~~**[MY COMMENTS BOLDED AND IN BRACKETS - ESH]**~~

BEFORE THE WASHINGTON UTILITY AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between	)	
SPRINT COMMUNICATIONS COMPANY, L.P.	)	**Docket No. UT-003006**
and	)	
U S WEST COMMUNICATIONS, INC.	)	
Pursuant to 47 U.S.C. Section 252	)	

DIRECT TESTIMONY OF DAVID E. STAHLY
ON BEHALF OF SPRINT COMMUNICATIONS COMPANY L. P.

Submitted April 26, 2000

I. INTRODUCTION

Q. Please state your full name, position, and business address.

A. My name is David E. Stahly. I am employed by Sprint Communications Company L.P. ("Sprint") as a Manager of Regulatory Policy. My business address is 8140 Ward Parkway, Kansas City, Missouri 64114.

Q. Please describe your educational background, work experience and present responsibilities.

A. I received a Master of Arts degree in Public Policy from the University of Chicago in 1987 and Bachelor of Arts degree in economics from Brigham Young University in 1985.

I began working for Sprint Communications Company L.P. in 1994 as a Manager of Regulatory Access Planning. In that position, I represented Sprint before state and federal regulatory commissions regarding the costing and pricing of switched and special access and negotiated access pricing and rate structures with the Local Exchange Carriers ("LECs").

Prior to joining Sprint Communications Company L.P., I was employed by Sprint Corporation's local telephone affiliate, Sprint-United North Central ("UNC") from

1990 to 1994. In that capacity, I was responsible for costing and pricing switched and special access services as well as Sprint's local products. While at UNC, I also conducted competitive analyses of potential new entrants. Prior to joining Sprint, I worked for the Illinois Commerce Commission as an Executive Assistant to the Commissioners from 1986 to 1990. In that capacity, I provided financial and economic analyses of cost studies and other issues for telecommunications, gas and electric utilities and assisted in the preparation of orders and opinions.

My current responsibilities include the development of Sprint's regulatory policy focusing on issues supporting Sprint's CLEC entry into local markets as well as RBOC entry into interLATA markets, universal service, access charges, and TELRIC costing of unbundled network elements. I have filed testimony and/or testified before regulatory commissions in 25 states including the State of Washington.

II. PURPOSE, OUTLINE, AND SUMMARY OF TESTIMONY

Q: Please provide a brief description of your testimony.

A: My testimony covers two major areas of disagreement in the contract negotiations with U S WEST. The two areas are reciprocal compensation for ISP-bound traffic and unbundled network elements (UNEs) - combinations and

nonrecurring charges.

Q. Please provide a brief description of your testimony as it relates to reciprocal compensation for ISP traffic.

A. The purpose of my reciprocal compensation testimony is to demonstrate that the appropriate mechanism for compensating local exchange carriers ("LEC") for terminating traffic to an Internet Service Provider ("ISP") is reciprocal compensation. My testimony supports the Commission's historical treatment of this issue that recognizes a CLEC's right to recoup the costs incurred in terminating traffic to ISP customers.

Q. What is Sprint's position regarding the appropriate compensation for terminating traffic to an ISP?

A. Sprint's position is that reciprocal compensation is due on intercarrier ISP-bound traffic. This position is in conformity with the Commission's orders on this issue in the WUTC's 17th Supplemental Order in Docket Nos. UT-960369, 960370, and 960371. Carriers incur significant costs in terminating traffic to ISPs and that traffic should be compensated. Reciprocal compensation remains the best mechanism for ensuring that costs associated with termination of this type of traffic are paid. This Commission has thoroughly examined this issue since the FCC's Declaratory Ruling and has concluded that reciprocal compensation should be paid for ISP-bound traffic.

Q. What is U S WEST's position regarding the appropriate compensation for terminating traffic to an ISP?

A. U S WEST's position is that it should not pay to terminate ISP-bound traffic on a CLEC's network. Its position relies on the jurisdictional finding of the FCC in the Declaratory Ruling that ISP-bound traffic was jurisdictionally mixed with an interstate component. Under U S WEST's reasoning, reciprocal compensation rates cannot apply because such rates are for local traffic only under the Telecommunications Act of 1996 ("Act"). U S WEST's position does not account for the FCC's statement that nothing prohibits states from mandating reciprocal compensation for traffic other than covered in Section 251(b)(5) as long as there is no conflict with federal law, or its statement that a state decision requiring reciprocal compensation for ISP traffic does not conflict with Commission rules. Furthermore, U S WEST alleges that the payment of reciprocal compensation to Sprint for ISP-bound traffic is tantamount to subsidizing Sprint and creates incentives for carriers to specialize only in the carrying of ISP-bound traffic, which it views as contrary to the purpose of the Act. Therefore, according to U S WEST, the reciprocal compensation provisions of the local interconnection agreement should compensate for local, but not for ISP-bound traffic.

Q. What are the main conclusions of your testimony regarding reciprocal compensation?

A. Although I am not an attorney, based upon my review of the WUTC's order on

this issue, the FCC's Declaratory Ruling, and the U.S. Court of Appeals for the District of Columbia Circuit's recent ruling, it is clear that the U S WEST and Sprint should pay reciprocal compensation for ISP-bound traffic. Therefore, the Commission should adopt Sprint's proposed contract language on this issue.

Q: Please provide a summary of your testimony regarding unbundled network elements or UNEs.

A: Throughout our negotiations, U S WEST has contended that because the FCC's Third Report and Order dealing with UNEs (adopted September 15, 1999)[1] did not become effective until February of this year, negotiations on this issue would be premature. Hence, U S WEST would not negotiate on the UNE section of this Interconnection Agreement between Sprint and U S WEST until just recently. Sprint and US WEST have reached agreement on most of the unresolved UNE issues recently, for example, on issues dealing with "true-ups" and recovery of OSS costs. My testimony addresses issues that are still in a state of flux:

whether U S WEST should be required to combine UNEs currently or ordinarily combined in its network; and

whether U S WEST should be permitted to charge Sprint NRCs for each individual UNE that is already combined in a platform;

[1] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Notice of Proposed Rulemaking, CC Docket 96-98 (November 5, 1999) ("UNE Remand Order").

Q. What is the difference between Sprint's position and U S WEST's position regarding UNE combinations?

A. Sprint's position is that U S WEST should be required to combine UNEs that are ordinarily combined anywhere in its network. For example, if Customer A is served by UNEs 1, 2, and 3 and Customer B next door is served with UNEs 1, 2, 3, and 4, Sprint wants to be able to serve Customer A with UNEs 1, 2, 3, and 4 by requiring U S WEST to combine those four UNEs for Customer A.

U S WEST's position is that it will not combine UNEs 1, 2, 3, and 4 for Customer A on behalf of Sprint because that is not Customer A's "existing UNE combination." U S WEST argues that "existing UNE combinations" are specific to each individual customer. Thus, in this example, U S WEST's view is that existing UNE combinations for Customer A means that the only existing UNE combination U S WEST will combine for Sprint is the combination of UNEs 1, 2, and 3. Hence, Sprint is restricted to offering Customer A only his or her existing service. U S WEST on the other hand, will combine UNEs 1, 2, 3, and 4 for Customer A if the customer orders the retail services from U S WEST.

Q. What is the difference between Sprint's position and U S WEST's position regarding the payment of NRCs for each individual UNE in a platform?

A. Sprint wants to pay a reduced NRC for UNE platforms it orders of pre-existing combined

UNEs. Sprint's position is reasonable since, in cases where the UNEs are already combined and Sprint is merely assuming ownership control of the UNE combination, U S WEST is not incurring any costs to recombine the UNEs.

U S WEST wants to charge the full NRC for combining each UNE even though the UNEs are already combined and U S WEST will not incur any labor costs. U S WEST's position is inconsistent with the promotion of competition in the local exchange market and operates as a barrier to entry contrary to the intent of the Telecommunications Act of 1996. U S WEST is acting in a discriminatory manner designed to provide itself a competitive advantage vis-à-vis Sprint.

III. JOINT ISSUES MATRIX ISSUE NO. 1: RECIPROCAL COMPENSATION FOR ISP TRAFFIC

A. Jurisdiction And Authority To Order Reciprocal Compensation For ISP Traffic.

Q. In light of the FCC's rulings, to what extent does the Washington Commission have jurisdiction to regulate inter-carrier compensation for traffic to Internet Service Providers?

A. The WUTC has previously determined that it has jurisdiction over reciprocal compensation for traffic delivered by LECs to ISPs and has already ruled that LECs pay

reciprocal compensation for such traffic. The Commission addressed the impact of the FCC's decision in its 17th Supplemental Order in the generic cost proceeding and required ILECs to pay reciprocal compensation for ISP traffic. The Commission explicitly recognized and followed the FCC's Orders on this matter and established a consistent methodology to deal with this issue until the FCC further clarifies its ruling.

Q. Did the FCC determine the jurisdiction of Internet traffic?

A. Yes. The FCC determined that Internet traffic is jurisdictionally mixed. It found that, "although some Internet traffic is intrastate, a substantial portion of Internet traffic involves accessing interstate or foreign websites (Declaratory Ruling at ¶18). However, although the FCC found that Internet traffic is jurisdictionally mixed, it has also clearly exempted such traffic from switched access charges.

Q. How did the Circuit Court's recent ruling impact the FCC's finding regarding the jurisdictional nature of Internet traffic?

A. On March 24, 2000 the U.S. Court of Appeals for the District of Columbia Circuit vacated the FCC's Declaratory Ruling. See *Bell Atlantic Telephone Companies v. Federal Communications Commission and United States of America*, 206 F.3d 1; 2000 U.S. App. LEXIS 4685 (D.C. Cir. March 24, 2000) (*Bell Atlantic*). Based upon my understanding of the *Bell Atlantic* decision, the Court vacated the FCC's ruling that ISP-bound traffic is interstate in nature on the basis that the FCC did not justify its use of an

"end-to-end" analysis. The *Bell Atlantic* Court also questioned the ruling in light of the FCC's decision granting ESP exemption from paying access charges.[2]

The *Bell Atlantic* Court stated that the FCC's extension of "end-to-end" analysis from jurisdictional purposes to the ISP context yielded intuitively backwards results. While much of my testimony below relates to the FCC's Declaratory Ruling, the reasons explained in the Court's decision to vacate the FCC's order and remand the issue back to the administrative body only strengthens Sprint's argument that reciprocal compensation is due for termination of ISP-bound traffic. Much of *Bell Atlantic* opinion supports the view that a call to an ISP is like a call to a local business that then uses the telephone to order products or services, and hence supports the view that reciprocal compensation should be due for such traffic. Also, as I discuss in more detail below, nothing in the *Bell Atlantic* Court decision affects consideration of the fact that CLECs incur real costs in terminating such traffic to ISPs. Such costs should not go uncompensated.

[2] *Bell Atlantic* at *21.

Q. Can internet traffic be separated into state and interstate traffic?

A. No. There is no mechanized method to identify which minutes of use ("MOUs") are interstate or intrastate. The FCC noted that "Although ISP-bound traffic is jurisdictionally mixed, incumbent LECs argue that it is not technically possible to separate the intrastate and interstate ISP-bound traffic.[3] (Declaratory Ruling at ¶19).

B. The Cost To The CLEC Alone Justifies The Implementation Of A Mechanism To Compensate CLECs For Terminating Traffic To ISPs.

Q. What costs does a CLEC or ILEC incur when it terminates traffic to an ISP?

A. The cost of terminating a call to an ISP on a local network is very similar, if not identical to terminating a call to a local customer.[4] In each instance, the call is handled in a similar manner and incurs similar costs. The FCC has noted that CLECs incur costs for terminating traffic to ISPs. In the portion of the Declaratory Ruling devoted to the Notice of Proposed Rulemaking, the FCC acknowledged that "no matter what the payment arrangement, LECs incur a cost when delivering traffic to an ISP that originates on another LEC's network." (Declaratory Ruling at ¶ 29).

Many CLECs, including Sprint, are designing their networks using technology and

[3] Even if it is technically impossible to separate the intrastate and interstate ISP traffic, it may be possible for LECs to determine whether dial-up traffic is in fact destined for an ISP.

[4] I will use the term "terminate" in this testimony in the sense of the delivery of the traffic to the ISP and not with regard to the FCC jurisdictional analysis.

network design that is similar to the existing ILEC network. Sprint's CLEC network design includes switches with CLASS 5 functionality, interoffice transport, and local loops. Inasmuch as these are similar to the piece parts of the ILEC network, it stands to reason that a CLEC's costs will be similar. Using an example where the ISP-bound traffic originates on U S WEST's network and terminates on Sprint's CLEC network, the costs would be as follows. Sprint would incur a cost for transporting the traffic from the meet point with U S WEST to Sprint's end office switch serving the ISP. This is typically billed as local transport and is offered in a variety of options including direct-trunked transport that is flat-rated and common transport that is per minute of use based.[5] Next, Sprint would incur a cost for the use of the local end office switch to switch the call to the ISP. This is typically billed as end office switching. The cost of carrying the call from the end office switch to the ISP's premise over the local loop is recovered from the ISP via a flat-rated local loop charge such as a Primary Rate Interface ("PRI") ISDN loop charge. Thus, when terminating local calls, such as a local call to a dial-up ISP, the carrier terminating on the CLEC's network is not charged for traversing the loop. To recover the costs of transporting and switching (terminating) the call to the dial-up ISP, Sprint would charge U S WEST a reciprocal compensation rate. That rate compensates Sprint for use of its transport and switching, the same as it would for terminating traffic

[5] Under common transport, the call also goes through the ILEC's tandem switch en route to the end office serving the end user customer and thus "causes" some expense at the tandem. This is a per minute of use based charge that is typically billed as tandem switching.

to voice customers served by Sprint.

Q. Would the costs be similar for an ISP-bound call originating on Sprint's CLEC network and terminating on U S WEST's network?

A. Yes, similar costs would be incurred when a Sprint CLEC end user customer places a local call to a dial-up ISP served by U S WEST. The traffic traverses similar pieces of U S WEST's network equipment and facilities as discussed in the above example. To recover its costs, U S WEST charges CLECs full reciprocal compensation rates for terminating ISP-bound traffic on U S WEST's network.

Q. Does the cost of an internet call vary depending upon the carrier originating or terminating the call?

A. The cost of originating or terminating a call depends on the carrier's network architecture and volumes of traffic carried over that network. Inasmuch as a CLEC may not have a network that is identical to the ILEC's network in terms of scale, volume of traffic, network architecture, and equipment type, it is reasonable to expect that the CLEC would have a different cost structure than that of the ILEC's. I will address each of these factors.

Q. How does scale and volume impact the cost of originating/terminating an internet call?

A. In regards to scale, it should be obvious that the ILEC will have much greater scale than

CLEC at the outset and that advantage of scale is likely to continue well into the foreseeable future. There is simply no way a CLEC can enter a market and overlay the ILECs ubiquitous system of copper and fiber loops to every customer premise in the ILEC's territory. Even if the CLEC had an endless supply of capital, it would still take years to replicate the enormous scale of the ILEC's network. With great scale comes great volume although it may not be on a one-for-one basis. The greater volume of traffic an ILEC can put over its network, the lower it's per unit cost for carrying that traffic. This can clearly be seen in cost studies of ILECs that have deaveraged rates for urban and rural areas or in the difference between costs studies for RBOCs in urban areas versus independent telcos in rural areas. Typically, the more rural the area, the lower the total call volumes and the higher the per unit cost of carrying the traffic. In this category, the ILEC has a clear advantage over the CLEC in that the ILEC will have a much lower per minute cost than the CLEC due to the much greater amount of traffic the ILEC will carry. At a minimum, based upon lower traffic volumes, CLECs will have a significantly greater per unit cost of carrying traffic.

Q. How does network architecture and equipment impact the cost of originating/ terminating an Internet call?

A. Network architecture and equipment type are two other factors which may work to the CLECs' advantage, but are likely not significant enough to outweigh the advantage bestowed by the ILEC's economy of scale. CLECs have the advantage of building their

network with the latest state-of-the-art technology. Given the increased capacity of today's switches, CLECs can serve the same size area as ILECs without deploying as many switches. ILECs, on the other hand, have significant network investment that they must upgrade to the newer technologies. However, it should be noted that many ILECs are making significant investments to upgrade their local networks. For example, SBC/Ameritech has recently announced its plans to spend $6 billion over the next 3 years on Project Pronto in which it will upgrade its network to be capable of high speed data loops. U S WEST has also made significant investments in deploying its DSL network. I have not seen any press releases of a CLEC making a comparable investment of $6 billion for network upgrades. It appears that U S WEST and many of the BOCs are quickly eliminating whatever small cost advantage that has been temporarily gained by CLECs using state-of-the-art technology.

Q. Given these factors, what do you suggest the Commission use to determine the costs of connecting a call to an Internet Service Provider?

A. Due to U S WEST's advantage in network scale and scope, the Commission should determine that it is reasonable to use U S WEST's reciprocal compensation rate as a reasonable proxy for Sprint to adopt.

C. Dial-Up Internet Traffic Should Not Be Split Off Into A Separate Class Of Traffic.

Q. Would creating a separate class of service for ISP dial-up traffic alleviate the concern about uneven traffic flow to ISPs?

A. No. At this time, there is no need to create a separate class of service for dial-up Internet traffic for several reasons. First, it does not appear that technology has developed sufficiently to separate out dial-up Internet traffic from other types of local traffic. Second, there are other types of traffic, besides Internet traffic that tend to generate a disproportionately larger amount of terminating traffic than originating. It is far from clear that Internet traffic should be singled out as some type of arbitrage culprit without looking at all types of traffic and traffic flows. And third, CLECs and Data CLECs are just in the initial stages of building out their networks. Until their networks are completed, it will be difficult to determine their costs of terminating ISP-bound and other types of traffic. Given all of the uncertainties, it appears that there would be little, if any, benefit gained from trying to separate out dial-up Internet traffic as a separate class.

Q. Can Internet traffic presently be distinguished from other categories of telephone calls?

A. At present, the main method an interconnected carrier has for determining ISP-bound traffic that it is terminating to a CLEC is to compare originating and terminating traffic flows between itself and the CLEC. If the ILEC is terminating significantly more traffic to the CLEC than the CLEC terminates to the ILEC, then the ILEC typically makes the assumption that the traffic being terminated to the CLEC is ISP-bound traffic. However,

it should be emphasized that the ILEC does not know with any degree of certainty whether the type of traffic it is terminating to the CLEC is ISP-bound. Rather, it must merely assume that the traffic is ISP-bound based on terminating traffic ratios.[6]

Q. Is the use of terminating traffic ratios a good method to determine the type of traffic being terminated?

A. Absolutely not. CLECs and ILECs can have large quantities of terminating traffic for reasons other than terminating traffic to an ISP. There are a number of businesses and public agencies that receive more in-bound traffic than outbound. For example, if the CLEC services a city, county, or state government agency, particularly one that offers call-in help lines, (such as a county extension service) then it will have a larger amount of traffic terminating than originating. A CLEC that provides service to an AM talk radio station will have a significantly greater amount of terminating traffic. Similarly, a CLEC that provides service to a business office that has a local area network ("LAN") and allows its employees to dial-in to the company's LAN and work from a remote location such as the employees' home will have a large amount of terminating traffic. This is particularly true since employees dialing into their LAN will likely log-on and remain on line for the greater part of a day. In fact, if the employee has a second local line at their

[6] In some instances, ILECs have measured the traffic terminating to an ISP by asking the CLEC to identify ISP-related NXXs. However, such a method is administratively burdensome and largely unworkable. Billing records must be updated daily, if not hourly, to ensure accurate tracking of ISP minutes. Additionally, If an ILEC knows that a CLEC serves only ISP traffic, the ILEC could identify the trunk groups serving that CLEC and measure the traffic flowing over those trunk groups.

house solely for the purpose of logging onto the company's LAN, the employee may simply leave their computer logged on to the LAN 24 x 7. As more companies allow their employees to work at home and log into the company's computers from home, this type of traffic has the potential to generate terminating traffic volumes even greater than that generated by dialing into ISPs. Inasmuch as the ILECs still serve the lion's share of the local business market, they are the main beneficiaries of the large amount of this type of traffic terminating to business LANs. Accordingly, it may be reasonable to review the rates paid for LAN-bound traffic terminating to the ILECs. Regardless, there are clearly a number of situations, other than delivering traffic to an ISP that could cause a CLEC, or an ILEC, to have significantly increased amounts of terminating traffic.

Q. How can Internet traffic be distinguished from other categories of telephone calls?

A. At present, there is no easy means to identify ISP-bound traffic from voice call traffic. Telecommunications markets, technology, and other relevant factors are changing at a fast pace. In the future, it may be technically feasible to uniquely identify ISP traffic from non-ISP traffic. If ISP traffic can be separated and identified, it may be possible to develop specific cost studies. However, inasmuch as ILECs and most, if not all, CLECs use similar switched networks to terminate traffic, it is questionable whether there will be any significant difference in cost.

D. Reciprocal Compensation Rates Are The Appropriate Rates To Charge For

Terminating Traffic To An ISP Pending A Final FCC Rule On Inter-Carrier Compensation.

Q. What compensation arrangement or methodology should carriers employ to compensate each other for completing a dial-up internet call?

A. Carriers should compensate each other for completing a dial-up Internet call the same as they would for completing any other local call. This is the only mechanism to ensure that carriers are compensated for costs incurred in terminating or delivering traffic.

The FCC allows states to view ISP-bound traffic as local for purposes of compensation. The FCC stated in its Declaratory Ruling that "[W]e note that our 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." (Declaratory Ruling at ¶19). Further, the fact that the FCC specifically noted that in the absence of a federal rule state commission "have had no choice" but to establish an inter-carrier compensation rule is strong evidence that the FCC believes that some form of inter-carrier compensation for ISP-bound traffic must exist. (Declaratory Ruling at ¶ 26). These statements, along with the FCC's statements concerning the continued access exemption for ESPs, including ISPs, and the fact that ISPs order their service from local tariffs, strongly suggests that the FCC believes not only that ISP-bound traffic should be subject to inter-carrier compensation, but that the form of compensation

may be analogous to the compensation for other local traffic.

Q. What compensation arrangement or methodology has the FCC suggested that carriers should employ to compensate each other for completing a dial-up Internet call?

A. While the FCC has yet to make a final determination regarding the appropriate compensation arrangement or methodology that carriers should employ to compensate each other for completing dial-up Internet calls, the FCC has clearly stated that reciprocal compensation is an acceptable option for the interim period. The FCC declared that State Commissions may order reciprocal compensation be paid for terminating ISP-bound traffic and the Washington Commission has, in fact, already ruled that it has the authority to establish reciprocal compensation for internet traffic in the WUTC's 17th Supplemental Order in Docket Nos. UT-960369, 960370, and 960371. Sprint simply seeks to mirror US WEST's reciprocal compensation rate.

Further, as discussed above, a carrier incurs costs when it terminates a call on its network to an ISP. Principles of economic efficiency dictate that the carriers must be compensated for such traffic. Without the appropriate level of compensation, demand for such traffic will far exceed the supply creating an imbalance

E. Summary of Reciprocal Compensation Testimony.

Q. Please summarize Sprint's position regarding the appropriate compensation for terminating traffic to an ISP.

A. The Washington Commission should adopt the Sprint-proposed language in its interconnection agreement with US West because it is consistent with the WUTC's ruling in the 17th Supplemental Order Docket Nos. UT-960369, 960370, and 960371. Until the FCC adopts a permanent rule concerning such traffic, this Commission's ruling in its 17th Supplemental Order discussed above should govern the parties' contract in this regard. It is reasonable for the Washington Commission to order U S WEST to pay Sprint at rates that are equivalent to reciprocal compensation rates for terminating traffic to an ISP on Sprint's network.

Q. Does this conclude the reciprocal compensation portion of your testimony?

A. Yes, it does.

IV. JOINT ISSUES MATRIX ISSUES NOS. 2 AND 3: UNE COMBINATIONS

Q. Please explain Sprint's position on the unbundled network element combinations issue.

A. Sprint and U S WEST have a fundamental disagreement as to the definition of "combinations." As used in Section E of the Interconnection Agreement, U S WEST defines combinations, including but not limited to the unbundled network element platform (UNE-P) as those elements which are already "*pre-existing*" combinations in its

network on a customer-specific basis. In other words, Sprint is restricted to ordering combinations of network elements from U S WEST that are already connected to the specific customer at the time of the Sprint order. Unless U S WEST has already combined network elements for a particular customer, Sprint has no ability to purchase a combination of network elements to serve that customer. Any request by Sprint for a combination of elements that are different than the customer's current network at the time of the Sprint order will be rejected by U S WEST. This prohibition, by definition, prevents Sprint from offering customers anything other than the customer's existing service, effectively relegating Sprint to merely being a reseller. It also prevents Sprint from accessing new customers in the U S WEST territories unless it builds its own facilities to that customer or allows U S WEST to first serve the customer and then try to lure the customer away via resale.

Q. What is Sprint's position regarding combining elements?

A. Sprint believes that the law imposes an obligation on U S WEST to combine unbundled network elements, including but not limited to the pre-existing UNE combinations that exist for any customer. That is, UNE combinations are <u>not</u> customer specific. Rather, any one customer can be served by UNE combinations found elsewhere on U S WEST's network. Sprint also believes that U S WEST has an obligation to provide combinations of unbundled network elements in any manner in which they are ordinarily combined within U S WEST's network. U S WEST's proposed contract language impermissibly limits Sprint's ability to order combinations of network elements that are not previously

combined.

Q. What rules support Sprint's position on combination of elements?

A. The Telecommunications Act provides guidance here. Section 251(c)(3) of the Telecommunications Act requires incumbent local exchange companies (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...." U S WEST's proposed limitation of providing only "pre-existing" combinations is both unreasonable and discriminatory. While U S WEST has the easy access to its own network that enables it to provide itself unlimited forms of network element combinations, Sprint has no such ability because Sprint is reliant on U S WEST to provide it with nondiscriminatory services. Sprint respectfully requests that this Commission adopt its proposed language regarding the combination of unbundled network elements allowing to order unbundled network element combinations from U S WEST even if those elements are not currently combined for a given customer. Sprint's language reasonably provides that such combination must be technically feasible and not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with U S WEST's network.

Absent the adoption of Sprint's proposed language, Sprint's ability to compete would be significantly impaired – a result contrary to the goals of the Telecommunications Act of 1996.

Other state commissions, including some in the U S WEST region, have rejected U S WEST's position regarding "pre-existing" UNEs. For example, The Minnesota PUC has recently decided that U S WEST must combine elements of the type that it currently combines in its network.[7] The MPUC's ruling contemplates that Sprint should not be limited to ordering preexisting combinations of UNEs. To the contrary, this Commission's decision requires U S WEST to combine elements on behalf of CLECs in the same manner as U S WEST currently combines them in its network, and makes clear that U S WEST cannot limit combinations to that pre-existing for specific customers. The MPUC made this clear when it stated, "[t]he Commission rejects U S WEST's claim that its obligation to combine network elements is limited to those elements *actually combined at the time of the request on behalf of the specific customer to whom the CLEC intends to provide service*." (MPUC Remand Order, pg. 10). The MPUC found that U S WEST's position was an "unreasonably narrow reading of the language of the FCC rule and would undermine the purpose of the Act." (MPUC Remand Order, pg. 10). Finally, rejecting the overly narrow interpretation that U S WEST sought, the MPUC stated that "[t]his is also the only reading that makes sense in light of network realities and the competitive purposes of the Act." (MPUC Remand Order, pg. 10). Although the MPUC decision accurately rejects the notion that U S WEST can limit UNE combinations only

[7] *In the matter of the Federal Court Remand of issues Proceeding from the Interconnection Agreements Between U S WEST Communications, Inc. and AT&T, MCI, MFS and AT&T Wireless,* P421/Cl-99-786 (March 14, 2000) ("MPUC Remand Order").

to that which presently exists for each customer on its network at the time of the request, it failed to address future comminations of elements that U S WEST might ordinarily combine in its network going forward. (MPUC Remand Order, pg. 9).

In Washington, this Commission has also considered this combination issue in the context of an interconnection arbitration. Recently, in the ATTI/U S WEST arbitration, Judge Berg ruled that absent a question as to technical feasibility, USWC has an obligation to combine UNEs as they are ordinarily combined in its network, language, very similar to that which Sprint is proposing here.[8] Accordingly, Sprint urges the Commission to adopt its proposed language for the UNE combination issue.

If Sprint's position outlined above is not followed, it will be severely limited in its ability to offer customers new and innovative services. This will prevent Sprint from capturing enough market share to be a viable competitor in the local market. Sprint's ION service requires an xDSL-type of network configuration. This is different than the standard network configuration used to provide POTS services. Under U S WEST's proposal, if a U S WEST customer has POTS services, Sprint would not be able to offer that customer ION service because the customer's "pre-existing UNE combination" only supports POTS at the time of the order. Such a policy is discriminatory and prevents Sprint from fully

[8] *See*, Arbitrator's Report and Decision, WUTC Docket No. UT-990385 at paragraph 58: "Procedural objections aside, U S WEST presents no compelling argument in support of its position that it should not be required to combine requested UNEs in any technically feasible manner either with other UNEs from USWC's network, or with network elements possessed by ATTI."

and effectively competing in the marketplace because Sprint would be restricted to offering customers only the exact same service package that the customer was currently buying from U S WEST. Under Sprint's proposal, Sprint would be able to offer the customer ION service because the xDSL-type of network configuration is offered elsewhere in the U S WEST network and would correctly be considered a combination ordinarily combined in the network (without reference to the specific customer's existing services). Adoption of Sprint's position would foster its ability to compete in the local market against U S WEST, and bring the benefit of new services to telecommunications customers in Washington.

V. JOINT ISSUES MATRIX ISSUE NO. 10: UNE COMBINATIONS, NONRECURRING CHARGES.

Q. Should U S WEST be permitted to charge Sprint the full nonrecurring charges for each individual unbundled network element that comprises a UNE combination that is already combined?

A. No. Sprint is willing to pay appropriate nonrecurring charges but U S WEST is not entitled to a nonrecurring charge for each element within an already combined platform of network elements. U S WEST is attempting to charge Sprint for a service it is not providing. The nonrecurring charges for network elements exists because U S WEST must provide some labor to combine one network element with another. Here, U S

WEST is selling Sprint network elements that have already been combined and which were combined for another customer at some earlier time. Thus, U S WEST is proposing to charge Sprint for work for which it has already been compensated. U S WEST's proposal is anti-competitive in the extreme. U S WEST would collect a windfall by requiring Sprint to pay it for combining elements that are already combined Any non-recurring charges in excess of a reasonable record change charge when no incremental installation work effort is expended by U S WEST amounts to unearned profits from the CLECs thereby harming their ability to compete.

This Commission has already rejected USWC's recombination charge that it proposed in the generic cost docket.[9] Sprint submits that imposing NRCs for each network element in a combination of elements, some of which may not be "separated" or require more than the flip of a switch to implement, is equally unacceptable and should be rejected.

Q. Does this conclude your direct testimony?

A. Yes it does.

[9] 17th Supplemental Order in WUTC Docket Nos. UT-960369, 960370, and 960371 at paragraph 402.