ISSUE NO. 1 / RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC / PROVISION (C)2.3.4.1.3

WHETHER RECIPROCAL COMPENSATION SHOULD BE PAID FOR ISP-BOUND TRAFFIC?

SPRINT POSITION	SPRINT PROPOSED LANGUAGE	U S WEST PROPOSED LANGUAGE	U S WEST POSITION
The FCC has left it to state commissions to determine, pursuant to §252 of the Act, a inter-carrier compensation mechanism for ISP-bound traffic, until the FCC adopts a rule concerning such traffic. "Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68," *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Dkt. No. 96-98 (rel. Feb. 16, 1999). The FCC found that it would be reasonable for states to apply reciprocal compensation to such traffic. The FCC stated that although it has not adopted a specific rule governing this matter of intercarrier compensation, it noted that its policy of "treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic." ¶ 25). In Washington, the WUTC has determined that reciprocal compensation should be paid for such traffic. 17th Supplemental Order in Docket Nos. UT-960369, 960370, and 960371 at paragraph 54: "The Commission has authority to resolve this issue pending an FCC rule requiring one outcome or another. The FCC currently exempts ISP-bound traffic from access charges, so the resolution most consistent with existing FCC rules is to require reciprocal compensation. The FCC's conclusion that ISP-bound traffic is primarily interstate is not dispositive because neither the Act nor FCC rules preclude interstate traffic from reciprocal compensation. The Commission concludes that ISP-bound traffic should remain subject to reciprocal compensation."	As set forth herein, the Parties agree that without regard to characterization of traffic as interstate or local, traffic carried or delivered to one carrier which is then delivered to an ESP, including, but not limited to ISPs, shall be compensated at the same rates as the reciprocal compensation rates for the termination of local traffic for the interim period until such time as the FCC determines rates specific to the transport and termination of traffic to ESPs though a mechanism for intercarrier compensation.	As set forth above, the Parties agree that reciprocal compensation only applies to Local Traffic and further agree that the FCC has determined that traffic originated by either Party (the "Originating Party") and delivered to the other Party, which in turn delivers the traffic to an enhanced service provider (the "Delivering Party") is primarily interstate in nature. Consequently, the Delivering Party must identify which, if any, of this traffic is Local Traffic. The Originating Party will only pay reciprocal compensation for the traffic the Delivering Party has substantiated to be Local Traffic. In the absence of such substantiation, such traffic shall be presumed to be interstate.	The FCC has ruled that ISP-bound traffic is interstate in nature. I/M/O Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, FCC 99-38 (February 26, 1999), vacated by Bell Atlantic Tel. Cos. v. FCC, No. 99-1094, 2000 U.S. App. LEXIS 4685 (D.C. Cir. March 24, 2000). Further, the FCC has affirmed that Section 251(b)(5) of the Telecommunications Act of 1996 mandates the payment of reciprocal compensation only for the transport and termination of local traffic. Id. at § 7. USW believes there is no sound policy reason for USW to subsidize Sprint by paying it reciprocal compensation for handling traffic that is not local. The reciprocal compensation provisions of this local interconnection agreement should compensate for local, not interstate, traffic.

ISSUE NO. 2 / UNE COMBINATIONS: DEFINITION OF "CURRENTLY COMBINED" IN 47 C.F.R. 51.315(B) / PROVISIONS (E)1.16

WHETHER THE PHRASE "CURRENTLY COMBINED" DESCRIBES THOSE PRE-EXISTING OR ALREADY COMBINED NETWORK ELEMENTS (I.E. ACTIVE SERVICES) IN THE U S WEST NETWORK OR WHETHER THE PHRASE "CURRENTLY COMBINED" DESCRIBES THOSE NETWORK ELEMENTS THAT ARE OF THE TYPE THAT U S WEST ORDINARILY AND NORMALLY COMBINES IN ITS NETWORK?

PROVISION (E)1.16

SPRINT POSITION	SPRINT PROPOSED LANGUAGE	U S WEST PROPOSED LANGUAGE	U S WEST POSITION
Sprint views this issue as being the same issue as Issue 3. Section 251(c)(3) of the Act requires ILECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable and nondiscriminatory . . . ." USW's proposed limitation of providing only "preexisting" combinations is unreasonable and discriminatory. State Commissions, including those in regions where USW is the ILEC, have held that USW must combine elements <u>of the type</u> that it currently combines <u>in its network</u>, and have expressly rejected USW's contention that its obligation to combine elements can be limited to those actually combined at the time of the request for a specific customer. *E.g.*, *In the Matter of the Federal Court Remand of Issues Proceeding from the Interconnection Agreements Between US WEST Communications, Inc. and AT&T, MCI, MFS and AT&T Wireless,* P421/CI-99-786 (March 14, 2000) . "Currently combined" refers to USW's normal business practices and ordinary operation of its network, and does not refer to "the specific network configuration it uses for each of its two million customers." (*Id*. at pg. 10).	Sprint and USW have a fundamental disagreement as to the definition of combinations. As used in this Section (E), USW defines combinations, including but not limited to the UNE Platform, as those elements which are already preexisting combinations in the network. As used in this Section (E), Sprint believes that USW has an obligation to combine UNEs, including but not limited to the UNE Platform. Wherever the elements are either currently combined or normally combined, meaning existing or new elements, Sprint believes USW has an obligation to provide those elements in combination. The Parties acknowledge that the term "currently combined" in Rule 51.315(b) is still pending Eighth Circuit Court of Appeals interpretation. The outcome of this dispute may require further negotiation of additional rates, terms and conditions to account for new combinations.	Sprint and USW have a fundamental disagreement as to the definition of combinations. As used in this Section (E), USW defines combinations, including but not limited to the UNE Platform, as those elements which are already preexisting combinations in the network. As used in this Section (E), Sprint believes that USW has an obligation to combine UNEs, including but not limited to the UNE Platform. Wherever the elements are either currently combined or normally combined, meaning existing or new elements, Sprint believes USW has an obligation to provide those elements in combination. The Parties acknowledge that the term "currently combined" in Rule 51.315(b) is still pending Eighth Circuit Court of Appeals interpretation. The outcome of this dispute may require further negotiation of additional rates, terms and conditions to account for new combinations.	The phrase "currently combined" describes those pre-existing or already combined unbundled network elements (UNEs) i.e. active services, which USW will provide to Sprint as UNE-P in accordance with 47 C.F.R. 51.315(b).

ISSUE NO. 3 / UNE COMBINATIONS: COMBINATIONS OF UNES THAT ARE NOT CURRENTLY COMBINED / PROVISIONS (E)1.16.3

WHETHER U S WEST IS OBLIGATED TO PROVIDE UNE COMBINATIONS FOR UNES THAT ARE NOT CURRENTLY COMBINED OR PRE-EXISTING (I.E. ARE NOT ACTIVE SERVICES) WITHIN THE U S WEST NETWORK?

PROVISION (E)1.16.3

Sprint Position	Sprint Proposed Language	U S WEST Proposed Language	U S WEST Position

Sprint views this issue as being the same issue as Issue 2.

Section 251(c)(3) of the Act requires ILECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable and nondiscriminatory . . . ." USW's proposed limitation of providing only "preexisting" combinations is unreasonable and discriminatory. Other jurisdictions have ruled The Minnesota PUC has recently decided that USW must combine elements of the type that it currently combines in its network, and specifically rejected USW's contention that it can limit combinations of UNEs to that existing at the time of the request for a specific customer. *In the Matter of the Federal Court Remand of Issues Proceeding from the Interconnection Agreements Between US WEST Communications, Inc. and AT&T, MCI, MFS and AT&T Wireless,* P421/CI-99-786 (March 14, 2000).

Upon request USW shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not currently combined for a given customer, provided that such combination is technically feasible and would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with USW's network.

USW will not on behalf of Sprint, create combinations of network elements, facilities, or features that it does not have in an already combined state.

USW will not, on behalf of Sprint, combine any element in its network or any UNE Combination with Sprint's network elements, features or services to create a finished service. Sprint must perform this work for itself within its collocation arrangement.

USW is not obligated to provide UNE Combinations for UNEs that are not currently combined or pre-existing within USW's network. USW maintains this position in the absence of a decision on § 51.315 (c)-(f) by the Eighth Circuit Court of Appeals.

ISSUE NO. 10 / UNE COMBINATIONS: NON-RECURRING CHARGES / PROVISION (E)1.16.5.2

WHETHER U S WEST SHOULD BE PERMITTED TO RECOVER ITS COSTS FOR EACH ELEMENT THAT COMPRISES A UNE COMBINATION?

PROVISION (E)1.16.5.2

SPRINT POSITION	SPRINT PROPOSED LANGUAGE	U S WEST PROPOSED LANGUAGE	U S WEST POSITION
USW's position is contrary to law and distorts the plain meaning of Section 251(d)(1) of the Telecommunications Act of 1996. Sprint is willing to pay legitimate nonrecurring charges that account for real costs incurred in providing access to unbundled network elements. USW, however, is not entitled to a nonrecurring charge for providing currently combined elements that is equal to the sum of the per element nonrecurring charges. Excluding recovery of NRCs for a billing change or record change, any recovery of NRCs for conversion of preexisting arrangements constitutes recovery of phantom charges, results in a windfall to USW and is discriminatory and anticompetitive. For preexisting arrangements, USW performs no other work justifying recovery of NRCs. Recovery of such non-cost-based charges by USW is therefore arbitrary, unjust, unreasonable and violates § 251 of the Telecommunications Act of 1996.		Nonrecurring charges for each unbundled network element that comprise the UNE Combination shall apply when a UNE Combination is ordered. These non-recurring charges are described in this Agreement.	Section 252(d)(1) of the Act requires that incumbent local exchange carriers be permitted to recover the costs they incur to provide access to unbundled network elements. This right to cost recovery includes the nonrecurring costs that USW incurs to provide unbundled network elements.