

1 **Q. What is your name and business address.**

2 **A.** My name is Mark E. Argenbright. My business address is 6 Concourse Parkway,
3 Suite 3200, Atlanta, GA 30328

4 **Q. By whom are you employed and what is your position with your employer.**

5 **A.** I am employed by WorldCom, Inc. (WCom”) in the Law and Public Policy group
6 and hold the position of Sr. Staff Specialist, State Regulatory Policy. In my current
7 position I assist in the development and coordination of WCom’s regulatory and public
8 policy initiatives for the company’s domestic operations. These responsibilities require
9 that I work closely with our state regulatory groups across the various states, including
10 Washington.

11 **Q. Please described telecommunications background and education.**

12
13 **A.** WithinWCom, I held the position of Senior Manager, Regulatory Analysis and
14 was responsible for performing regulatory analysis in support of a wide range of the
15 company’s activities. Prior to that, I was employed by the Anchorage Telephone Utility
16 (now known as Alaska Communications Systems) as a Senior Regulatory Analyst and
17 American Network, Inc. as a Tariff Specialist. I have worked in the telecommunications
18 industry for sixteen years, with the majority of my positions in the area of regulatory
19 affairs. I received a Bachelor of Science Degree in Business Administration from the
20 University of Montana in 1980.

21 **Q. What is the purpose of your testimony.**

22 **A.** I will address issues relating to Checklist Item No. 13 regarding reciprocal
23 compensation. Initially, my testimony will address the policy and economic issues
24 surrounding the issue of inter-carrier compensation to then be followed by In particular I

1 will address a more specific discussion of WCom's concerns regarding U S WEST's
2 Statement of Generally Accepted Terms and Conditions ("SGAT") filed in this docket.

3
4 **Q. Would you please briefly describe the position WCom is taking on the**
5 **fundamental issue of inter-carrier compensation and whether that position**
6 **distinguishes between traffic which terminates to Information Service Providers or**
7 **other types of customers?**

8 **A.** Yes. The position being taken by WCom, as supported by the economic and
9 policy recommendations in my testimony, is that:

10 There should be no distinction made between traffic that terminates to ISP end
11 users and other end users, as WCom does not make such distinctions in its end user
12 tariffs, and handles all end user traffic utilizing the same network and switches.

13 All such traffic that does not involve interexchange carriers should be treated as
14 local for inter-carrier compensation purposes, as well as for purposes of determining
15 financial responsibility for shared interconnection facilities; consistent with the way
16 U S WEST provides services to ISP end users out of its local exchange and general
17 exchange tariffs.

18 The appropriate inter-carrier compensation mechanism for such traffic should be
19 reciprocal, symmetrical compensation.

20
21 **As an introductory matter, would you briefly describe WCom's local market**
22 **business strategy?**

23 **A.** Yes. In September, 1998 MCI Communications Corporation and WorldCom, Inc.

1 merged to become MCI WorldCom, Inc. (recently changed to WorldCom, Inc.), creating
2 a new era communications company providing facilities-based and fully-integrated local,
3 long-distance, international, and Internet services. A key element of the company's
4 business strategy has always been, where possible, to provide service over its own
5 facilities. In pursuit of its local-to-global-to-local strategy, WCom has installed and
6 currently is operating significant network facilities and equipment in Washington. Those
7 network facilities, both local switching facilities and state-of-the-art metropolitan area
8 fiber rings, are located in the greater Seattle area and are used to provide local services to
9 a wide range of business customers. WCom's decision to invest in such facilities was
10 made with the intent to serve the telecommunications needs of a broad range of types of
11 customers, handling all types of traffic that our customers and potential customers would
12 generate.

13 **Q. Have you developed an understanding of U S WEST's position regarding the**
14 **compensation it should pay for traffic originating from its end users and destined**
15 **for customers on a CLEC's network?**

16 **A.** Based on the proposed contract language in the U S WEST SGAT and the direct
17 testimony of Mr. Thomas R. Freeberg I have obtained a general understanding of
18 U S WEST's position.

19 It can be determined from the testimony and proposed language that U S WEST
20 has two central goals. The first being to exclude local traffic which terminates to ISPs
21 from the application of reciprocal compensation. The second is to impose its own
22 network definitions on a CLEC in such a way as to essentially penalize a CLEC, from a
23 reciprocal compensation perspective, if the CLEC does not have a network which

1 replicates the U S WEST network.

2 Regarding the exclusion of ISP traffic, it is clearly stated in Mr. Freeberg's direct
3 testimony at page 33, ln 6 – 8, "As a result, the SGAT includes language specifically
4 exempting traffic originated to and terminated by enhanced service providers (defined
5 elsewhere as ISP traffic) from the reciprocal compensation arrangements of the SGAT."

6 Mr. Freeberg then cites to language in the SGAT:

7 As set forth above, the Parties agree that reciprocal compensation only applies to
8 EAS/Local Traffic and further agree that the FCC has determined that traffic
9 originated by either Party (the "Originating Party") and delivered to the other
10 Party, which in turn delivers the traffic to the enhanced service provider (the
11 "Delivering Party") is interstate in nature.
12

13 The implications of this position are carried through other sections of the SGAT.

14 Specifically, in Section 7.3.1 Interconnection Options and various of its subsections (e.g.,
15 7.3.1.1.3.1) U S WEST states that "The initial relative use factor will continue for both
16 bill reduction and payments until the parties agree to a new factor, *based upon actual*
17 *minutes of use data for non-Internet Related Traffic* to substantiate a change in that
18 factor." [emphasis added]. U S WEST further clarifies its view of the jurisdictional
19 nature of Internet traffic in the same section stating, "By agreeing to this interim solution,
20 U S WEST does not waive its position that Internet Related Traffic or traffic delivered to
21 Enhanced Service Providers is interstate in nature." U S WEST relies on this
22 jurisdictional classification as a basis for excluding such traffic from the calculation of
23 financial responsibility for interconnection facilities as well as reciprocal compensation.

24 U S WEST is also trying to avoid its reciprocal compensation obligations by
25 reducing the level of payment it makes to CLECs for all traffic subject to reciprocal

1 compensation by specifying restrictive definitional language for End Office Switches and
2 Tandem Office Switches in section 4.11. These terms carry significance in determining
3 the level of reciprocal compensation because U S WEST will use its proposed definitions,
4 which reflect the architecture of its monopoly, ubiquitous network, to assert that a
5 CLEC's network, unless it replicates the U S WEST network, would not be eligible to
6 receive compensation at the tandem rate level (tandem, transport and end office) and
7 instead would only compensate the CLEC at the end office rate level. This is embodied
8 in the SGAT at Section 7.3.4.2.1, Tandem Switched Transport which states:

9 For traffic delivered through a U S WEST or CLEC local tandem switch (as
10 defined in this agreement), the tandem switching rate and the tandem transmission
11 rate in Exhibit A shall apply per minute in addition to the end office call
12 termination rate described above so long as the terminating Party switches the
13 traffic at both its tandem switch and separate end office switch. However, if
14 CLEC or U S WEST only switches the traffic once and this switch meets the
15 definition of tandem switch in 4.11.2, then only the tandem switching rate shall
16 apply. [emphasis added]
17

18 Mr. Freeberg's testimony at page 29, ln 9 – 16 where he asserts that the SGAT
19 meets the requirement for symmetrical compensation arrangements is instructive. The
20 indication is that rates and their application will be symmetrical “for Exchange Service
21 (EAS/Local) traffic terminated at a U S WEST or CLEC end office.” [emphasis added] It
22 is obvious that US West has no intention of extending the concept of symmetry to tandem
23 traffic.

1 **Q. Does the FCC’s Declaratory Ruling provide U S WEST any support for its**
2 **position on the jurisdictional nature of ISP traffic and its impact on inter-carrier**
3 **compensation?**

4 **A. No. While the FCC did establish the jurisdiction of ISP traffic as interstate¹ in**
5 **this decision, US West’s reliance on this determination to exclude ISP traffic from the**
6 **application of reciprocal compensation is misplaced for several reasons.**

7 First, and most significant, this decision has been vacated by the U.S. Court of
8 Appeals for the D.C. Circuit. This alone removes any ability for U S WEST to assert that
9 ISP traffic is interstate in nature and therefore not subject to reciprocal compensation .
10 Even prior to the U.S. Appeals Court action, U S WEST’s interpretation was in error.
11 Excluding ISP traffic from reciprocal compensation payments based on the FCC’s now
12 vacated decision overlooked the FCC’s very clear determination that:

13 This conclusion [that ISP-bound traffic is jurisdictionally mixed and
14 appears to be largely interstate], however, does not in itself determine
15 whether reciprocal compensation is due in any particular instance.²

16
17 Also:

18
19 Even where parties to interconnection agreements do not voluntarily agree
20 on an inter-carrier compensation mechanism for ISP-bound traffic, state
21 commissions nonetheless may determine in their arbitration proceedings at
22 this point that reciprocal compensation should be paid for this traffic.³

23
24 Accordingly, U S WEST’s attempt to use this jurisdictional argument to avoid its

¹ *In the matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, FCC 99-38, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, Released February 26 (Declaratory Ruling, hereinafter).*

² Declaratory Ruling at ¶1.

³ *Id.*, at ¶9.

1 reciprocal compensation responsibilities is and has been incorrect and therefore
2 U S WEST should not be allowed to inject contract language into its SGAT that
3 perpetuates this error.

4 **Does U S WEST provide any other support for its perceived ability to exclude ISP**
5 **traffic from its reciprocal compensation obligations?**

6 Yes. Mr. Freeberg's direct testimony, at page 34, ln 4 – 13, cites to the FCC's Order in
7 the Bell Atlantic New York 271 Case as a "clarification of the law" which "establishes
8 that payment for such traffic is 'inter-carrier compensation' and not 'reciprocal
9 compensation.'" Due to this action by the FCC, Mr. Freeberg concludes that the SGAT
10 and checklist item 13 are "unaffected by ISP bound traffic."

11 As discussed more completely below, the recent actions by Court of Appeals for
12 Washington D.C. and the 5th Circuit make this argument a non-starter as well.

13 **Q. Given that U S West's reasons for excluding ISP traffic from reciprocal**
14 **compensation obligations are incompatible with current law, are there other**
15 **concerns the Commission should have with regard to U S WEST's position?**

16 **A.** Yes. From a competitive perspective, U S WEST's position fails to recognize the
17 CLEC's role in the market.

18 When a CLEC terminates traffic that would otherwise have terminated to a
19 customer on US WEST's network, it relieves U S WEST of the cost of performing that
20 same call termination(s) – both in terms of capital assets and operations and maintenance
21 (O&M) expense. That is, the CLEC performs a function – using its own capital for
22 switches and fiber rings and its own operating expenses to operate and maintain those
23 assets – which relieves US WEST of the need to perform that same function. It is

1 important for the Commission to recognize this fact, and to acknowledge that payment
2 from U S WEST to CLECs in an amount equal to the cost it avoids by not having to
3 perform such transport and termination functions is financially neutral to U S WEST.⁴

4 If we change from a static to a dynamic analysis, the result is the same. Looking
5 at the matter dynamically, we can assume that certain types of calls placed by U S WEST
6 end users – i.e., 7- and 10-digit calls to ISPs – have grown more rapidly than other types
7 of calls. Absent entry by third parties, these increasing traffic demands on U S WEST’s
8 network would create significant pressure on its engineers to augment existing switching
9 and transport capacity to handle the additional call terminations demanded by its end
10 users. Such capacity demands would, of course, require greater outlays by U S WEST in
11 capital investment and O&M expense. The fact of other carriers risking their own capital
12 investment to enter Washington markets has relieved U S WEST of at least a portion of
13 the capital and expense outlays it otherwise would have faced.

14 **What concerns do you have with U S WEST’s proposed elimination of**
15 **reciprocal and symmetrical treatment for tandem traffic?**

16 A. As stated above, U S WEST’s proposed treatment of tandem traffic would
17 establish a situation where a CLEC, unless it has replicated US WEST’s hierarchical hub
18 and spoke network, would only be eligible for compensation at the end office rate.

1 ⁴ This narrow analysis focuses solely on the question of whose network terminates
2 traffic. A broader analysis would suggest that US West suffers competitive losses
3 by losing the additional margin or profit on the services it would otherwise sell to
4 ISPs. Such competitive losses – real or potential – provide an incentive to US
5 West to attack its competitors’ ability to provide service to ISP customers. I
6 believe it would be beneficial for the Commission to ask as an overarching
7 question whether it is more preferable for US West to serve virtually all ISPs as
8 part of its customer mix than for CLECs to provide service to a customer mix
9 which also includes ISPs.

1 The initial problem with this proposal is that it is not consistent with the FCC's
2 rules on symmetry. 47 CFR 51.711(a)(3) directs:

3 Where the switch of a carrier other than an incumbent LEC serves a
4 geographic area comparable to the area served by the incumbent LEC's tandem
5 switch, the appropriate rate for the carrier other than an incumbent LEC is the
6 incumbent LEC's tandem interconnection rate.

7
8 Further, adoption of such a proposal would establish poor public policy. In its
9 First Report and Order the FCC stated succinctly that:

10 A symmetric compensation rule gives the competing carriers correct incentives to
11 minimize its own costs of termination because its termination revenues do not
12 vary directly with changes to its own costs.

13
14 The public policy implications of setting a lower price for CLECs' switching and
15 transport than that which U S WEST is permitted to charge for the same function are simple.
16 Unless U S WEST is obliged to pay to CLECs the same rate it charges CLECs, it will have
17 absolutely no incentive to reduce its own costs, because U S WEST would face the prospect
18 of reflecting such lower costs in the pricing of switching and transport to its CLEC
19 competitors. Said differently, the only means available to the Commission to inject market
20 forces into the equation for inter-carrier compensation is to require that payments between
21 the parties be reciprocal.

22 U S West's proposal, on the other hand, would result in establishing a double
23 standard for what constitutes the efficient operation of a telecommunications network: a
24 higher rate for U S WEST, and a significantly lower rate for all carriers to whom
25 U S WEST must pay inter-carrier compensation. The effect would be that an entrant would
26 be penalized for being only slightly more efficient than U S WEST -- and
27 *U S WEST would be rewarded for being less efficient than all other carriers.*

1 Recall the above discussion of CLECs' role in the market and the fact of their taking
2 on the financial responsibility for operating networks. Those CLECs' networks terminate
3 a portion of traffic which U S WEST would otherwise have had to terminate on its own
4 network, thereby relieving U S WEST of the capital and O&M cost to handle that increment
5 of traffic. I noted that, solely from the perspective of network costs,
6 U S WEST should be neutral to whether it terminates the traffic or a CLEC terminates the
7 traffic on its behalf. For this statement to be true the only requirement is that the cost of
8 switching and transport which U S WEST avoids is equal to the price(s) established by the
9 Commission. That is, the statement is true unless the Commission "got it wrong" in setting
10 the prices for switching and transport.

11 If, on the other hand, U S WEST can convince this Commission to set a lower price
12 for the CLECs than what U S WEST is able to charge, U S WEST could then pay to CLECs
13 a *lower* amount than the cost it avoids in performing the switching and/or transport function.
14 Said differently, U S WEST's proposed compensation mechanism, if adopted, would turn
15 what is a financially neutral proposition to one which is significantly advantageous to U S
16 WEST.⁵ For all the above reasons, the appropriate public policy is to continue the practice
17 of using U S WEST's transport and termination rates as the proxy for the CLECs' costs for
18 purposes of inter-carrier compensation.

19 **Q. What concerns does WCom have about U S WEST's SGAT and how do your**
20 **policy and economic discussions relate?**

21 **A.** As indicated First, WCom has concerns about several sections of the SGAT that

1 ⁵ And of course, if ~~SWB~~U S WEST were to succeed in driving ISPs from its CLEC
2 competitors back to its services, it would gain profit from those services and
3 customers it had re-captured.

1 relate to reciprocal compensation arrangements, terms and conditions and more
2 particularly relating to relevant definitions found in Section 4. Specifically WCom has
3 the following concerns about definitions that relate to reciprocal compensataion.

4 Section 4.11. The existing definition is too restrictive. Such a definition of End office switches
5 would allow US West to preclude a CLEC from receiving the appropriate level of reciprocal compensation
6 and also fails to recognize the ~~are not limited to terminating station loops and perform much~~ broader
7 functions and services that can be performed by a switch. Specifically, ~~t~~The tandem definition should be
8 changed so that a CLEC switch can be recognized ~~could be classified~~ as an end office and tandem. To
9 recognize the broader functions and to avoid restrictions on innovation and efficiencies, ~~clarify~~, the
10 following should be added to the definition of central office switching: "Central office switches may be
11 employed as combination end office/tandem switches." Additionally, the definition for "End Office
12 Switches" as Section 4.11.1 should

13 ~~Section 4.11.1:~~ This definition should also be changed to read: "End Office Switches" from which
14 End Users' Telephone Exchange Services are directly connected and offered.

15 Further, contrary to CFR 47 51.711(a)(3) recited above, with the proposed language for Section
16 4.11.2: U S WEST has established a tandem office switches definition that would require the CLEC to
17 serve the "same" geographic area as the
18 U S WEST tandem rather than the FCC language of a "comparable" geographic area. ~~The FCC has~~
19 ~~addressed this issue in 47 CFR §51.711(a)(3). That rules supports MWCom's argument that the U S WEST~~
20 ~~definition is inconsistent with the rule. The rule states:~~

21 ~~Where the switch of a carrier other than an incumbent LEC serves a geographic~~
22 ~~area comparable to the area served by the incumbent LEC's tandem switch, the~~
23 ~~appropriate rate for the carrier other than an incumbent LEC is the incumbent's LEC's~~
24 ~~tandem interconnection rate.~~

25
26 Accordingly, this section must be modified to conform to the FCC rule.

27
28 Section 4.11.2 should be modified to read: "Tandem Office Switches" ~~which that~~
29 are used to connect and switch trunk circuits between and among other Central Office
30 Switches. CLEC switch(es) shall be considered a Tandem Office Switch to the extent
31 such switch(es) serves a comparable geographic area as U S WEST's Tandem Office
32 Switch.

1 Based on the policy and economic issues discussed above, tThe CLEC switch, assuming it meets
2 the requirements of 47 CFR 51.711(a)(3), tandem should be able to apply charge both the end office E0 and
3 tandem switching, tandem switching and related tandem transmission rate elements for purposes of
4 reciprocal compensation. Where CLEC switches cover a comparable geographic area as U S WEST's
5 tandem switches, the reciprocal compensation rate for all local traffic terminated by that CLEC should
6 include both the end office and the tandem switching rate as set forth by the FCC in 47 C.F.R. §51.711.

7 Section 4.22. The definition of "Exchange Service" should be modified to
8 remove the words "as defined by U S WEST's then-current EAS/local serving areas". This language is not
9 necessary as the local calling area is determined by the Commission (as stated in U S WEST's definition);
10 and further allowing U S WEST the unilateral right to modify this definition (i.e. through tariff) is
11 inappropriate.

12 **Does WCom have additional concerns with regard to the tandem treatment**
13 **issue?**

14 **A.** —Yes. WCom has concerns about The terms and conditions stated proposed in Section 7 reflect U
15 S WEST's attempt to require a CLEC's network to mirror the network architecture U S WEST has
16 deployed over its decades as a monopoly provider of telecommunications. Again, as explained above,
17 adoption of U S WEST's position results in bad public policy.

18 For these reasons Specifically, WCom has the following concerns with Section 7.

19 Section 7.3.4.2: This section states that if a CLEC has a switch that qualifies as a tandem, but only
20 switches traffic once, then only the tandem switching rate will apply for reciprocal compensation purposes.
21 If the traffic is switched twice, only then will the tandem switching, transport and end-office switching rates
22 apply. The number of times traffic is switched does not control whether a CLEC qualifies for tandem rates
23 treatment. Again, as stated above Rather, if a WCom switch serves a geographic area comparable to the
24 area served by U S WEST's tandem switch, then the tandem switching, transport transport and end-office-
25 switching rates should apply.

26 **Has US West attempted to apply the concept of symmetry in an inappropriate manner?**

27 **A.** Yes. The FCC's rules require symmetrical treatment for local traffic and, while not willing to apply

1 this concept to local traffic, US West has advocated its use for the application of switched access charges to
2 the exchange of intraLATA toll traffic.

3 At Section 7.3.1 :US West proposes ~~This section states~~ that access charges for intraLATA traffic
4 ~~will~~ be symmetrical and at U S WEST's tariffed rate. WCom has established switched access rates and
5 should be permitted to charge its approved rates for switched access. Each party is permitted by law to
6 establish their own Access Tariff rates. To require a CLEC to use U S WEST's tariff based on a perceived
7 need for symmetry is ~~unsupportable~~ ~~contrary to that right~~, and places an unfair administrative burden on the
8 CLEC. US West again reverses itself in ~~The requested change is also consistent with the following sentence~~
9 ~~in the same paragraph as well as with~~ Section 7.3.7.3, which provides that each party will bill third parties
10 pursuant to each party's respective tariffs.

11 In order to protect CLEC's from U S WEST's preservation of its self interest at all
12 costs, ~~Therefore~~, this section must be modified to appropriately allow each carrier to bill
13 switched access charges in accordance with its applicable tariffs.

14 **In what other way does US West's proposed SGAT attempt to force CLECs to**
15 **replicate the U S West network?**

16 A. The proposed language at Section 7.3.1.1.2 restricts the ability of a CLEC to utilize existing
17 network facilities by refusing to adjust pricing to reflect "commingling" of UNEs with existing access
18 services. ~~Commingling involves the combination of UNEs and access in an effort to promote efficient~~
19 ~~overall use of the network. Examples of commingling UNEs and access include, but are not limited to, the~~
20 ~~following:~~

21 an unbundled loop connected by a multiplexer ("MUX") to T-1 access transport;

22 an unbundled T-1 transport coming from a collocation cage and then connected by an access DS-3
23 MUX into another collocation cage;

24 an access transport coming from an End Office and then connected by an unbundled DS-3 MUX
25 into a collocation cage; and

26 an unbundled T-1 loop commingled with an access T-1 loop and then connected by a MUX to an
27 access DS-3 transport which links to a collocation cage.

28
29
30
31
32 WCom does not, under any of the above-referenced scenarios, seek to substitute

1 unbundled network elements for access services. WCom does propose that ~~Since the~~
2 Entrance Facility ("EF") is used for local interconnection purposes, it should be priced at
3 TELRIC rates and not taken from U S WEST's access tariffs. Hence, section 7.3.1.1.2
4 should be rewritten to read, "If a CLEC chooses to utilize an existing facility
5 purchased as Private Line Transport Service from the state or FCC Access Tariffs in
6 conjunction with its use of UNEs should have the tariff rates shall be ratcheted⁶ to reflect
7 the UNE local usage on the commingled and the recurring rate for Entrance Facility,
8 shall be priced at the TELRIC based rates."

9 Without this capability, CLECs will be economically restricted from utilizing
10 network capacity in the most efficient manner available. Such a restriction would also be
11 discriminatory as U S WEST enjoys the presence of commingled facilities in its own
12 network.

13 **Does WCom propose other specific changes to US West's proposed SGAT language?**

14 **A.** Yes. Based on the discussion above concerning US WEST's incorrect belief that ISP traffic can
15 be excluded from reciprocal compensation obligations and, as described below, appropriate consideration
16 for purposes of determining financial obligations for shared interconnection facilities WCom proposes
17 changes to language in Sections 7.3.1.1.3.1, 7.3.1.2.2, 7.3.2.2, and 7.3.2.3 and 7.3.4.1.3: Because these
18 sections inappropriately exclude the consideration of Internet traffic when calculating the relative use factor
19 for determining each party's obligation for costs of 2-way facilities, WCom would Section 7.3.4.1.3 states
20 that both parties agree that Internet traffic has been determined to be interstate by the FCC and therefore no
21 reciprocal compensation will be paid for this traffic.

22 In 7.3.1.1.3.1 U S WEST is rewriting the way CLECs compensate for facilities used for 2-way
23 trunking. This new language is different from other interconnection agreements. The exclusion of ISP

1 ⁶ "Ratcheting" is a term used to describe the common industry practice of pro-
2 rating rate elements applicable to a specific facility based upon the percentage of
3 service utilization on that facility.

1 traffic in this section is unreasonable. ISP imposes no different costs of transport and termination on local
2 exchange carriers than does voice traffic. Forcing CLECs to terminate this category of traffic without
3 compensation is not justified by current FCC decisions and provides U S WEST with an unfair advantage
4 by granting it a "free ride" on the networks of the CLECs. The requirement to track such traffic in order to
5 exclude it from facilities compensation calculations also places an onerous administrative burden on the
6 CLECs and increases the CLECs' costs associated with LIS 2-way trunks.

7 ~~_____ Additionally, in existing markets where a CLEC already has traffic data, the above method should~~
8 ~~apply. In new markets where a CLEC has never exchanged traffic, there is no traffic data. For those~~
9 ~~markets, CLECs should be able to wait one quarter and then bill in arrears based on the relative traffic flow~~
10 ~~for that quarter. Therefore, propose the following replacement text is recommended:~~

11 The provider of the EF will share the cost of the EF as follows: (i) for
12 augmentation of an existing trunk group, the initial relative use factor will be the relative
13 use of the existing trunk group for the quarter immediately prior to the establishment of
14 the new EF, or (ii) for establishment of a trunk group in a new market where no traffic has
15 been exchanged, the Parties shall bill each other 3 months in arrears based on the relative
16 use of the trunk groups for the 3 months prior. The nominal charge to the other Party for
17 the use of the EF, as described in Exhibit A, shall be reduced by this initial relative use
18 factor. Payments by the other Party will be according to the initial relative use factor for
19 one quarter. Thereafter, the relative use factor will be adjusted on a quarterly basis based
20 upon actual minutes of use data for all traffic.

21 This should also apply to the EICT when collocation is used. WComMCIW recommends adding
22 the following to Section 7.3.1.2.2:

23 ~~Section 7.3.1.2.2:~~ The provider of the collocation EICT will share the cost of
24 the EICT as follows: (i) for augmentation of an existing trunk group, the initial relative
25 use factor will be the relative use of the existing trunk group for the quarter immediately
26 prior to the establishment of the new EICT, or (ii) for establishment of a trunk group in a
27 new market where no traffic has been exchanged, the Parties shall bill each other 3
28 months in arrears based on the relative use of the trunk groups for the 3 months prior. The
29 nominal charge to the other Party for the use of the EICT, as described in Exhibit A, shall
30 be reduced by this initial relative use factor. Payments by the other Party will be
31 according to the initial relative use factor for one quarter. Thereafter, the relative use
32 factor will be adjusted on a quarterly basis based upon actual minutes of use data for all
33 traffic.

34 The same facilities cost sharing method described in Section 7.3.1.2.2 above,
35
36 should also be applied to DTT. Therefore, Section 7.3.2.3 should be rewritten as follows:

37
38 If the Parties elect to establish LIS 2-way DTT trunks, for reciprocal exchange of
39 Exchange Service (EAS/Local) traffic, the provider of the LIS 2-way DTT facility will
40 share the cost of the LIS 2-way DTT facility as follows: (i) for augmentation of an

1 existing trunk group, the initial relative use factor will be the relative use of the existing
2 trunk group for the quarter immediately prior to the establishment of the new LIS 2-way
3 DTT, or (ii) for establishment of a trunk group in a new market where no traffic has been
4 exchanged, the Parties shall bill each other 3 months in arrears based on the relative use
5 of the trunk groups for the 3 months prior. The nominal charge to the other Party for the
6 use of the LIS 2-way DTT, will be reduced by this initial relative use factor. Payments by
7 the other Party will be according to the initial relative use factor for one quarter.
8 Thereafter, the relative use factor will be adjusted on a quarterly basis based upon actual
9 minutes of use data for all traffic
10

11 **Are you aware of a ruling by the Federal Communications**
12 **Commission in the Bell Atlantic, New York 271 proceeding concerning the payment of**
13 **reciprocal compensation for Internet Service Provider (“ISP”) Traffic?**
14

15 Yes, I am aware of a ruling in the Bell Atlantic, New York 271 (“BANY
16 271”) proceeding. However, I am not an attorney, and any comments I have about that order are
17 those of a layman, with telecommunications experience, and represent only my understanding of
18 the decisions as explained to me by WCom’s attorneys and law public policy group.

19 **Are you familiar with recent decisions issued by the by the Court of**
20 **Appeals for Washington D.C. (“D.C. Circuit”)⁷ and the Court of Appeals for the 5th Circuit**
21 **(“5th Circuit”)⁸?**
22

23 **A.** Yes, I am with the same qualifications I described above with respect to the BANY 271
24 order.⁹

25 **Q. What is your understanding of those decisions.**

26 **A.** Without getting into detail, it is my understanding that these decisions have an impact on a ruling
27 in the BANY 271 order relating to whether we should discuss reciprocal compensation for ISP traffic.
28
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⁷ Bell Atlantic Tel. Cos. v. FCC, ___ F.3d ___, 2000 WL 273383, (D.C. Cir. Mar. 24, 2000).

⁸ Southwestern Bell Tel. Co. v. Public Utils. Comm'n, ___ F.3d ___, 2000 WL 332062, (5th Cir. Mar. 30, 2000).

⁹ In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Decision No. FCC99-404, adopted: December 21, 1999, released: December 22, 1999.

1 Q. Are you familiar with WCom's position on this issue.

2 A. Yes, I have read WCom comments filed in Arizona and Colorado addressing the issue.

3 ~~Q. Can you describe WCom's position as you understand it.~~

4 ~~A. ISP traffic should be subject to reciprocal compensation.~~

5 ~~Q. Why?~~

6 ~~A. Because the originating LEC, such as U S WEST, collects the revenue from its~~
7 ~~local customers for calls that must be routed on the CLEC's network to be delivered to~~
8 ~~the called party (the ISP) the only way for CLECs to be compensated for delivering calls~~
9 ~~from ILECs' customers to ISPs is through reciprocal compensation. Absent an~~
10 ~~intercarrier compensation mechanism, CLECs do not recover legitimate costs incurred to~~
11 ~~complete calls made by U S WEST's end-users. Calls to ISPs should be eligible for~~
12 ~~reciprocal compensation because they are just like local calls and should be treated as~~
13 ~~such. Calls made by U S WEST end users to ISPs require the same switching, transport~~
14 ~~and termination facilities as voice calls that unquestionably are subject to reciprocal~~
15 ~~compensation. Moreover, like CLECs, U S WEST serves ISPs on its network and~~
16 ~~receives full local rates for terminating such traffic to its ISPs. It is therefore~~
17 ~~discriminatory and anti-competitive to permit U S WEST to receive full local rates for~~
18 ~~such traffic when it terminates the same calls on its network, but then not require it to pay~~
19 ~~identical reciprocal compensation rates for the terminating portion (which have been set~~
20 ~~at the local rates in Colorado) to CLECs when U S WEST is relieved of the burden of~~
21 ~~terminating such traffic on the CLEC network. This is particularly so because it is the~~
22 ~~U S WEST end user that places the ISP call which in turn places costs on the CLEC~~
23 ~~network. Denying such reciprocal compensation clearly stalls competition in the local~~
24 ~~telecommunications market, and perpetuates U S WEST's anti-competitive monopoly.~~

1 **Q. Can you describe WCom’s legal position as you understand it?**

2 **A.** Yes, I can with the same qualifications I described above with respect to the
3 BANY 271 order. I am not a lawyer, so I am providing this for continuity, not because I
4 am familiar with all of the legal nuances discussed below. I acknowledge that what
5 follows is legal argument, but because we are in workshops, instead of a traditional
6 evidentiary hearing, I am providing this information.

7 WCom’s position, as I understand is that in light of the recent court rulings by the
8 Court of Appeals for Washington D.C. (“D.C. Circuit”)¹⁰ and the Court of Appeals for the
9 5th Circuit (“5th Circuit”), this language is inappropriate.¹¹ Prior to the rulings by the 5th
10 and DC circuit, the payment of reciprocal compensation for ISP was found to be
11 irrelevant to Checklist Item No. 13 by the FCC in Bell Atlantic 271 (“BANY Order”)
12 order on checklist Item 13.¹² In that order, the FCC found that “[I]n light of our prior
13 ruling that “ISP-bound traffic is non-local interstate traffic” and that “the reciprocal
14 compensation requirements of section 251(b)(5) of the Act . . . do[es] not govern inter-
15 carrier compensation for this traffic,” we conclude that Global NAPs’ arguments are
16 irrelevant to checklist item 13.¹³ However, as a result of recent decisions from the DC
17 and 5th Circuit Courts of Appeal, the FCC’s determination that ISP traffic is not local
18 traffic for purposes of Section 251(b)(5) and Checklist Item 13 is no longer viable.

1 ¹⁰ Bell Atlantic Tel. Cos. v. FCC, ___ F.3d ___, 2000 WL 273383, (D.C. Cir. Mar. 24, 2000).

1 ¹¹ Southwestern Bell Tel. Co. v. Public Utils. Comm'n, ___ F.3d ___, 2000 WL 332062, (5th Cir.
2 Mar. 30, 2000).

1 ¹² In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of
2 the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC
3 Docket No. 99-295, Decision No. FCC99-404, adopted: December 21, 1999, released: December
4 22, 1999.

1 ¹³ *Id.* at ¶377.

1 Checklist Item No. 13 requires U S WEST to provide reciprocal compensation
2 arrangements for the transport and termination of telecommunications in accordance with
3 the requirements of Section 252(d)(2). Pursuant to Section 252(d)(2), the rates, terms and
4 conditions for reciprocal compensation shall not be considered just and reasonable unless
5 the terms and conditions provide for mutual and reciprocal recovery of costs associated
6 with transport and termination of calls and such terms and conditions determine such
7 costs on the basis of a reasonable approximation of the additional costs of terminating
8 such calls.

9 The FCC removed the treatment of ISP traffic from consideration as a Checklist
10 Item 13 issue in the BANY Order based upon its own ISP order.¹⁴ However, that order
11 has been vacated by the D.C. Circuit. Section 251(b)(5) requires reciprocal compensation
12 for calls to ISPs as local calls. The D.C. Circuit found that such calls most likely
13 terminate at the ISP and are, therefore, local calls. The 5th Circuit found that under the
14 FCC's own definition of termination, these calls are local. Thus, both courts, relying on
15 prior pronouncements of the FCC, seriously undermine the FCC's determination that
16 these calls could be considered interstate traffic.

17 Section 251(b)(5) of the Act requires all LECs to "establish reciprocal
18 compensation arrangements for the transport and termination of telecommunications." 47
19 U.S.C. § 251(b)(5). In its Local Competition Order, the FCC narrowed the class of traffic
20 for which the Act requires payment of reciprocal compensation to "local traffic."¹⁵ The

1 ¹⁴ In re Implementation of the Local Competition Provisions in the Telecommunications
2 Act of 1996, Inter-Carrier compensation for ISP-Bound Traffic, 14 F.C.C.R. 3689 ¶¶ 1,10
3 (1999) ("ISP Order")

1 ¹⁵ In re Implementation of the Local Competition Provisions in the Telecommunications Act of
2 1996, First Report and Order, 11 F.C.C.R. 15499 ¶¶ 1033-1034 (1996).
3

1 FCC held that traffic is "local" and entitled to reciprocal compensation if it "originates
2 and terminates within a local service area."¹⁶ The FCC defined termination as "the
3 switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end
4 office switch (or equivalent facility) and delivery of that traffic from that switch to the
5 called party's premises."¹⁷ In its ISP Order, the FCC stated in a conclusory manner that
6 calls to ISPs are not subject to this regulation and do not terminate at the ISP.¹⁸

7 The DC Circuit vacated that decision for lack of reasoned decision-making. The
8 Court stated:

9 The end-to-end analysis applied by the Commission here is one that it has
10 traditionally used to determine whether a call is within its interstate
11 jurisdiction. Here it used the analysis for quite a different purpose, without
12 explaining why such an extension made sense in terms of the statute or the
13 Commission's own regulations. Because of this gap, we vacate the ruling
14 and remand the case for want of reasoned decision-making.

15 * * *

16
17
18 Calls to ISPs are not quite local, because there is some communication
19 taking place between the ISP and out-of-state websites. But they are not
20 quite long-distance, because the subsequent communication is not really a
21 continuation, in the conventional sense, of the initial call to the ISP. The
22 Commission's ruling rests squarely on its decision to employ an end-to-end
23 analysis for purposes of determining whether ISP- traffic is local. There is
24 no dispute that the Commission has historically been justified in relying on
25 this method when determining whether a particular communication is
26 jurisdictionally interstate. But it has yet to provide an explanation why this
27 inquiry is relevant to discerning whether a call to an ISP should fit within
28 the local call model of two collaborating LECs or the long-distance model
29 of a long-distance carrier collaborating with two LECs.

30
31 In fact, the extension of "end-to-end" analysis from jurisdictional purposes
32 to the present context yields intuitively backwards results.
33

1 ¹⁶ *Id.* ¶¶ 1034-1035.

1 ¹⁷ *Id.* ¶ 1040; 47 C.F.R § 51.701(d).

1 ¹⁸ The ISP Order ¶¶ 1, 10 (1999).

1 * * *

2 Because the Commission has not provided a satisfactory explanation why
3 LECs that terminate calls to ISPs are not properly seen as "terminat[ing] ...
4 local telecommunications traffic," and why such traffic is "exchange
5 access" rather than "telephone exchange service," we vacate the ruling and
6 remand the case to the Commission.

7
8 The Court also indicated that calls to ISPs *do* fit the FCC's regulatory definition
9 of termination for reciprocal compensation purposes:

10 Calls to ISPs appear to fit this definition: the traffic is switched by the
11 LEC whose customer is the ISP and then delivered to the ISP, which is
12 clearly the "called party." In its ruling the Commission avoided this result
13 by analyzing the communication on an end-to-end basis: "[T]he
14 communications at issue here do not terminate at the ISP's local server ...,
15 but continue to the ultimate destination or destinations." FCC Ruling, 14
16 FCC Rcd at 3697 (p 12). But the cases it relied on for using this analysis
17 are not on point. Both involved a single continuous communication,
18 originated by an end-user, switched by a long-distance communications
19 carrier, and eventually delivered to its destination. Bell Atlantic Tel. Cos.
20 v. FCC, ___ F.3d ___, 2000 WL 273383, at 5 (D.C. Cir. Mar. 24, 2000).

21
22 The Fifth Circuit also has held that calls to ISPs terminate at the ISP under the
23 FCC's regulatory definition: "So, under the foregoing [FCC regulatory] definition,
24 'termination' occurs when Time Warner switches the call at its facility and delivers the
25 call to 'the called party's premises,' which is the ISP's local facility. Under this usage, the
26 call indeed 'terminates' at the ISP's premises."¹⁹

27 Because a call to an ISP terminates at the local ISP's premises under the FCC's
28 own regulations, it is a local call and federal law requires carriers to pay reciprocal
29 compensation for calls to ISPs.

30 Since U S WEST has chosen to file an SGAT addressing reciprocal compensation
31 which is being relied on as evidence of its compliance with Section 271, including

1 ¹⁹ Southwestern Bell Tel. Co. v. Public Utils. Comm'n, ___ F.3d ___, 2000 WL 332062, at 9 (5th
2 Cir. Mar. 30, 2000).

1 Checklist Item No. 13, and since several courts have ruled on this issue, this issue is now
2 ripe for consideration in this proceeding. U S WEST should be directed to modify its
3 Washington Arizona SGAT to treat ISP traffic as local traffic subject to reciprocal
4 compensation. Therefore, paragraph 7.3.4.1.3 of U S WEST's SGAT should be changed
5 to read as follows:

6 7.3.4.1.3 The Parties agree that reciprocal compensation applies to
7 Exchange Service (EAS/Local) Traffic and further agree that traffic
8 originated by either Party (the "Originating Party") and delivered to the
9 other Party, which in turn delivers the traffic to the enhanced service
10 provider (the "Delivering Party") is Exchange Service (EAS/Local) Traffic
11 in nature.
12

13 In addition, corresponding changes should be made to other paragraphs, including
14 but not limited to paragraph 7.3.2.3. U S WEST should be required to make all
15 corresponding changes and submit those to all parties for review and approval.

16 Telecommunications service does terminate at the ISP because ISPs provide
17 customers with information services, not telecommunication services. The D.C. Circuit
18 agrees. The D.C. Circuit concluded that calls to ISPs may terminate at the ISP because
19 the information services that an ISP provides are distinct from the separate
20 telecommunications service used to connect the caller to the ISP. As the D.C. Circuit
21 stated:

22 ISPs . . . are "information service providers," . . . which upon receiving a
23 call originate further communications to deliver and retrieve information
24 to and from distant websites. . . . Although ISPs use telecommunications
25 services to provide information services, they are not telecommunications
26 providers (as are long-distance carriers).
27

28 The D.C. Circuit recognized that "[i]n this regard, an ISP appears no different
29 from many businesses, such as 'pizza delivery firms, travel reservations agencies, credit

1 card verification firms, or taxicab companies,' which use a variety of communication
2 services to provide their goods or services to their customers.²⁰ Further, calls to ISPs are
3 just like other local calls – e.g., caller dials seven-digit number and is billed for a local
4 call.

5 **Are there any other sections that should be modified?**

6 **A.** Yes.

7 Section 7.3.2.4:

8 Consistent with the above recommended changes to the other sections in Section
9 7.3.1, Section 7.3.2.4 should also be modified as follows:

10
11 7.3.2.4.1 The provider of the DS1/DS3 MUX will share the cost of the
12 DS1/DS3 MUX as follows: (i) for augmentation of an existing trunk
13 group, the initial relative use factor will be the relative use of the existing
14 trunk group for the quarter immediately prior to the establishment of the
15 new DS1/DS3 MUX, or (ii) for establishment of a trunk group in a new
16 market where no traffic has been exchanged, the Parties shall bill each
17 other 3 months in arrears based on the relative use of the trunk groups for
18 the 3 months prior. The nominal charge to the other Party for the use of the
19 DS1/DS3 MUX will be reduced by this initial relative use factor.
20 Payments by the other Party will be according to the initial relative use
21 factor for one quarter. Thereafter, the relative use factor will be adjusted
22 on a quarterly basis based upon actual minutes of use data for all traffic.

23
24 Section 7.3.2.1.3: This section is inconsistent with Section 7.3.2.1.1. Mileage
25 should be calculated between the POI and the tandem or end office. Therefore, section
26 7.3.2.1.3 should be modified to read as follows: "Mileage shall be measured for DTT
27 based on V&H coordinates between the Serving Wire Center of the POI and the
28 local/access tandem or end office."

29 Section 7.3.3.1.1: CLECs should not have to pay the nonrecurring charges for
30 trunk installation. In the existing WCom interconnection agreement with U S WEST, the

1 ²⁰ Bell Atlantic Tel. Cos. v. FCC, __ F.3d __, 2000 WL 273383, at 6 (D.C. Cir. Mar. 24, 2000).

1 parties do not charge each other NRCs for trunk installation. However, if U S WEST
2 insists on using these charges, the same methodology should be used as described in
3 Section 7.2.2.4.1 above. Therefore, if CLECs are forced to pay trunk install NRCs, the
4 following language should be added:

5 7.3.3.1.1 The provider of the trunk installation will apportion the cost as
6 follows:

7
8 for augmentation of an existing trunk group, the initial relative use factor
9 will be the relative use of the existing trunk group for the quarter
10 immediately prior to the establishment of the new trunk group, or
11 (ii) for establishment of a trunk group in a new market where no
12 traffic has been exchanged, the initial relative use factor will be
13 50%. The nonrecurring trunk installation charge to the other Party
14 will be reduced by this initial relative use factor. Parties shall
15 retroactively true-up the amounts in the subsequent quarter based
16 on the traffic flows in the previous quarter.

17
18 ~~Section 7.3.4.1.2: A CLEC should be permitted to receive tandem~~
19 ~~treatment for a CLEC switch. Section 7.3.4.1.2 should be rewritten as follows: "Office~~
20 ~~Switch(es) to the extent that such CLEC switch(es) serve a comparable geographic area as U S~~
21 ~~WEST's Tandem Office Switch." This change is for purposes of call termination, the CLEC~~
22 ~~switch(es) shall be treated as Tandem consistent with the proposed change to Section 4.11~~
23 ~~discussed above, and the rationale is the same.~~

24 Section 7.3.4.2.3: U S WEST must apply tandem transmission (transport charges)
25 for local traffic in a manner consistent with how this is applied in the access world. If
26 this is what is intended by U S WEST's current language, then this language should be
27 clarified to explicitly state this. If a CLEC is not required to pay this under access, a
28 CLEC should not be required to pay an additional tandem transmission component in
29 local. Alternatively, should the Commission determine that payments of such an

1 additional tandem transmission component is appropriate, then the language concerning
2 treatment of mileage between host offices and remote offices should apply reciprocally to
3 both parties.

4
5
6 Accordingly, this paragraph should be rewritten as follows:

7 When the originating Party terminates traffic to the terminating
8 Party's remote office, tandem transmission rates will be applied for the
9 mileage between the terminating Party's host office and the terminating
10 Party's remote office.

11
12 Section 7.3.4.2.4: This section is inconsistent with common industry practice
13 that NXX billing is based on mileage between the rate centers to which the NXXs are
14 associated, not based on the physical path of the call. Therefore, this section is
15 inappropriate and should be stricken in its entirety.

16 Section 7.3.7.1: The inclusion of a variable component of transit pricing
17 is objectionable, as it is not appropriate to include a variable component as part of tandem
18 transmission. Therefore, the language in this section pertaining to the use of actual and/or
19 assumed mileage should be stricken, along with the Local Transit Assumed Mileage
20 pricing.

21 Section 7.3.8: The last 2 sentences (beginning "Since U S WEST is a transit
22 provider for many carriers, the traffic sent to the CLEC without CPN (valid
23 originating information)") should be deleted because U S WEST should be
24 able to identify this traffic at its tandem or U S WEST has the ability to work with the
25 originator of the traffic to determine the jurisdiction of the traffic and be made whole. In

1 addition, WCom proposes one alternative solution to calls passed without CPN. The
2 parties could use a “change-to number” as proxy for CPN. This is a standard industry
3 solution. In addition, any billing method for these calls should be mutual, rather than
4 unilaterally applied only to the CLEC as U S West’s language provides. The sentence
5 stating: “If CLEC fails to provide CPN (valid originating information), and cannot
6 substantiate technical restrictions (i.e., MF signaling), such traffic will be billed as
7 switched access” should be deleted and replaced with the following sentence: “If either
8 Party fails to provide CPN or reasonable alternative (i.e., charge-to-number), and cannot
9 substantiate technical restrictions (i.e., MF signaling), such traffic will be billed as
10 Switched Access.” This language provides both parties a reasonable alternative,
11 rendering the last two sentences unnecessary.

12 Section 7.3.9: The section is not consistent with UNE-P or Resale. U S WEST
13 should clarify the circumstances under which this provision is intended to apply.

14 **Does this complete your testimony?**

15 **A.** Yes, it does.