commission is designated by the Telecommunications Act of 1996 as the agency responsible for arbitrating and approving interconnection agreements between telecommunications carriers within the state of Washington, pursuant to Sections 251 and 252 of the Act.

4. USWC was, until recently, the exclusive provider of switched local exchange service in its Washington exchanges, is an incumbent local exchange carrier, and is currently the dominant provider of switched local services within the territory of its Washington exchanges.

5. AT&T provides switched intraLATA and interLATA exchange service in Washington and seeks to competitively provide local exchange service in the intrastate territory of USWC.

6. On July 25, 1996, AT&T filed a Petition for Arbitration of an interconnection agreement with USWC pursuant to the federal Telecommunications Act of 1996 ("Act"). USWC responded to AT&T's petition on August 19, 1996. An arbitration hearing on the disputed issues was conducted by Administrative Law Judge Simon ffitch on October 21 and 22, 1996.

7. This arbitration and approval process was conducted pursuant to and in compliance with the Commission's *Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996,* Docket No. UT-960269, June 27, 1996. The arbitrator's adoption of "best offer" arbitration was reasonable and was consistent with the authority delegated to the arbitrator in the Commission's Order on Arbitration Procedure, June 28, 1996. No party objected to adoption of "best offer" arbitration.

8. On November 27, 1996, pursuant to the Commission's Order On Arbitration Procedure in this docket, the arbitrator issued an Arbitrator's Report and Decision resolving the disputed issues between the parties to this proceeding, AT&T and USWC. On January 16, 1997, the arbitrator issued an Arbitrator's Supplemental Order.

9. On February 11, 1997, AT&T and USWC submitted unsigned

arbitrated interconnection agreements to the Commission for approval, although each asked that the submitted agreements be rejected and modified, in part. The agreements did not properly incorporate the decisions of the arbitrator as to the disputed issues, they included language which the parties had agreed to in principle but disagreed to in substance, and they included language of terms and conditions which were neither negotiated nor arbitrated.

10. In open meeting on March 5, 1997, the Commission adopted the recommendation of Commission Staff that the interconnection agreements as filed by the parties be rejected. In doing so, the Commission rejected the agreements on public interest grounds, directed the parties to continue to negotiate in good faith, directed the parties to submit a completed agreement within 60 days, and directed the arbitrator to assist the parties. The Commission deferred resolution on the requests of the parties for modification until such time that a single completed agreement ("Agreement") was submitted for approval. On March 12, 1997, the Commission issued and served Commission Order Modifying Arbitrator's Report; Rejecting Agreement; Identifying Deficiency; and Requiring Refiling.

11. The parties met with Larry Berg, Arbitrator, on several occasions to negotiate the remaining terms of the Agreement. The parties agreed to the post-hearing process which was to be followed, including the presentation of their unresolved contract language disputes to the arbitrator for his recommendations. On May 7, 1997, after reviewing the status of post-hearing negotiations, the Commission established a schedule for completing negotiations and to file the Agreement.

12. The Arbitrator's Report and Recommendations ("Recommendation") resolving those additional issues was filed and served on June 6, 1997. The Arbitrator's Recommendation is to be given the same force and effect as the initial Arbitrator's Decision, and it operates as an addendum to the Arbitrator's Decision. The parties are entitled to make objections and requests for modification to the same extent that they were previously entitled to do so. The deadline for the parties to file an interconnection agreement with the Commission was subsequently extended to June 12, 1997. On that date the parties filed the Agreement along with their respective requests for approval and modification of the Decision and the Recommendation.

13. On June 25, 1997, the Commission held an open meeting at its Main Hearing Room in Olympia, Washington to consider the requests for approval of the Agreement. Commission Staff presented its recommendations for modification, clarification, and adoption of the Arbitrator's Decision, Supplemental Order, and Arbitrator's Recommendation. Counsel for AT&T made comments opposing Commission Staff's recommendation to modify the Decision to provide that voice mail be classified as an enhanced service not required to be offered for resale by USWC. Counsel for USWC made comments opposing Commission Staff's recommendation to modify the Arbitrator's Recommendation to substantially adopt AT&T's proposed implementation schedule. Counsel for AT&T made comments opposing Commission

Staff's recommendation to support the Arbitrator's Recommendation regarding shared transport. Counsel for AT&T made comments opposing Commission Staff's recommendation to modify the Recommendation to provide that USWC had no obligation to prominently indicate AT&T's name or logo on its directory covers.

14. Voice mail is an enhanced service, and not a telecommunications service. Although voice mail is often bundled with telecommunications services, it is not involved in the transmission of information. Insofar as voice mail is not part of the transmission of information by the public switched telephone network, it is not a "telecommunication service" as defined in federal law.

15. The denial of physical collocation of remote switching units ("RSUs") would put a competing local exchange carrier ("CLEC") at a competitive disadvantage from both a cost and technical performance standpoint. Therefore, RSUs are equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier. Fully equipped switching equipment (host class 5 switches) are not equipment necessary for interconnection and should not be required to be physically collocated on the premises of a local exchange carrier. A CLEC should not use physically collocated RSUs to avoid payment of access charges.

16. There are no express limitations regarding the provision of shared transport in the Agreement. Furthermore, the Agreement expressly provides that any request for interconnection or access to an unbundled network element not already available via a price list tariff shall be treated as a request subject to the BFR process. The Agreement states that "network element" means a facility or equipment used in the provision of a telecommunications service. End office to end office interconnection is described as a facility or equipment used in the provision of a telecommunications service; therefore, it is a network element which is not available as a stand-alone item via price list or tariff. The BFR process would be triggered by AT&T's request under the terms and conditions of the Agreement.

17. The Commission has already required that each company provide a directory to its customers, that each directory include the listings of all customers without regard to which company serves them, and that each directory include contact information on all companies providing local exchange service in that area. The Arbitrator's Recommendation that USWC place AT&T's name or logo on its directory cover would constitute dictating graphic design of the directory cover to USWC, and would infringe on USWC's rights.

18. There are a number of implementation schedule points contained in AT&T's proposed attachment 7 to the Agreement which are not found elsewhere in the body of the Agreement. The schedule proposed by AT&T is reasonable with the exception of service intervals which were included in attachment 7.

19. The several clarifications which have been recommended by Commission Staff are well founded and necessary in order to accurately reflect the decisions by the arbitrators, and to provide the parties with a complete Agreement.

20. The Commission has reviewed and analyzed the Commission Staff's recommendations, the Arbitrator's Report and Decision, the Arbitrator's Supplemental Order, the Arbitrator's Recommendation, the proposed Agreement, the filings of the parties and the record herein, including the oral comments made at the open meeting. The Commission hereby adopts and incorporates by reference the findings and conclusions of the Arbitrator's Report and Decision, the Arbitrator's Supplemental Order, and the Arbitrator's Recommendation, subject to the modifications and clarifications which are Ordered herein.

21. At an open meeting on June 25, 1997, the Commission adopted the Commission Staff recommendation that the Agreement be approved subject to certain specific modifications and clarifications of the Arbitrator's Report and Decision, the Arbitrator's Supplemental Order, and the Arbitrator's Recommendation.

CONCLUSIONS OF LAW

1. The provisions of the Agreement meets the requirements of Section 251 of the Telecommunications Act of 1996, including the regulations prescribed by the Federal Communications Commission pursuant to Section 251 which have not been stayed, and the pricing standards set forth in Section 252(d) of the Act.

2. The negotiated provisions of the Agreement do not discriminate against a telecommunications carrier not a party to the agreement, and it is accepted as consistent with the public interest, convenience, and necessity.

3. Voice mail is an enhanced service, and not a telecommunications service. Although voice mail is often bundled with telecommunications services, it is not involved in the transmission of information. Insofar as voice mail is not part of the transmission of information by the public switched telephone network, it is not a "telecommunication service" as defined in federal law.

4. The denial of physical collocation of remote switching units ("RSUs") would put a competing local exchange carrier ("CLEC") at a competitive disadvantage from both a cost and technical performance standpoint. Therefore, RSUs are equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier. Fully equipped switching equipment (host class 5 switches) are not equipment necessary for interconnection and should not be required to be physically collocated on the premises of a local exchange carrier. A CLEC should not use physically collocated RSUs to avoid payment of access charges.

5. There are no express limitations regarding the provision of shared transport in the Agreement. Furthermore, the Agreement expressly provides that any request for interconnection or access to an unbundled network element not already available via a price list tariff shall be treated as a request subject to the BFR process. The Agreement states that "network element" means a facility or equipment used in the provision of a telecommunications service. End office to end office interconnection is described as a facility or equipment used in the provision of a telecommunications service; therefore, it is a network element which is not available as a stand-alone item via price list or tariff. The BFR process would be triggered by AT&T's request under the terms and conditions of the Agreement.

6. The Commission has already required that each company provide a directory to its customers, that each directory include the listings of all customers without regard to which company serves them, and that each directory include contact information on all companies providing local exchange service in that area. Insofar as AT&T can distribute a directory to its customers with its name solely on the cover without being unduly discriminatory, it is not appropriate to require USWC to place AT&T's name or logo on its directory cover; each company should determine what information appears on the cover of the directories which they distribute to their respective customers.

7. There are a number of implementation schedule points contained in AT&T's proposed attachment 7 to the Agreement which are not found elsewhere in the body of the Agreement. The schedule proposed by AT&T is reasonable with the exception of service intervals which were included in attachment 7.

8. The several clarifications which have been recommended by Commission Staff are well founded and necessary in order to accurately reflect the decisions by the arbitrators, and to provide the parties with a complete Agreement.

9. The Agreement is otherwise consistent with Washington law and with the orders and policies of this Commission.

O R D E R

THE COMMISSION ORDERS:

1. The Agreement filed by the parties on June 12, 1997, is approved subject to the Commission Staff's recommendations for the modification and clarification of the Arbitrator's Decision, the Arbitrator's Supplemental Order, and the Arbitrator's Recommendation:

A. AT&T shall be entitled to collocate remote switching units on the premises of USWC, but shall not use physically collocated equipment to avoid payment of access charges;

B. The implementation schedule submitted by AT&T in attachment 7 to the Agreement is approved, subject to the deletion of sections 1.2 and 2.2 of the Agreement which relate to service intervals;

C. The last sentence of section 19.3 of the Agreement shall be modified to state that the damage cap does not apply to gross negligence or willful misconduct by making express reference to the entire section 19 of the Agreement;

D. There shall be no requirement that USWC display AT&T's name or logo on the cover of the directory which it distributes;

E. USWC shall not be required to make voice mail available for resale;

F. USWC's position regarding performance requirements as set forth in the first paragraph of section 18.2.1 of the Agreement shall comprise its position which was presented to the Arbitrator for his recommendation;

G. Prices for unbundled sub-loop elements shall be established in the BFR process;

H. The interim rate for an unbundled loop shall equal the existing retail non-recurring charge minus the avoided cost discount;

I. USWC's prices for collocation are adopted, except where USWC has not proposed a price in which case AT&T's prices are adopted; to the extent that any conflict in prices exists, USWC's price should apply; and

J. Pricing for cage and hard wall enclosures shall be determined on an "individual case basis."

All other requests for modifications or clarifications by the parties are denied.

2. AT&T shall file a revision of the Agreement on or before July 25, 1997. The revised agreement shall be integrated and conform with the Commission's modification and clarification of the Arbitrator's Decision, the Arbitrator's Supplemental Order, and the Arbitrator's Recommendation.

3. In the event that the parties revise, modify or amend the agreement approved herein, the revised, modified, or amended agreement shall be deemed to be a
new negotiated agreement under the Telecommunications Act and shall be submitted to the Commission for approval, pursuant to 47 U.S.C. § 252(e)(1) and relevant provisions of state law, prior to taking effect.

4. The Agreement approved in this Order shall be effective on July 25, 1997.

DATED at Olympia, Washington and effective this day of July 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHARON L. NELSON, Chairman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner