BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

Submitted May 10, 2000

A. Are you the same David Stahly who filed direct testimony in this case on April 26, 2000?

A. Yes, I am.

Q. What is the purpose of your rebuttal testimony?

A. I will review the issues discussed in U S WEST's pre-filed direct testimony of April 26, 2000. Specifically I will identify areas of agreement and disagreement with the case presented by, U S WEST witnesses Taylor, Brotherson, Craig, and Hooks. My objectives are to clarify misstatements of Sprint's positions made by these witnesses and to refute arguments that U S WEST claims support its positions.

Q: How is your testimony organized?

A. I will address each issue in sequence as it appears in the joint issues matrix that was previously submitted.

Q. ISSUE NUMBER ONE: RECIPROCAL COMPENSATION ON ISP-BOUND TRAFFIC

Q. Does the recent circuit court ruling change Sprint's position regarding

reciprocal compensation for ISP traffic?

A. No. The March 24, 2000 U S Court of Appeals for the District of Columbia opinion in Bell Atlantic Telephone Companies v. Federal Communications Commission and United States of America, 206 F.3D 1; 2000 U.S. LEXIS 4685 (March 24,2000) (*Bell Atlantic*)does not change Sprint's position. As I stated in my direct testimony, my understanding is that the court vacated the FCC declaratory ruling concerning the "non-local" nature of ISP-bound traffic and remanded the decision back to the FCC "for want of a reasoned decision." The Court's ruling did not eliminate the state commissions' authority to order compensation for such traffic, which the Washington Utilities and Transportation Commission ("WUTC" or "Commission") did in its 17th Supplemental Order in Docket Nos. UT-960369, 960370, and 960371. Thus, Sprint's position remains that the Commission should require U S WEST to pay Sprint for terminating ISP-bound traffic on Sprint's network at the same rates that U S WEST pays to terminate other similar local traffic.

Q. What impact does the circuit court's ruling have in this arbitration?

A. I believe the *Bell Atlantic* Court's ruling strengthens Sprint's contention that reciprocal compensation is a reasonable compensation mechanism for ISP-bound traffic. The *Bell Atlantic* Court's opinion questioned how the FCC

reached the conclusion that ISP-bound traffic was interstate and not local for purposes of reciprocal compensation. Given the *Bell Atlantic* Court's opinion, state commissions still retain the interim responsibility to determine a compensation method for ISP-bound traffic. Mr. Brotherson agrees that the Commission has authority to determine the appropriate compensation rates by acknowledging on page seven of his testimony that the FCC "left the door open for state commissions to order the payment of reciprocal compensation for this traffic…" As I stated in my direct testimony, the FCC found that state commissions have authority to determine an inter-carrier compensation mechanism in arbitration proceedings and may choose to treat ISP-bound traffic as local for purposes of reciprocal compensation until the FCC issues a final ruling.

Q. U S WEST witnesses Taylor, Brotherson, and Craig rely heavily on the FCC's end-to-end analysis to allege that ISP-bound traffic is Interstate in nature and not subject to reciprocal compensation. Did the D.C. Circuit Court agree with this end-to-end analysis?

A. No. Based on my reading of the *Bell Atlantic* Court's opinion, it appears that it strongly questioned the reasonableness of the FCC's use of end-to-end analysis for purposes of determining whether reciprocal compensation applied

to ISP-bound traffic, and in fact, stated that extension of such analysis from the jurisdiction context to reciprocal compensation for ISP-bound traffic yielded intuitively backward results (*Bell Atlantic* at p. *14). While the *Bell Atlantic* Court acknowledged that "Neither category fits clearly" for ISP-bound traffic, in several places within its opinion, the it cites a number of arguments that indicate ISP-bound traffic could be considered local. For example, the Court stated that "they (calls to ISPs) are not quite long distance because subsequent communication is not really a continuation, in the conventional sense, of the initial call to the ISP."[1] The *Bell Atlantic* Court went on to question end-to-end analysis when it stated that, "The Commission has not satisfactorily explained why an ISP is not, for purposes of reciprocal compensation, 'simply a communications-intensive business end user selling a product to other consumer and business end-users.'" (*Bell Atlantic* at p. *18).

The *Bell Atlantic* Court then cited the FCC 's own differentiation between ISP calls and ordinary long distance calls and used the analogy that a "call to an information service provider is really like a call to a local business that then uses the telephone to order wares to meet the need."[2] Finally, the court concluded, that "Because the

[1] *Bell Atlantic* at page *13.
[2] *Bell Atlantic* at page *21 citing Brief of FCC at 76, *Southwestern Bell v. FCC* 153 F.3d 523 (8th Cir. 1998)(97-2618).

Commission (FCC) has not supplied a real explanation for its decision to treat end-to-end analysis as controlling, we must vacate the ruling and remand the case." (*Bell Atlantic* at p. *26) Clearly, the *Bell Atlantic* Court questioned the appropriateness of using end-to-end analysis for the purpose of determining whether reciprocal compensation should apply to traffic terminating to an ISP.

Q. Do you agree with Taylor's allegation that the FCC's exemption of ESP traffic from access charges was further evidence that ISP-bound traffic was interstate?

A. No, and interestingly, neither did the *Bell Atlantic* Court. The *Bell Atlantic* Court stated that the FCC "in 1983 exempted ESPs from the access charge system, thus in effect treating them like end users rather than long-distance carriers." (*Bell Atlantic* at p. *****19 - *20).

Q. Does that fact that U S WEST provides Internet service inconsistent with its argument that Internet service is an interstate service?

A. Most definitely, yes. Unless it has been granted quietly, U S WEST has not been authorized to carry interstate traffic. The 271 authority has not been approved. Yet, U S WEST has its own successful internet service provider, U S WEST.net, which it currently markets to end users. If U S WEST's position is that internet traffic is interstate traffic, then it appears to be offering "interstate" internet services though U S

WEST.net in violation of the Act. I can conclude only that U S WEST has different definitions of "local" and "interstate" traffic as it relates to ISP-bound traffic depending upon its current needs. The attached screen-print of the U S WEST website demonstrates that it advertises and promotes the U S WEST.net entity, and is Exhibit 1 to my rebuttal testimony (in electronic version, http://www.uswest.com/ps/net.html).

Q. Does the jurisdictional nature of ISP traffic change the fact that Sprint and other CLECs should be compensated for terminating that traffic?

A. No, it doesn't. Even if the FCC were to again make a finding that ISP traffic is interstate in nature, it does not change the fact that Sprint and other CLECs incur costs on their network for terminating traffic to ISPs and that U S WEST should compensate Sprint for those costs. U S WEST's witnesses do not dispute that Sprint incurs costs on its network for terminating traffic to an ISP (see Brotherson at p. 21, Craig at p. 22). Even Taylor agrees that CLECs should be compensated for costs that U S WEST imposes on the CLEC when it terminates traffic to Sprint. Taylor states, "…, if the cost per minute to terminate a local voice call were truly the same as that cost an ISP-bound call imposes on a CLEC, I would have no hesitation in recommending that compensation rates for the two types of traffic be the same." (See Taylor at p. 27.)

Q. Is Sprint willing to pay U S WEST reciprocal compensation for traffic that

Sprint's local customers send to ISPs on U S WEST's network?

A. Yes. U S WEST's witnesses appear to give the impression that reciprocal compensation is a one-way issue of U S WEST paying money to Sprint for terminating ISP-bound traffic. This is not true. Sprint is willing to pay U S WEST the exact same reciprocal compensation rates to U S WEST for traffic that originates on the Sprint network and is bound for ISPs which are served by U S WEST.

Q. Does U S WEST treat ISP traffic as local traffic for reciprocal compensation purposes?

A. Yes. Contrary to Brotherson's claim on page 12 of his testimony that U S WEST does not treat ISP traffic as local, that definition only applies when U S WEST is required to pay reciprocal compensation to a CLEC for terminating ISP traffic. However, when another LEC is terminating ISP traffic to U S WEST, then full reciprocal compensation rates apply. In fact, U S WEST's discovery responses indicate that it bills CLECs at local rates for traffic that terminates to its ISP customers because it is unable mechanically to identify traffic that terminates to ISPs. While it claims to consider manual adjustments by CLECs for such traffic, it admits the no CLEC has actually made such a request, and U S WEST has not made an adjustment to a CLEC for charges at the local rates. (see U S WEST's Responses to Sprint's Second Set of Data Requests Nos. 52-54).

Q. What does U S WEST propose as alternatives to paying current reciprocal compensation rates for ISP traffic?

A. U S WEST's witnesses recommend not paying reciprocal compensation at or else deferring application of reciprocal compensation until the cost docket before the Commission (UT-003013) is completed. The second alternative effectively amounts to U S WEST not paying reciprocal compensation for terminating ISP traffic to CLECs for some period of time. Additionally, U S WEST recommends paying a reduced rate for reciprocal compensation if the Commission orders reciprocal compensation to be paid.

Q. What problems do you see with U S WEST's proposals?

A. Both of U S WEST proposals would deny payment of reciprocal compensation to Sprint for ISP traffic terminated on its CLEC network. U S WEST's first proposal is deny payment permanently and its second proposal is to deny payment until some unspecified date. U S WEST's first proposal appears to be the same as "bill and keep." However, "bill and keep" is intended for, and only really works, when there is a balance of traffic flowing between two companies and equal charges (such as reciprocal compensation or similar access charges) are in place. CLECs have courted and won the business of ISPs, which do generate unbalanced traffic. However, if the

CLEC has more terminating traffic, it also incurs more costs to terminate that traffic. Therefore, under "Bill and Keep" the CLEC will not fully recover its costs of terminating the ILEC's traffic on its network. U S WEST's second proposal to not pay reciprocal compensation until the cost docket is completed likewise denies Sprint's CLEC proper recovery of its costs. A more equitable solution would be for the Commission to order the payment of reciprocal compensation for ISP traffic until there is a need for a change in that position.

Q. Do you agree with Taylor's cost causation analysis beginning on page 9?

A. I agree with Taylor's cost causation analysis to the extent that it correctly identifies the end user as the ultimate cost causer. It is the end user that chooses to place a local voice call, dial an ISP, or place a long distance toll call. However, I disagree with Taylor's conclusion of how those costs should be collected from the end user. It is the end user that causes the cost and ultimately, it is the end user who should bear that cost. The most economically correct solution is to collect the costs directly from the end user customer. Dr. Taylor's cost causation analysis ignores a number of realities about the telecommunications marketplace today. Taking Taylor's cost causer analysis a step further, it is instructive to review how costs, today, are indeed recovered by the cost causer. This leads to the obvious conclusion that the current system of cost recovery is still the preferred method.

Q. How is U S WEST compensated today if a U S WEST local customer calls another U S WEST local customer?

A. U S WEST is compensated for such traffic by its local rates. First, U S WEST has set a local access rate that compensates it for the usage caused by its end user customer that recovers the cost of the call on the originating end. Additionally, U S WEST should have also factored in recovering the cost of the call on the terminating end of its network. That cost would be equal to its TELRIC-based reciprocal compensation rate and should be factored into the local rate charged to the cost causer, the originating end user.

Q. How is U S WEST compensated today if an U S WEST local customer calls a local customer served by a CLEC?

A. Again, U S WEST is compensated for such traffic by its local rates. As in the above example, U S WEST has set a local access rate that compensates it for the usage caused by its end user customer that recovers the cost of the call on the originating end. Obviously, the terminating end is different. Rather than terminating to an U S WEST local customer, the call now terminates to a local customer served by a CLEC. However, even though U S WEST is terminating the call to a CLEC, U S WEST still faces the exact same terminating costs.

Since U S WEST has set its terminating rate (reciprocal compensation) at its TELRIC price and the CLEC simply mirrors U S WEST's reciprocal compensation rate, U S WEST should face the same costs for terminating the traffic. And, as in the above example, those terminating costs should be recovered from the cost causer, the originating end user. Thus, regardless of whether the call terminates to U S WEST's own local customer or the CLEC's local customer, the result is the same. U S WEST recovers its costs from the cost causer, the originating end user customer.

Q. How is U S WEST compensated today if a U S WEST local customer dials an ISP that is served by U S WEST?

A. U S WEST is compensated for such traffic the same way that it is compensated when one U S WEST local customer calls another U S WEST local customer; that is, by its local rates. Same as above, U S WEST has set a local access rate that compensates it for the usage caused by its end user customer that recovers the cost of the call on the originating end. Additionally, U S WEST should have also factored in recovering the cost of the call on the terminating end of its network. That cost would be equal to its reciprocal compensation rate and should be factored into the local rate charged to the cost causer, the originating end user.

Q. Do U S WEST's local rates compensate it for calls by an U S WEST local customer to ISPs that are served by U S WEST?

A. I don't know. U S WEST has not offered any direct evidence in this proceeding as to whether its local rates recover its costs for local traffic. Over the past few years, local network usage has increased dramatically with the introduction of a number of new services such as local chat lines and information lines for weather, sports, stocks, horoscopes, etc. Additionally, more employers are allowing their employees to work from their homes or other off-site locations and dial into the company's computers via LANs. It is increasingly commonplace to find employees dialing into their company's LANs to check e-mail and work on documents from home. Finally, the Internet has also increased local network usage. To the extent that U S WEST has not factored in the increased local usage due to the growth of chat lines, information lines, employees dialing into LANs, and the Internet, U S WEST may need to readjust its local rates to insure that it is recovering the costs of its network from the costs causers – the originating end users.

Q. How is U S WEST compensated today if an U S WEST local customer dials an ISP that is served by a CLEC?

A. U S WEST is compensated for such traffic the same way that it is compensated when an U S WEST local customer dials an ISP that is served by U S WEST; that is, by its

local rates. Similar to the example above, U S WEST should have set its local access rates to compensate it for the usage caused by its end user customer so that it recovers the cost of the call on the originating end. Additionally, U S WEST should have also factored in recovering the cost of the call on the terminating end of its network. Again, the costs of both the originating and terminating end of the call are rightly recovered from the cost causer – the originating end user customer.

If U S WEST is concerned that it is not recovering its costs for terminating such traffic, then the solution is not to seek to create an economic distortion by billing ISPs for that traffic, but to go directly to the end user customer (the cost causer) and recover those costs from them. Since U S WEST already has an established relationship with the local originating customer as well as a service contract, U S WEST appears to have the best relationship and control over the customer for such revenue needs.

Q. Do you agree with Taylor's analysis that the ISP is in the best position to collect additional local network costs from its customers?

A. Most definitely not. Taylor acknowledges that the ISP's subscriber (a.k.a., U S WEST's originating end user customer) is the ultimate cost causer (see Taylor, p. 13). There is absolutely no reason for the ISP to act as a billing agent for U S WEST when U S WEST already has a direct relationship with the customer. Forcing the ISP to be a bill collector for U S WEST introduces additional transaction costs into the actual cost

recovery and is an inefficient means to accomplish that which can be done most easily and efficiently by U S WEST. There is no justifiable reason why ISPs should provide a free billing service to U S WEST.

Q. Does U S WEST charge the ISPs it serves any additional charges to compensate it for local calls terminating to the ISP?

A. No. As discussed above, U S WEST recovers those terminating costs via the local rates it charges the originating end user. U S WEST only charges the ISP a PRI 1B local access loop charge which gives the ISP access to U S WEST's local network. U S WEST does not charge the ISP any additional charge to recover the costs that U S WEST incurs for terminating traffic to the ISP. Rather, U S WEST recovers those costs from the cost causer, the originating end user, through the local rates charged to that end user.

Q. Are there other examples of network usage that are similar to dialing into an ISP that are compensated using reciprocal compensation?

A. Yes. On page 13 – 15 of his testimony, Taylor describes an end user dialing into an ISP, but wrongly concludes that the ISP is providing a "carrier" type function and should be charged access. What Dr.Taylor's conclusion fails to recognize is that other traffic similar to ISP traffic exists today that are compensated using local rates and

reciprocal compensation. One example is as follows. Instead of dialing an ISP, an employee places a local call by dialing into her company's LAN. U S WEST considers the call to have been terminated within the local exchange and thus, a local call. The only revenue U S WEST receives from the company is for the local PRI ISDN trunks it sells to the company. U S WEST recovers the usage cost of the employee dialing into her company's LAN via the local 1R rates U S WEST charges the employee.

Now suppose that the company has linked its local LAN to its corporate headquarters in another state to provide its employees access to e-mail across its 14-state region and shared files on out-of-state servers. (In fact, some servers could be in International locations.) Has the nature of the employee's call into her company's LAN changed from a local call to an interstate call? Does her call still "terminate" locally at her company or at some out-of-state location like Colorado? Using Taylor's analysis, the company is now acting like an IXC and is bypassing switched access charges costing U S WEST untold millions of potential switched access revenues. However, does U S WEST charge the company access charges every time this employee logs on to her company's LAN? Of course not. The only revenue U S WEST receives from the company is for the local PRI ISDN trunks it sells to the company. U S WEST does not receive any switched access revenue.

Taking the example one step further, suppose that a CLEC wins the company's business. Now the company is buying its PRI ISDN lines from the CLEC. U S WEST pays the CLEC reciprocal compensation for the local traffic it terminates to the company on the CLEC's network and recovers those charges from the local 1R rates U S WEST charges the employee.

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Q. Do you agree with Mr. Brotherson's assertion on page 10 of his direct testimony

that an ILEC delivering Internet traffic to a CLEC for completion to an ISP and paying reciprocal compensation is bearing the cost burden of both networks?

A. Yes, the same as it would rightly bear the burden if it were to terminate any other local traffic on a CLEC's network. As I explained above, carriers are required to pay for the costs of their customers' use of the terminating carrier's network. When a CLEC customer places a local call to an ILEC customer, the CLEC is bearing the cost of originating the call on its network as well as the cost of terminating the call on the ILEC's network. The ILEC charges, and the CLEC pays, reciprocal compensation for a CLEC-originated call terminating on the ILEC's network. The same holds true when a LEC customer places a local call to a CLEC customer; the ILEC pays the CLEC reciprocal compensation to cover the CLEC's cost of terminating the local call. Thus, each LEC pays the other for the termination of calls on the others' network. The monthly local access rate that LECs charges their end users should recover enough to compensate both LECs for usage of their networks.

Q. Do you agree with Brotherson's claim that ISPs are subsidized because U S WEST is required to increase the capacity of its network due to increased Internet usage?

A. No. ISPs are not receiving a subsidy simply because U S WEST is increasing its network capacity. Plus, U S WEST, itself, is driving the demand for Internet services

via its own affiliate which actively promotes and sells Internet service. If ratepayers are subsidizing ISPs, then U S WEST is in the position of having its ratepayers subsidize its deregulated ISP business. However, I disagree with Mr. Brotherson's assertion that U S WEST's increased network construction is tantamount to subsidizing the ISP market.

It is difficult to take Brotherson's complaint about subsidies seriously since U S WEST, itself, is fostering increased Internet usage by rapidly deploying ADSL services for faster connections to the Internet. This has not only caused U S WEST to significantly invest in network upgrades to handle data traffic but promotes the internet usage in an environment where U S WEST will not be subject to reciprocal compensation due to the fact that the ADSL service is a dedicated, not dial-up solution. On the one hand, U S WEST is enthusiastically embracing the Internet as a major line of business, yet, in this proceeding, is claiming it is subsidizing ISPs because it is expanding its network capacity to handle increased traffic.

Q. Brotherson and Taylor assert that reciprocal compensation creates incentives for Sprint to encourage ISPs to locate on its network. Do you agree?

A. No. These arguments are a red herring. CLECs have every incentive to win customers away from U S WEST, regardless of reciprocal compensation. Any good business is

going to find ways to serve better and cheaper than its competitors, there is nothing artificial or inappropriate about it. Also, this argument again rests on the faulty U S WEST notion that reciprocal compensation represents an improper subsidy rather than simply compensation for completion of a call by U S WEST customers.

Q. Does Sprint plan to focus on serving only ISPs?

A. No, Sprint is planning to serve all types of customers. As can be seen in the Sprint advertising now appearing in the Denver and Seattle markets, Sprint is advertising its ION service to residential and business customers, not ISPs. This is a broad, end user mass-market service strategy and is not targeted solely or primarily at ISP traffic.

Q. Do you agree with Brotherson that the bulk of traffic that is going to CLECs is ISP traffic?

A. I don't have information on the traffic of other carriers. However, it doesn't matter whether the traffic is traditional voice or data. It is still switched traffic and deserves to be compensated as local terminating traffic. Furthermore, I question how U S WEST knows the mix of traffic since it claims it cannot measure and distinguish the ISP traffic from voice traffic, including in its discovery responses here.

[PROPRIETARY DATA BEGINS]

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Q. Taylor and Brotherson claim that reciprocal compensation payments can completely consume the revenues that an ILEC receives from its customers through flat rate monthly residential rate. Do you agree?

A. Sprint operates ILECs in eighteen states serving more than seven million customers. The payment of reciprocal compensation for ISP traffic has yet to fully consume Sprint's local revenue. I would be surprised if U S WEST's local revenue has been

completely consumed by reciprocal compensation payments.

Q. Brotherson argues that if the commission does apply reciprocal compensation to ISP traffic, the current reciprocal compensation rate is inappropriate. Do you agree?

A. There are several different aspects to Brotherson's argument. First, and most importantly, there is no basis for Sprint to receive a different reciprocal compensation rate other than that ordered by the Commission in the U S WEST generic cost docket or the ELI ruling. This is not only because a different rate would be discriminatory, but because the undisputed provisions of the negotiated interconnection agreement provide for the application of all rates from that U S WEST generic case. Part H, Section 5.1 of the agreement, which was Exhibit 1 to Sprint's petition in this arbitration, provides that where the commissions have established permanent rates in a generic U S WEST cost case, those rates should be used.

Q. Craig and Taylor posit that if Sprint chose to exclusively serve ISPs, it would have a lower cost of service than a carrier serving a diverse customer base. Is that necessarily true?

A. No. There are a number of factors that impact a company's cost of providing service. As I discussed in my direct testimony, scope, volume of traffic, network architecture,

and equipment type could impact a CLEC's costs. Due to the CLEC's smaller size and traffic volume, it is possible that a CLEC could actually have a higher per unit cost of terminating traffic than U S WEST. If a CLEC can be a low cost provider by marketing to a particular niche, then such economic efficiency should be encouraged. Some companies choose to be full service providers, such as Sprint and many ILECs, other choose to be niche providers. All are legitimate businesses.

Q. Brotherson refers to Craig's testimony and alleges that Sprint's costs of receiving internet traffic is less than that incurred in carrying the average voice call. Is that correct?

A. No. Craig's discussion of Sprint's data network is not applicable to the issue of reciprocal compensation for ISP traffic. Sprint has a data backbone network and special access connections to end-users. This is a different business than Dial IP that allows end users to dial up their ISP on a local basis. Thus, while the Sprint data network is very efficient, it has absolutely nothing to do with the costs of terminating a local call in a CLEC environment. A byte of data would not reach the Sprint public Internet network until it is well past any ILEC or ISP. Apparently, Craig has the false assumption that the Sprint data network is embedded in the local Dial IP product that Sprint will sell. This is not true.

Q. Is proximity of the ISP to the CLEC switch a factor in the costs incurred by the CLEC and does it thus create a windfall for the CLECs not shared by US WEST?

A. Actually, since switching is not distance sensitive that measure has little bearing on the cost structure of a CLEC. A more significant factor is the CLEC proximity to the ILEC and the number of points of interface ("POIs") that the CLEC has to deploy to exchange traffic with U S WEST. U S WEST requires a POI in each local calling area, which creates a healthy revenue stream for U S WEST in the form of direct end office trunking. An extensive network of direct trunks costs the CLEC a great deal but is required if a CLEC wants to exchange traffic with U S WEST. In addition a lack of tandems in the U S WEST architecture makes the number even greater. These costs are traffic sensitive in that after the first is filled, traffic volumes will require additional trunks. If U S WEST customers are terminating great amounts of traffic on the CLEC network, the CLEC will need to add trunking and certainly requires compensation for that cost.

Q. What is the last aspect of U S WEST's argument against using the generic reciprocal compensation rate?

A. Brotherson and Taylor argue that Internet calls have different cost characteristics than voice calls due to longer holding times, higher trunk utilization, and other

characteristics. They suggest that these differences are not reflected in the current reciprocal compensation rate.

Q. What is Sprint's position?

A. Sprint doesn't disagree that internet calls may have different cost characteristics than voice calls and that a reciprocal compensation rate should ideally reflect those the overall costs and mix of traffic. However, it is always problematic for any rate to reflect the latest costs. There is always some "regulatory lag" in setting rates and it would be almost impossible to keep the reciprocal compensation rate "up to date" given the rapid changes that are occurring in telecommunications and internet usage. Thus, U S WEST concerns about the inappropriateness of the reciprocal compensation rate might never be adequately addressed.

As stated previously, Sprint believes that the current reciprocal compensation rate is the appropriate rate. This is especially true since U S WEST is not proposing any specific rate to address its concerns. Sprint does not oppose, however, going to the new rate for reciprocal compensation that may result from the pending U S WEST cost docket. This, of course, does not mean that Sprint necessarily agrees with U S WEST on the differences in cost characteristics or how to reflect them, simply that Sprint favors moving rate toward costs if they are not already there.

ISSUES TWO AND THREE – CURRENT AND FUTURE UNE COMBINATIONS

Q: Mr. Hooks takes issue with Sprint's rationale that U S WEST should be required to combine UNEs that are normally combined in its network - is his assessment of the basis of Sprint's position correct?

A: Paritally. While Sprint urges the Commission to order U S WEST to combine UNEs for Sprint that are normally combined in its network (whether a particular combination is currently in existence or whether it must be newly created), Mr. Hooks assertion that § 251(c)(3) does not support Sprint's position is incorrect. In fact, I understand that the Ninth Circuit Court of Appeals cases cited by Mr. Hooks on page 10 of his testimony upheld portions of interconnection agreements that required the combination of UNEs.

Although I am not an attorney, I understand that in the U S WEST v. MFS case cited by Mr. Hooks, the Court's analysis found that the non-discriminatory requirements of § 251(c)(3) of the 1996 Telecommunications Act require U S WEST to combine UNEs as requested by MFS.[3] The Court's decision involved the analysis of the AT&T v. Iowa Utilties Board decision rendered by the United States Supreme Court - the

[3] US West v. MFS, 193 F.3d1112, 1121 (1999).

appeal of the Eighth Circuit Court's decision also cited by Mr. Hooks - that stated: "It also necessarily flows from AT&T that requiring U S WEST to combine network elements is not inconsistent with the Act[.][4]

The Ninth Circuit Court also observed that the AT&T v. Iowa Utilities Board case "undermined the Eighth Circuit's rationale for invalidating [47 C.F.R. § 51.315(c)-(f)]" - the regulation requiring RBOCs to combine UNEs.[5] As stated by the Court: "Although the Supreme Court did not directly review the Eighth Circuit's invalidation of § 51.315(c)-(f), its interpretation of § 251(c)(3) demonstrates that the Eighth Circuit erred when it concluded that the regulation was inconsistent with the Act."[6]

Q: Have other state PUCs found that U S WEST must combine UNEs?

A. Yes. The Minnesota PUC rejected U S WEST's position and required U S WEST to combine UNEs for CLECs. Specifically, the PUC stated,

> "The 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. This is an unreasonably narrow reading of the language of the FCC rule and would undermine the

[4] *Id.*
[5] *Id.*
[6] *Id.*

> purposes of the Act. (MPUC UNE Remand Order, pgs. 9-10)

The MPUC went on to state:

> "This is also the only reading that makes sense in light of network realities and the competitive purposes of the Act. For example, to permit U S WEST to refuse to combine paired loops for the provision of second-line service, or to refuse to combine single loops with SS7 switching software for the provision of Call Waiting – both routine combinations occurring ubiquitously throughout the U S WEST network – would be to permit U S WEST to inhibit competition by denying its competitors least-cost access to network element combinations that are so common that they are akin to single network elements."
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> "Treating such combinations as groups of discrete elements that they are not "currently combined" would render meaningless the rules' prohibition against separating "currently combined" network elements and would subvert the purposes of the Act by imposing a severe handicap on new entrants seeking to offer service through a combination of resale and facilities-based service." (MPUC UNE Remand Order, pg. 10).

ISSUE NUMBER TEN: PAYMENT OF FULL NONRECURRING CHARGES ON AS-IS CONVERSIONS OF UNE COMBINATIONS

Q. Mr. Hooks refers to the nonrecurring charges on UNE combinations as record charges including billing, inventory, maintenance, and repair records. Was that the extent of the NRCs that were included in what U S WEST intended to charge Sprint?

A. No. In the negotiations, Sprint was led to believe that U S WEST intended to charge Sprint the full cost of building the element from scratch (so to speak), and then for combining it as if it was not previously combined. As I stated in my direct testimony, Sprint is willing to pay non-recurring charges for costs that are actually incurred. If my understanding of Mr. Hooks listing of applicable NRCs is correct, I would not have a conceptual disagreement with U S WEST's proposal. This is especially true since we have agreed that the new rates should be subject to true up when the WUTC makes a determination in an appropriate cost proceeding.

Q. Q. Does this conclude your rebuttal testimony?

A. Yes.