

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration)
of an Interconnection Agreement Between)
)
MCImetro ACCESS SERVICES, INC. and)
U S WEST COMMUNICATIONS, INC.)
)
Pursuant to 47 USC Section 252)
.....)

DOCKET NO. UT-960310

ARBITRATOR'S REPORT
AND DECISION

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IV. INTRODUCTION

A. Interconnection Process

The Act relies on contract negotiations rather than government regulations to define relationships between carriers. When negotiations fail, §252(b) provides for compulsory arbitration. The party desiring arbitration must petition the state commission during the period from the 135th to the 160th day (inclusive) after the date the incumbent local exchange carrier received the request for negotiation.

B. Commission's Role

The state commission may establish procedures for resolving disputes and approving agreements under the Act. This Commission did so in an "Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements under the Telecommunications Act of 1996" which it issued on June 28, 1996, under Docket No. UT-960269. The Statement included a summary of Preferred Outcomes" resulting from existing Commission dockets relating to competition in the local exchange market.

With respect to individual arbitrations, §252(b)(4)(A) of the Act authorizes the Commission to resolve only the issues the parties present. It must resolve them in a way consistent with the Act.

C. Arbitrator's Role

The arbitrator conducts the arbitration for the state commission. This Commission issues a general Procedural Order for each arbitration and appoints an arbitrator in that order or a supplemental order.

The arbitrator resolves the issues the parties present by selecting, if possible, one party's offer or the other. Afterwards, the parties must present the resulting contract to the Commission for approval.

D. Procedural Summary

1. Notice and Petition

MCImetro Access Transmission Services, Inc.¹ (MCImetro) notified U S WEST Communications (U S WEST) via letter on March 26, 1996, of its request for interconnection. It could file a petition between August 8, 1996 (135 days), and September 2, 1996 (160 days). It filed the petition on August 30, 1996.

2. Response

U S WEST responded on September 24, 1996.

3. Arbitration Hearing

The Arbitrator conducted the hearing on November 19, 1996, and November 20, 1996. The parties filed their briefs on December 10, 1996.

4. Deadline

The statutory deadline for the Arbitrator's report is December 26, 1996. The resulting deadline for filing the contract with the Commission is January 25, 1997.

E. Partial Settlement

The parties settled the following issues:

- » *Issue 1* Points of Interconnection.
- » *Issue 3* U S WEST points of Interconnection
- » *Issue 4* Two-way Trunking
- » *Issue 5* Interconnection with U S WEST End Offices
- » *Issue 6* Types of Collocation

¹MCImetro Access Transmission Services, Inc. ("MCImetro") is the subsidiary of MCI Telecommunications Corporation ("MCI") in charge of constructing local networks and interconnecting MCI's local network with U S WEST's network. MCI is the second largest facilities-based long distance carrier in the United States. MCImetro is a carrier authorized by this Commission to provide intrastate interexchange and intraexchange switched, private line and special access telecommunications services. See In the Matter of the Application of ACCESS TRANSMISSION SERVICES, INC. for an Order Authorizing the Registration of Applicant as a Telecommunications Company in Docket No. UT-931509 and In the Matter of the Application of MCImetro Access Transmission Services, Inc. for an Order Amending Registration and Authorizing of Switched Inter and Intraexchange Telecommunications Services, Docket No. UT-941287.

- » *Issue 21* Packet Switching
- » *Issue 23* SCP Unbundling
- » *Issue 26* Customized Routing
- » *Issue 49* Interim Number Portability
- » *Issue 59* (The parties deleted this issue.)

F. General Positions

1. MCImetro

Basic Approach to Follow. The Act is designed:

. . . to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to aid Americans by opening all telecommunications markets to competition.²

As the Arbitrator and Commission consider the issues, they should ask the following questions:

- Does the decision create an environment that promotes investment and the development of a flourishing array of new services and choices?
- Does it establish prices that mirror a fully competitive market?
- Does it provide vigilant oversight against anti-competitive practices?

Need for Complete Terms. An interconnection arrangement without complete terms will allow U S WEST to exercise its natural inclination as a monopoly to prevent competitors from entering its market and to slow their progress once in the market. U S WEST's ability to impede its competitors' progress is particularly powerful in the local telephone market because U S WEST possesses the network that its competitors need to get started in the business. Building facilities to duplicate U S WEST's network is prohibitively expensive at least in the not so short-term. *FCC Order* ¶ 287. Every term missing from an interconnection arrangement presents an opportunity for U S WEST to exercise its ability to delay commencement of local competition, such as by dragging out implementation and raising the specter of network failure.

²S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 1 (1996) (Joint Explanatory Statement).

Problems in Oregon. In Oregon, the Public Utility Commission initially refrained from ordering specific contract language and resolved only general issues. In spite of prevailing before the Oregon commission at each of several steps to compel compliance, it took eight months after receiving an interconnection order for MCImetro to obtain an interim agreement that both parties agree is not an acceptable permanent solution.

Problems in Washington. Litigation ending in 1994 resulted in Washington court orders holding that incumbents do not have a de jure monopoly on switched local exchange service.³ In late 1994, U S WEST filed proposed tariffs to provide for interconnection and unbundled local loop.⁴ At about the same time, several competitive local exchange carriers ("CLECs") filed complaints against U S WEST alleging discrimination and requesting imposition of fair, just, reasonable, and nondiscriminatory rates, terms, and conditions for interconnection and purchase of unbundled network elements. The resulting "Interconnection Case" illustrates the length that incumbents will go to impede, delay, and prevent the emergence of effective local exchange competition. For example, as the Commission noted:

U S WEST has made this tariffing process unnecessarily, unreasonable and unacceptably complicated by continuing to press forward with a position, that local interconnection arrangements should be part of a unified access structure, which this Commission rejected in the Fourth Supplemental Order.

Thirteenth Supplemental Order, *Interconnection Case*, (May 28, 1996). A number of the tariffs the Commission ordered in the final order of the case still have either not been approved or are only in effect on an interim basis, pending further proceedings. See, e.g., Eighteenth Supplemental Order, *Interconnection Case*, (July 1, 1996).

No Real Threat to the Network. The specter of a threat to the network was raised during AT&T's divestiture and again during the equal access process. In both cases, the crises predicted by the incumbents have not borne out, and the network remains intact and reliable. Nonetheless, U S WEST has raised again the

³ See Third Supplemental Order Granting Registration Application In Part, In The Matter of the Application of Electric Lightwave, Inc., Docket No. UT-901029 (December 6, 1991). This Commission order was reversed by the Superior Court Judge Lasnik, whose order was upheld by the Washington Supreme Court in In re consolidated cases, 123 Wn.2d 530, 869 P.2d 1045 (1994) ("ELI Decision").

⁴ See Fourth Supplemental Order Rejecting Tariff Filings And Ordering Refilings; Granting Complaints, In Part, *WUTC v. U S West Communications, Inc.*, WUTC Docket No. UT-94164, et al. ("*Interconnection Case*") (Oct. 30, 1995).

specter of a threat to the network as a means to delay competition. U S WEST claims both that competitors will harm the network and that U S WEST will stop investing in maintenance and improvement of the network. That does not mean the revenues are not available for U S WEST to invest in the network or that there will not be plenty of incentive for other companies to take over that job if U S WEST chooses to relinquish it. As with divestiture and equal access, the network will grow and improve, rather than wither on the vine, as predicted by U S WEST.

2. U S WEST

Basic Approach to Follow. The Act and Washington law require the Commission to further the development of competition, not the interests of specific competitors. Encouraging "balanced" competition requires the following:

- Prices must allow full recovery of economic costs.
- The Arbitrator's decisions must allow U S WEST to be a viable participant in the competitive local exchange market.
- The Arbitrator should exercise prudent judgment in making the transition from a regulated monopoly to competition.
- The Arbitrator must resolve the individual issues in this proceeding in the context of the overall framework of local telecommunications competition.
- The Arbitrator must recognize that his decisions will have a price tag and that the Act does not require U S WEST to finance competitor entry into the market.

Scope of the Issues. MCImetro's is proposing some terms that go beyond the terms necessary to implement the Act. Those terms are beyond the scope of this arbitration.

Evidentiary Record. MCImetro did not file a contract proposal until it filed its brief. If it makes a proposal similar to its Oregon proposal, it will not have an evidentiary basis for many of the terms. See RCW 34.05.461(6).

G. Role of State Policies

The Act allows state commissions to apply state policies to the extent they are consistent with the Act. The resulting legal structure includes state elements.

In 1985, the Washington legislature passed the Telecommunication Regulatory Flexibility Act. RCW 80.36.300 establishes the following policy goals:

- (1) Preserve affordable universal telecommunications service;
- (2) Maintain and advance the efficiency and availability of telecommunications service;
- (3) Ensure that customers pay only reasonable charges for telecommunications service;
- (4) . . .
- (5) Promote diversity in the supply of telecommunications services and products in the telecommunications markets throughout the state

Washington also has existing Commission policies from the following:

Consolidated Interconnection Proceeding. Docket No. UT-941464.
(Fourth & Sixth Supplemental Orders).

U S WEST Rate Case. Docket No. UT-950200.

1996 Act Implementation Proceeding. Docket No. UT-960269
Interpretive and Policy Statement.

The Interpretive and Policy Statement included the following summary of preferred outcomes from the Commission's state initiatives:

<u>Issue</u>	<u>Preferred Outcome</u>
Pricing	Rates and conditions should reflect Total Long Run Incremental Costs
Inter-carrier Relationships	New entrants should be recognized as co-carriers and treated accordingly.
Local call termination compensation	Capacity-based charge or Bill & Keep
Calling areas	EAS part of local calling; carriers should establish efficient means, either through engineering or accounting, to distinguish between toll and local traffic
Point of Interconnection	Mutually agreed upon meet points with each company responsible for its own facilities up to the meet point
Interim Number Portability	Provided at the incumbent's TSLRIC for that service until a true number portability solution is implemented
Directory Listings	Directories and databases should include listing of all telephone subscribers submitted to them

Directory Assistance, LIDB, and Operator Services	Same terms and conditions as they are provided to other incumbent LEC's
Virtual Collocation loading factor of 1.2	Virtual collocation should not cost any more than physical collocation; overhead
Resale	Bona fide request procedure for bundled and unbundled services

V. MOTION TO REOPEN

The Motion. On December 19, 1996, U S WEST filed a motion to reopen the record for the purpose of introducing the results of running MCImetro's cost model with six input changes. U S WEST, in its brief, had urged the Arbitrator to make the changes if the Arbitrator did not adopt U S WEST's cost mode.

Response. MCImetro opposed the motion on the grounds that it would be inappropriate to receive new evidence so late in the proceeding.

Ruling. The Arbitrator cannot receive new evidence three business days before the statutory deadline for the Arbitrator's report without depriving MCImetro of an opportunity to respond. He denies the motion.

VI. JURISDICTIONAL ISSUES

Issue. May the Arbitrator consider issues 12, 13, 22, 70, 71, 73, 74?

U S WEST's Position. The Arbitrator may not consider the following issues because MCImetro did not raise them in its petition:

Issue 12. Ordering Procedure for Collocation

Issue 13. Collocation Space

Issue 22. Dark Fiber: There is no reference to dark fiber.

Issue 70. Directory Listings

Issue 71. Directory Distribution and Yellow Pages Advertising: There is no reference to the Yellow Pages. In any event, the Yellow Pages issue is between MCImetro and U S WEST Direct Inc. rather than U S WEST Communications, Inc.

Issue 73. Quality Standards: There is no reference to quality standards. In any event, MCImetro desires parity, and U S WEST has agreed to parity, so there is no issue for the Arbitrator to address.

Issue 74. Performance Credits: There is no reference to performance credits. In any event, MCImetro desires parity, and U S WEST has agreed to parity, so there is no issue for the Arbitrator to address.

MCImetro's Position. Neither of the Act nor the conference report on the Act provide a definition of the term "issue," so the Arbitrator must look to the structure and purpose of the Act to determine what Congress intended in limiting arbitration to "issues" in the petition and response. While Congress knew that arbitrations would deal with specific contract details, it did not require the petitioner to file specific contract language with the petition. In that context, it is unlikely that Congress considered the term "issues" to refer to anything other than the broad issues arising from the Act itself. There is no unfairness to U S WEST because it has known the general nature of MCImetro's issues for a long time and was able to address all of the specific "sub-issues" in its direct testimony.

U S WEST focuses exclusively on Exhibit E to MCImetro's arbitration petition. MCImetro's petition contains other components which, as a whole, generally identify all of the issues including the specific matrix sub-issues in U S WEST's objection. The petition identifies those issues as follows:

Issue 12. Exhibit D, Section XV 1.1, states that "co-location should be suitable for use in MCImetro-ILEC local interconnection and MCImetro access to unbundled ILEC network elements." Moreover, according to U S WEST's position statement, U S WEST's response raises the sub-issue of ordering procedures for co-location (in the U S WEST proposed contract).

Issue 13. Exhibit D, Section XV addresses collocation space. To the extent the issue is minimum size, the U S WEST response proposed a minimum of 10 by 10 feet.

Issue 22. Exhibit D, Section V states in the definition section that "dark fiber must also be available." (Emphasis added). Additionally, subsection 1.4 mentions dark fiber.

Issue 70. Exhibit D, Section VIII defines the issue as "the ability of MCImetro's customers to be able to obtain printed directories that includes (*Sic*) all customers on the public switched network . . . regardless of their local service provider." Further, subsection 2 references primary and secondary white and yellow pages listing and advertising.

Issue 71. Exhibit D, Section XIII, subsection 2.9, addresses yellow pages advertising.

Issue 73. Exhibit D (MCImetro's term sheet) addresses this issue in various places. For example, Section I, subsection 7.1 requires parity: "Quality of service should be no less than that provided by the ILEC for its own services." The next subsection, 7.2, requires the parties to agree "to specify design objections on local interconnection facilities." Similar requirements are contained throughout the term sheet in the various sections.

Issue 74. Exhibit D, Section I, subsection 7.6 states that "the companies must agree upon a mechanism for deal (*Sic*) with breach of agreed quality-of-service standards." The same or similar language appears throughout Exhibit D and clearly put U S WEST on notice that contract language would be sought to provide for redress in the event of breach of service quality standards.

The Act. § 252 (b)(4)(A) of the Act provides: "The state commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response."

Decision. Lack of harm to U S WEST does not defeat the objection because the Act limits the issues regardless of an absence of unfairness. The Act does not specify any particular method or format for raising issues, so—while a format similar to the issue matrix would have been nice—the Arbitrator will interpret the issue-raising requirement in light of a reasonable reading of the overall petition and response in the context of on-going contract negotiations. On-going negotiations under a specific statute provide a background which should enable the respondent to understand a vaguer reference to an issue than would be reasonable in a typical civil court complaint. That is particularly true for U S WEST because it had been negotiating similar issues with a variety of potential new entrants and had, or should have, developed positions for a broad range of issues arising under the Act.

The Act seeks seamless integration of multiple networks. That goal will be hard to achieve if an overly narrow or technical interpretation of the Act leaves readily-apparent disputes which interfere with seamless integration. The goals of the Act support an approach which considers differences between the parties' positions even though neither party expressly states "this is an issue" in presenting their position.

There are sufficient references to the issues in the petition and response for the Arbitrator to identify differences between the parties on those points. The Arbitrator concludes that the issues should survive the MCImetro-did-not-raise-it challenge.

The remaining challenge involves U S WEST's assertion that the Yellow Pages dispute is outside the scope of the arbitration because U S WEST Direct publishes the book rather than U S WEST Communications. It would be inconsistent with the Act for the Arbitrator to ignore common control of corporate entities in resolving arbitration issues. The Arbitrator will consider Issue 71.

VII. MARKET ENTRY

The 1996 Act provides three paths for entry into the local telecommunications market:

- resale of incumbent retail services;
- acquisition of network elements for assembly into services, and
- interconnection of new entrant facilities.

This section addresses the scope of those opportunities.

A. Issues 27 & 28: Services for Resale

Issue. What services should the Commission require U S WEST to provide?

MCImetro's Position. MCImetro requests all retail telecommunications services including:

- retail services;
- non-tariffed services;
- deregulated services;
- "grandfathered services";
- contract services;
- services offered on individual case basis;
- discounted services; and
- promotional offerings where offered for a period of greater than 90 days.

The list specifically includes Centrex, Optional Calling Plans, Voice Mail, Inside Wire Maintenance, and Custom Calling Services. With respect to promotions, MCImetro opposes an extension of the FCC's time frame for distinguishing promotional rates from retail services. It also reserves the right to challenge promotional offerings designed to evade the requirements of the FCC Rule.

U S WEST's Position. U S WEST proposes to exclude the following:

Enhanced Services. These are "information" services rather than "telecommunications" services..

Deregulated Services. Deregulated services, like inside wire maintenance service, are not telecommunications services because they do not involve transmission of information.

Promotions. The FCC excluded promotions lasting less than 90 days, but the Commission should consider extending that time period.

The Act. §251(c)(4)(A) requires incumbents "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."

§3(a)(51) defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

§3(a)(48) defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

§3(a)(41) defines "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."

FCC Rules. §51.613(a)(2) establishes a 90 day limit for promotional rates. It provides:

Short term promotions. An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:

- (A) such promotions involve rates that will be in effect for no more than 90 days; and
- (B) the incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates.

§51.613(b) prevents an incumbent from imposing restrictions beyond the restrictions in §51.613(a) unless it proves to the state commission that the restriction is reasonable and nondiscriminatory.

FCC Order. ¶871 generally requires a wholesale rate for each retail service. In ¶872, the FCC declined to list retail services because the information is in the incumbent's retail tariffs. In ¶948, the FCC concludes that promotional offerings are not exempt from the resale provisions of the Act. In ¶949, the FCC concludes that short term promotions are not retail rates. In ¶950, the FCC concluded that 90 days is the most appropriate maximum duration for a non-retail promotional rate.

Washington Law/Policy. Resale is "essential" to the growth of competition. UT-941464, Fourth Supplemental Order at 17-19.

Decision. The Act clearly says "any" retail service, so the questions is whether U S WEST's limitations involve retail services:

Enhanced Services. Information services are not telecommunications services, so U S WEST need not offer for resale "enhanced" services which qualify as "information" services. On the other hand, it must offer any "enhanced" services which do qualify as "telecommunications" services.

Deregulated Services. While the FCC directs attention to the incumbent's retail tariffs in determining whether a service is a retail service, the FCC also recognizes that state commissions may have authority to require an incumbent to offer other intrastate services for resale. To the extent U S WEST provides deregulated services at retail, and those services qualify as "telecommunications" services, U S WEST must offer the services for resale.

Promotions. The FCC reasonably concluded that a promotional rate with a duration of more than 90 days is a retail rate. The rule is not subject to the stay, so the Arbitrator will apply it.

» *Issue 27* MCImetro prevails.

» *Issue 28* MCImetro prevails.

B. Issue 10: Collocation Space

Issue. At what point should the Commission require U S WEST to allow MCImetro to collocate equipment?

MCImetro's Position. MCImetro's requests collocation at wire centers, local serving offices, central offices, controlled environmental vaults, and Environmental Huts. To the extent collocation is not feasible at a particular location, U S WEST has the burden of proving unfeasibility to the Commission.

U S WEST's Position. U S WEST proposes to allow collocation only at central office buildings housing end office or tandem switches. This is necessary to comply with a fundamental tenet of previous FCC collocation orders: physical segregation of local exchange carrier and interconnector equipment. There are space constraints in cable vaults and in other non-end office structures which preclude U S WEST, as a general matter, from ensuring that adequate space exists for physical separation from U S WEST's equipment. The possibility of space limitations should prevent the Commission from making a blanket determination that collocation at anything other than central offices is technically feasible. The Commission should allow U S WEST to handle specific requests for collocation in non-end office structures through the bona fide request process.

The Act. §251(c)(2) requires all incumbent local exchange carriers to provide interconnection "at any technically feasible point."

§251(c)(6) requires collocation of new entrant equipment "at the premises of the local exchange carrier."

FCC Rules. §1.5 broadly defines "premises" as "an incumbent LEC's central offices and serving wire centers, as well as all buildings or similar structures owned or leased by an incumbent LEC that house its network facilities, and all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures."

FCC Order. In ¶573, the FCC's adopted the broad definition after noting that the Act uses the term "premises" in a variety of contexts.

Decision. §251(c)(2) requires U S WEST to interconnect at any technically feasible location and the FCC broadly defined the term "premises" for collocation of equipment. U S WEST cannot refuse to interconnect at any permissible location under the FCC's rule without showing technical unfeasibility. Since technical feasibility is a factual issue depending on the premises and the equipment MCImetro proposes to install, interconnection at points other than switching centers and mid-span fiber meets should be the subject of a bona fide request process. There is an inherent presumption of technical feasibility in the statute because U S WEST has the burden of proving lack of feasibility. The contract should presume feasibility.

» *Issue 10* MCImetro Prevails.

C. Issue 1a: Interconnection

Issue. Should the Commission require U S WEST to interconnect at a single point in each LATA?

MCImetro's Position. MCImetro seeks a single point of interconnection in each LATA. It is technically feasible because MCImetro is interconnecting on that basis in other states. It is important because interconnection in every free calling area, as U S WEST proposes, is not efficient for the type of network MCImetro plans to install and would greatly slow entry by forcing MCImetro to perform extra construction. It also would force MCImetro to mirror U S WEST's technology and network architecture. U S WEST's network employs a large number of switches, within a hierarchical system, with relatively short subscriber loops. In contrast, MCImetro's local network employs technology, particularly optical fiber rings, that does not require as many switches. At least at this point in time, MCImetro's switches serve areas at least equal to the service area for a U S WEST tandem.

U S WEST Position. U S WEST continues to assert that the Commission should not give any interconnecting carrier the unilateral right to designate only one point of interconnection per LATA. At a minimum, the Commission should require interconnecting carriers to establish at least one point of interconnection in each local calling area where they offer facilities-based local telecommunications service. A single interconnection point within the LATA could require U S WEST to provide transport between, for example, Seattle and Bellingham just to enable an MCImetro customer in Bellingham call a U S WEST customer in Bellingham. MCImetro would compensate U S WEST only for the transport and termination of a local call, even though the routing for this call is toll routing, using toll facilities, and U S WEST would otherwise receive switched access revenues. Placing U S WEST at an economic disadvantage by imposing inefficiencies on U S WEST will harm both U S WEST and competition.

FCC Order. In ¶209 the FCC concluded that the Act gives new entrants the right to make unilateral decisions regarding interconnection points.

Washington Law/Policy. At page 45 of the Fourth Supplemental Order in Docket No. 941414, the Commission concluded that new entrants should have flexibility in configuring their networks. The Commission also concluded that its interconnection policy should not force new entrants to adopt the incumbent's network structure.

Decision. The Act gives MCImetro the right to unilaterally select interconnection points. Neither the Act nor the FCC rules specifically address the concept of a single interconnection point for each LATA. The concept is consistent with the Act's competitive objectives because it prevents the incumbent's network

structure and local calling policies from becoming a barrier to entry. It also is consistent with the policies the FCC and this Commission have adopted regarding flexibility in network design for new entrants.

» *Issue 1a* MCImetro Prevails.

VIII. PRICING

A. Generic Pricing Proceeding

On September 17, 1996, Sprint Communications Company L. P. (Sprint) petitioned to intervene in this and other all other pending arbitration dockets. Sprint sought to remove costing and pricing issues to a generic proceeding.

As a result of that request, the Commission has started a generic proceeding to consider costing and pricing issues. *See* UT-960369.⁵ The costing and pricing decisions in this arbitration will result in interim rates.

B. Eighth Circuit Stay

On October 15, 1996, the Eighth Circuit stayed a variety of FCC rules relating to costing and pricing. On November 1, the Court partially lifted the stay. To the extent the stay is effective, this Report looks to the FCC's rationale for adopting the rule rather than the rule itself.

C. Party Positions

1. In General

a) Elements and Functions

The parties agree that the Commission should base prices for access and network elements on total element long-run incremental cost (TELRIC) plus portion of forward looking shared and common costs. They disagree about methodology.

⁵ In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport & Termination, and Resale, Docket UT-960369 *et. al.*, Order Instituting Investigations, November 21, 1996.

b) Wholesale Discount

U S WEST focuses on the costs it would actually avoid from an individual wholesale transaction while MCImetro focuses on the costs U S WEST would avoid if it discontinued retail operations. The difference in their approaches produces different methodologies.

2. Cost Measurement

a. Elements & Functions

MCImetro. The "Hatfield" Model provides the best estimate of Total Element Long Run Incremental Cost (TELRIC). It produces an average loop cost for U S WEST of \$11.33 per line per month.

U S WEST. U S WEST's internal model provides the best estimate because it uses company-specific data, includes nonrecurring charges, and estimates prices for all elements. It produces an average loop cost of \$38.22 per line per month.

b. Wholesale Discount

MCImetro. The appropriate discount equals the costs U S WEST would no longer incur if it ceased retailing and provided service only through resellers. Those costs average 22.56 percent of U S WEST's retail rate.

U S WEST. MCImetro's single discount rate is not tailored to U S WEST's operations. U S WEST's cost study produces service-by-service discounts which accurately reflect its avoided costs. Those discounts are:

<u>Discount</u>	<u>Service</u>
1.01%	Listing Service, Central Office Features, and Information Services
0.00%	Basic Residential Service ⁶
4.35%	Toll Services (including MTS, WATS, and 800)
4.41%	ISDN/ACS Services
8.17%	Basic Business Service (including PBX)
0.00%	Private Line Service ⁷

⁶ U S WEST's cost model produces a figure of 3.86 percent, but U S WEST opposes a wholesale discount for residential service on the grounds that it provides the service below cost.

⁷ U S WEST's cost model produces a figure of 8.64 percent, but U S WEST opposes a discount for private line service on the grounds that it offers private line services at a wholesale prices.

U S WEST opposes wholesale discounts for services subject to volume discounts. U S WEST's volume discounts already reflect savings from lower retailing costs. They also reflect the benefits to U S WEST from volume and time commitments.

D. Transport & Termination

1. Issues 88 & 92: Bill & Keep

Issue. Should the parties use the "bill and keep" approach for reciprocal compensation?

MCImetro's Position. MCImetro favors a bill and keep plan as long as it applies to both termination and transport elements, including any tandem switching.

U S WEST's Position. U S WEST opposes bill and keep. Bill and keep arrangements, while historically used as a method of compensation in a monopoly environment are not appropriate compensation arrangements in a competitive local exchange environment because it is no longer safe to assume that traffic will be in balance. Bill and keep arrangements also:

- (a) create serious rate arbitrage opportunities, particularly when local call termination is offered for "free" and toll call termination is offered with charges including the local switching and carrier common line charge;
- (b) create the opportunities to shift costs to a competitor through the shifting of interconnection points;
- (c) result in "in kind" compensation that is not equal, because traffic volumes are not equal;
- (d) fail to properly compensate U S WEST for tandem transport; and
- (e) fail to provide U S WEST any compensation for the costs incurred in providing call transit service to CLECs because all of the calls originate or terminate on other carriers' networks.
- (f) is not an economically sound pricing principle, leading to over use of the "free" good.

Bill and keep is without precedent in any other industry. Instead, the Arbitrator should establish separate forward looking prices for call transit, call transport, and call termination.⁸

⁸ Call transport occurs when one carrier originates a call and another terminates it. Call transit occurs when the carrier neither originates nor terminates the call.

The Act. §252(d)(1) provides standards for state commissions to follow in setting terms and conditions for transportation and termination of traffic. The terms and conditions must provide for "mutual and reciprocal" recovery of "reasonably approximate additional" transportation and termination costs for calls that originate on the other carrier's network. This specifically does not preclude:

- mutual recovery of costs through the offsetting of reciprocal obligations, or
- arrangements to waive mutual recovery (such as bill-and-keep).

It specifically prohibits the FCC or state commission from:

- specifically identifying the additional costs of transporting or terminating calls through a rate regulation proceeding, or
- requiring carriers to maintain records of the additional costs.

FCC Order. In ¶1111 through ¶1113, the FCC discussed Bill & Keep and concluded that Bill & Keep met the "mutual and reciprocal recovery" standard. In ¶1113 it concluded that states may presume traffic balance until one party or the other proves otherwise.

Washington Law/Policy. The Commission's preferred outcome is Bill & Keep. The Commission, in the Docket No. 641464, expressed a preference for a capacity charge method of compensation rather than U S WEST's minutes of use approach. *Fourth Supplemental Order* at 29-30.

Decision. The Commission's preferred outcome (Bill & Keep) is consistent with the Act, so the Arbitrator adopts MCImetro's position.

- » *Issue 88* MCImetro Prevails.
- » *Issue 92* MCImetro Prevails.

2. Issues 85-87, 89, 90, & 93: (Moot)

The Arbitrator's decision to adopt bill and keep as the interim compensation mechanism for transport and termination moots the following issues:

<u>Issue #</u>	<u>Description</u>
Issue 85	Should the Commission establish separate rates for call transit, and call termination?
Issue 86	What termination rate should the Commission establish?
Issue 87	To what extent should the Commission establish symmetry between U S WEST's charges and MCImetro's charges?

- Issue 89 Should the Commission establish on-peak and off-peak prices for call termination?
- Issue 90 What transport rate should the Commission establish?
- Issue 93 What rate should the Commission establish for tandem switching?

3. Issue 95: Universal Service Charge

Agreement. The parties agree on the absence of a universal service charge.

Issue. Both parties assert that there is no substantive disagreement.

Decision. The Arbitrator will simply strike this issue.

» *Issue 95* Issue stricken.

E. Interconnection & Network Elements

1. Issues 63, 68, 77, & 94: General Methodology

Note: Given the "bill and keep" decision above on page 19, Issue 94 now only relates to call transit.

Issue. How should the Arbitrator calculate the costs of interconnection and network elements? What are the resulting prices?

MCImetro's Position. Pricing should, to the extent possible, replicate conditions of a competitive market. In a competitive market, pricing reflects incremental costs and efficient use of the best available technology. This is a forward looking approach which avoids saddling new entrants and consumers with inefficiencies resulting from U S WEST's years as a monopolist.

U S WEST, as a monopolist, did not face competitive pressures to make economically efficient decisions concerning new technologies and network design. Given those inefficiencies, an appropriate TELRIC study must reflect:

- Use of the most efficient telecommunications technology currently available;
- The lowest-cost network configuration given the existing location of U S WEST's wire centers;
- A forward-looking cost of capital; and
- Economic depreciation rates.

MCImetro's Cost Model. MCImetro proposes use of the Hatfield Model Version 2.2. The Model fully implements TELRIC pricing because the Hatfield Model:

- Assumes a period long enough for all costs to become variable or avoidable.
- Studies an increment equal to the entire quantity of the network element.
- Uses existing wire center locations and develops investments using the most efficient, currently available technologies.
- Includes a forward-looking cost of capital.
- Does not use embedded costs.
- Does not include funding for any universal service mechanisms.
- Uses publicly available generic data and permits scrutiny by both commissions and interested parties.
- Uses cost-causative principles to identify forward-looking costs with specific network elements.
- Includes in the cost of network elements all costs that the FCC has specifically discussed as being part of the direct cost of network elements.
- Estimates the overhead costs of a wholesale-only carrier by adding a 10% markup.⁹

MCImetro used current Washington figures for cost of capital, depreciation rates, and tax rates. Its points for, and U S WEST's points against, the Hatfield Model are:

<u>Hatfield Model</u> Model Type	ARGUMENT IN FAVOR: Excel spreadsheet; a transparent, adaptable model whose assumptions and calculations are open and susceptible of review and verification.
Theoretical Basis	ARGUMENT IN FAVOR: The model applies TELRIC principles by focusing on forward looking, best available technology, least cost, long run economic costs.
Data Sources	ARGUMENT IN FAVOR: The Model uses publicly available data and allows the user to modify many of its inputs to reflect specific conditions.

⁹ This approach ensures that each network element recovers at least its reasonable share of common costs (to the extent they exist). It allows a firm which charges Hatfield Model prices for each element to solely engage in providing network elements and recover all economic costs of doing business, including a reasonable profit, but no more.

	ARGUMENT AGAINST: Default data reflects national averages; MCImetro used Washington data only when favorable to MCImetro; MCImetro did not support opinions of Hatfield's expert
Key Assumptions	ARGUMENT IN FAVOR: Scorched node, objective fill factors, forward looking economic depreciation, and rate of return equals forward looking cost of capital. ARGUMENT AGAINST: 100% sharing of plant structures compared with U S WEST's 20% experience; unrealistically high fill factors; monopoly era cost of capital and depreciation; invalid 3% reduction in shared and common costs; drop cost should be \$150 rather than \$40
General Operation	ARGUMENT IN FAVOR: The model constructs a network and measures costs by census block group. ARGUMENT AGAINST: U S WEST's aerial photographs show that the Model's distribution loop lengths are too short.
Outputs	ARGUMENT IN FAVOR: The cost an efficient producer would incur in a competitive market. ARGUMENT AGAINST: MCImetro did not provide prices for all elements.

MCImetro did not propose nonrecurring charges or a price for call transit. It asserts that the Hatfield fully reflects costs so that nonrecurring charges are not necessary.

MCImetro's Response to U S WEST. MCImetro responds to U S WEST's criticisms as follows:

- The Hatfield Model accounts for growth by use of conservative fill factors, rather engineering fill factors, for capacity to accommodate growth.
- The photographs U S WEST' introduced are misleading. U S WEST claimed a density of 800 lines per mile for Olympia and 1100 per square mile for Seattle. At one line per residence and four lines per commercial building, the Olympia photo has 372 lines on a scale of 2500 x 2500 feet for a density of 1690 per square mile. The Seattle photo has 3129 lines for a density of 4286 per square mile. (This is based on an actual scale of 4,500 x 4,500 feet rather than one mile square). The Seattle photo reasonably represents the highest density category in the Hatfield study. At that density, the photo would include eight spans of cable per census block. If there were exactly four census blocks in the photo, there would be 32 spans to cover the area rather than the six spans U S WEST's witness drew on the photo.

MCImetro Prices. MCImetro proposes the prices in Appendix "A."

U S WEST's Position. The Arbitrator and Commission must take a fresh look at the current version of the Hatfield Model and analyze it independent of the Commission's ruling in the rate case. If the Arbitrator decides to use the Hatfield Model, he should make the following adjustments:

- Modify the assumption that the costs of installing plant will be shared among three utilities 100% of the time to provide for sharing no more than 20% of the time;
- Use a risk adjusted cost of capital that reflects a competitive market;
- Use economic depreciation lives to reflect forward-looking technology;
- Modify the drop cost to reflect the drop costs that U S WEST actually incurs;
- Increase the investment in distribution to allow for complete coverage of all homes in census block groups;
- Use a figure for corporate overhead expense that does not assume an automatic reduction in expenses for undefined "inefficiencies" in U S WEST's operations;
- Increase the costs of installing cable and conduit to account for higher costs in areas with higher population densities; and
- Assume that aerial placement of cable does not exceed 20%, the amount of aerial placement that exists in Washington.

U S WEST's Cost Model. U S WEST's cost model uses U S WEST's actual experiences in building a network in Washington and elsewhere to project forward-looking costs to confirm the validity of the assumptions and values used in the model. U S WEST assigned an internal team of cost analysts to work with experts from the Law and Economics Consulting Group in conducting a review of the actual costs incurred by U S WEST in providing similar network components. That group also reviewed the cost results produced by others in the industry and validated key inputs by focusing with competitors' actions in the marketplace.

The reliability and validity of the U S WEST model is demonstrated further by other realistic assumptions in the model, including:

- economic depreciation rates that are appropriate for the competitive environment established by the Act;
- capital costs that are based upon actual conditions prevailing in debt and equity markets and that account for the increased risks U S WEST faces in the competitive environment that the Act establishes; and

- construction of an efficient network configuration based upon use of the best available technology, the most efficient mix of resources (land, labor, and capital), and the existing grid of U S WEST network nodes.

U S WEST's model produces estimates much higher than the Hatfield Model. U S WEST's points for, and MCImetro's points against, the model are:

U S WEST Model

Model Type	<p>ARGUMENT IN FAVOR: Proprietary.</p> <p>ARGUMENT AGAINST: The U S WEST "cost study" is not a cost study at all; it is a collection of cost studies whose inner workings are not subject to review.</p>
Theoretical Basis	<p>ARGUMENT IN FAVOR: The model complies with TELRIC methodology.</p> <p>ARGUMENT AGAINST: The models do not represent pure forward-looking economic costs; it contains a mixture of forward-looking cost, revenue replacement, and capture of monopoly rents.</p>
Data Sources	<p>ARGUMENT IN FAVOR: Internal Washington data.</p> <p>ARGUMENT AGAINST: Internal data is hard to verify.</p>
Key Assumptions	<p>ARGUMENT IN FAVOR: Cost of capital = 11.4%; forward looking depreciation reflecting that copper is a dying technology.</p> <p>ARGUMENT AGAINST: The models assume that 82% of loops would be "difficult placements" causing streets, sidewalks and pipes etc. to be dug up and replaced; fill factors are unrealistically low.</p>
Outputs	<p>ARGUMENT IN FAVOR: The figures reasonable in light of RFP bids for specific projects, U S WEST's broadband trial in Omaha, Nebraska, and absence of new entrants constructing ubiquitous networks in Washington.</p> <p>ARGUMENT AGAINST: In the recent rate case, U S WEST claimed its \$15.77 rate for measured business service (almost identical to the loop element) covered its forward-looking economic cost, a proportionate share of common costs and a "subsidy" for universal service. In this proceeding, U S WEST's asserts a loop cost of about \$36.</p>

U S WEST opposes deaveraging unless and until the Commission deaverages its retail rates.

U S WEST Prices. U S WEST proposes the prices in Appendix "B."

The Act. §252(d)(1) provides standards for state commissions to follow in setting interconnection and element prices. The state commission:

- must base rates on the cost of providing the connection or element;
- cannot develop the rates through a rate-of-return or other rate-based proceeding; and
- may include a reasonable profit.

The FCC Order. In ¶ 679, the FCC concluded that pricing for collocation, interconnection, and network elements should replicate the results of a competitive market. In ¶ 687, the FCC noted factors that would tend to mitigate any adverse risk-related impacts from competition an incumbent's cost of capital: In ¶ 688, the FCC noted similar factors with respect to sunk costs:

Washington Law/Policy. The Commission rejected U S WEST cost studies in Docket No. UT-941464. The Commission stated:

For reasons set out above, the Commission is unable to identify the cost of various products or offerings in this proceeding. The Commission is also unable to identify the proper level of contribution to be allowed in the prices of these various products or offerings. The Commission orders the company to file future cost studies consistent with this order. These studies should be TSLRIC studies, and as such should not include shared residual or common costs. The company should recognize that its protracted inability to produce respectable, auditable, "checkable" cost studies as detrimental to its own self-interest. It must do better in this regard if it expects to fare better in persuading the Commission of the rightness of its positions.

Fourth Supplemental Order at 90 - 91.

In Docket No. UT-950200, the Commission also criticized the company's studies:

The Commission has, on numerous occasions, most recently in the "term loops" order, expressed its frustration with its inability to penetrate U S WEST's calculation of cost

The company's costing models have been described as cryptic and a "black box" in testimony or briefs in the pending interconnection proceeding. Other testimony has concluded that review of these costing models is virtually impossible.

Ninth Supplemental Order at 2.

In the final order for Docket No. UT-950200, the Commission rejected U S WEST's cost studies in favor of the Hatfield Model:

The Commission rejects U S WEST's cost studies for local service and local loop. The most reasonable and accurate measure of incremental costs for these services on this record is provided by the Hatfield Model sponsored by AT&T. While U S WEST complained that the Hatfield Model is inaccurate as to U S WEST, it provided little verification of its claim. We are satisfied from comparisons of underlying assumptions and comparisons of inputs that it accurately reflects costs incurred by U S WEST and that, if it errs, it likely errs on the high side through the inclusion of an overhead factor. Correcting the U S WEST local exchange model with the tools and input available also provides verification for the Hatfield Model.

Fifteenth Supplemental Order at 86.

Decision. Both parties updated their models in the time since the recent U S WEST rate case. While the update to the Hatfield Model resulted in a small increase in the local loop cost (\$8.96 in the rate case and \$11.33 in this proceeding), the Arbitrator is concerned that:

- U S WEST's current \$38 loop cost is 2 ½ times the figure in the recent rate case.¹⁰
- The loop cost is more than double U S WEST's \$15.77 rate case proposal for measured business service. In the rate case, U S WEST contended that \$15.77 would fully cover forward-looking economic costs plus an allocation of shared costs and a "subsidy" for universal service.

²² See *Fifteenth Supplemental Order at 90.*

- On June 7, 1996, U S WEST filed Advice No. 2775T proposing unbundled loop rates ranging from \$16.83 to \$19.24.¹¹ These proposed rates are approximately one-half of what U S WEST now contends is its cost of unbundled loop service.

While both parties rely on expert opinions in selecting inputs for their models, the Hatfield Model gives users an opportunity to change the defaults when they have better information. The Hatfield Model also is more open to user examination and sensitivity analysis than U S WEST's model. U S WEST's model retains features which the Commission criticized in recent orders, so the Arbitrator concludes that the Hatfield Model is the better platform for developing interim rates.

The Arbitrator agrees with some, but not all, of U S WEST's proposed changes:

<u>Outcome</u>	<u>Topic/Rationale</u>
U S WEST number	<p>TOPIC: Percent of sharing for outside plant structures.</p> <p>RATIONALE: Hatfield essentially assumes that U S WEST bears 33% of the cost of outside plant structures while U S WEST asserts that it actually bears 80% of the cost. U S WEST's figure is more reasonable than Hatfield's assumption that U S WEST shares facilities with an electric utility and cable company 100% of the time.</p>
MCImetro number	<p>TOPIC: Risk adjusted cost of capital.</p> <p>RATIONALE: While U S WEST's argument makes intuitive sense, the Act created a complex mix of risks and opportunities for RBOC's and the net impact on U S WEST's cost of capital is not clear.</p>
MCImetro number	<p>TOPIC: Economic depreciation lives.</p> <p>RATIONALE: It also is not clear whether U S WEST's depreciation lives are better estimates than the ones the Commission adopted in the rate case.</p>
MCImetro number	<p>TOPIC: Drop costs.</p> <p>RATIONALE: To the extent the Hatfield Model constructs a different network than U S WEST's network, drop costs are likely to be different. It is not clear that the broadband drop has the same cost as a voice-grade drop.</p>

¹¹ See Docket No. UT-941464, Eighteenth Supplemental Order at 3.

MCImetro number TOPIC: Distribution plant length.

RATIONALE: U S WEST did not show the actual number of census group blocks on the photographs. The photographs appear to cover an area much larger and more dense than U S WEST assumed.

U S WEST number TOPIC: Corporate Overhead

RATIONALE: The three percent reduction in corporate overhead appears to be an arbitrary number.

MCImetro number TOPIC: Cable and Conduit Costs.

RATIONALE: U S WEST's 82 percent "difficult" installation assumption is unreasonably high and the record does not permit the Arbitrator to select another number.

U S WEST number TOPIC: Aerial Cable.

RATIONALE: The actual number probably is a more realistic representation of the impact of local topography and government requirements in U S WEST's service area.

Call Transit Charges. The Arbitrator selects U S WEST's call transit charges because MCImetro did not propose call transit charges.

Nonrecurring Charges. The Arbitrator selects U S WEST's nonrecurring charges because MCImetro did not propose nonrecurring charges. MCImetro asserts that the Hatfield model recovers all costs but, unless the Commission decides in the generic case to recover all nonrecurring costs through recurring charges, the short duration of interim rates will prevent U S WEST from recovering nonrecurring costs. U S WEST's costs studies probably overstate nonrecurring costs to a similar extent as other costs, so the Arbitrator declines to require the parties to rerun the Hatfield model with the Arbitrator's choice of assumptions. The lower-than-perfect Hatfield numbers will tend to offset, albeit in a less-than-perfect way, the higher-than-perfect U S WEST nonrecurring cost numbers. A "perfect" match between TELRIC and prices is something the Commission will be in a better position to pursue, to the extent anyone can perfectly estimate forward-looking costs over the long term, in the generic costing/pricing proceeding. In any event, this is "best offer" arbitration and MCImetro's offer is the better one.

Price Deaveraging. The Arbitrator does not require U S WEST to deaverage prices because it would be a policy change which the Commission, if it desires to do so, should make rather than the Arbitrator. The Commission will have an opportunity to consider the policy in the generic case.

- » *Issue 63* Neither party prevails. The Arbitrator selects U S WEST's offer for call transit charges, nonrecurring charges, and deaveraging. He selects MCImetro's offer for the other rates it proposed and U S WEST's offer, as the only available offer, for any other rates which MCImetro did not propose.
- » *Issue 68* Neither party prevails. The Arbitrator selects U S WEST's offer for call transit charges, nonrecurring charges, and deaveraging. He selects MCImetro's offer for the other rates it proposed and U S WEST's offer, as the only available offer, for any other rates which MCImetro did not propose.
- » *Issue 77* Neither party prevails. The Arbitrator selects U S WEST's offer for call transit charges, nonrecurring charges, and deaveraging. He selects MCImetro's offer for the other rates it proposed and U S WEST's offer, as the only available offer, for any other rates which MCImetro did not propose.
- » *Issue 94* Neither party prevails. The Arbitrator selects U S WEST's offer for call transit charges, nonrecurring charges, and deaveraging. He selects MCImetro's offer for the other rates it proposed and U S WEST's offer, as the only available offer, for any other rates which MCImetro did not propose.

2. Issues 79 & 91: Network Development

Issue. Should the Commission allow U S WEST to charge nonrecurring network development fees?

MCImetro's Position. Prices should not exceed TELRIC plus a reasonable allocation of common costs.

U S WEST's Position. U S WEST should recover costs in the way it incurs costs.

FCC Order. In ¶743, the FCC stated that, as general rule, incumbents should recover costs in the way they incur costs. In ¶747, the FCC expressed concern about the impact of nonrecurring charges on entry. ¶749, allows state commissions to follow common telecommunications practice by requiring incumbents

to recover nonrecurring costs over a reasonable period of time. ¶750, requires state commissions to equitably spread nonrecurring charges among beneficiaries and ensure that an incumbent which imposes nonrecurring charges does not recover the cost more than once. ¶751 specifically addresses equity and double recovery when the first entrant abandons an asset before the end of its economic life. It requires equitable allocation of costs between the first and second entrant. It also prohibits a solution which allows the incumbent to recover the cost more than once:

Decision. This issue requires the Commission to balance U S WEST's reasonable desire to avoid financing its competitors against the logistical problems arising from the need to:

- equitably allocate nonrecurring costs among new entrants sharing an asset;
- equitably allocate nonrecurring costs between present and future beneficiaries of the asset; and
- avoid double recovery.

It is a problem which the industry and regulatory agencies worked out a long time ago in the context of nonrecurring charges for end users. In general terms, the resulting tariffs recover a reasonable level of nonrecurring costs through recurring charges over a reasonable period of time. The old solution did not follow strict cost causation principles, in contrast to U S WEST's proposal in this case, so the Arbitrator selects MCImetro's offer as the interim solution for these issues pending the generic cost proceeding.

» *Issue 79* MCImetro prevails.

» *Issue 91* MCImetro prevails.

3. Issue 83: Elements Outside FCC Mandate

Issue. What prices should prevail for elements outside the FCC mandate.

MCImetro's Position. The Commission should require TELRIC pricing (including a reasonable allocation of forward-looking common costs) for all elements.

U S WEST's Position. If U S WEST agrees to provide additional elements, it should be able to use its existing tariffs for special construction.

Decision. The special construction tariff would not be appropriate if the additional element already exists. In any event, pricing should not depend on whether the Commission has required U S WEST to provide the element. U S WEST should price additional elements in the same way it prices similar existing elements. (For example, if U S WEST dedicates the facility to MCImetro, U S WEST should charge a flat rate rather than a usage-sensitive rate).

» *Issue 83* MCImetro prevails.

4. Issue 78: Price Deaveraging

Issue. Should the Commission deaverage prices?

MCImetro's Position. MCImetro proposes three zones.

U S WEST's Position. The Commission should not geographically deaverage prices for network elements until it deaverages retail rates.

The Act. The Act does not specifically address deaveraging.

FCC Order. In ¶764, the FCC concluded that deaveraged prices would more accurately reflect costs. In ¶765, the FCC concluded that states should implement at least three zones:

Washington Law/Policy. In U S WEST's recent rate case, the Commission declined to deaverage rates. Docket No. UT-950200, 15th Supplemental Order at 106-107.

Decision. While the Commission's policy is not consistent with the FCC's policy, the Act does not require deaveraging. Deaveraging is an issue which the Commission may consider in the generic case. It would not be appropriate for the Arbitrator to change the policy for an interim rate.

» *Issue 78* MCImetro prevails.

F. Services for Resale

1. Issue 32: Factors to Consider

Issue. What factors should the Commission consider in setting wholesale prices?

MCImetro's Position. The Commission should not consider non-price or policy considerations.

U S WEST's Position. The Commission should ensure that wholesale prices do not discourage facilities-based competition.

FCC Order. In ¶914, the FCC specifically rejected the concept of factoring policy considerations into wholesale prices.

Decision. The pricing standards in §252(d) require the Commission to base prices on costs. Nothing in the Act states a preference for facilities-based competition over resale. A preference for one form of competition, and against other forms, would be inconsistent with the Act's focus on costs and the goal of replacing regulatory oversight with self-regulating markets.

» *Issue 32* MCImetro prevails.

2. Issues 31, 35, & 37: General Methodology

Issue. How should the Commission calculate avoided costs?

MCImetro's Position. The proper method is to subtract marketing, billing, collection, and other retailing costs from the retail price. The proper method for measuring retailing costs is to identify the costs which U S WEST would no longer incur if it sold all services through resellers. This produces a wholesale discount which covers all costs which U S WEST could reasonably avoid. They are the costs which the FCC identified in its order.

U S WEST's Position. The proper method is to subtract only the retailing costs which U S WEST actually avoids in a wholesale transaction and then to add any additional cost of selling at wholesale.

The Act. §252(d)(3) requires the Commission to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."

FCC Order. In ¶911, the FCC concluded that Congress did not intend to allow incumbents to maintain artificially high wholesale pricing by declining to reduce their expenditures to the degree that cost are really avoidable. As a result, it adopted an "avoidable" cost standard.

Washington Law/Policy. The Commission's preferred outcome is Long Run Incremental Cost pricing.

Decision. The concept of deducting only retailing costs which U S WEST does not incur for individual transactions, and then adding wholesaling costs, can produce the nonsensical result of wholesale prices higher than retail prices. It is more consistent with the Act to interpret the phrase "will be avoided" as including all of the costs that the LEC incurs in maintaining a retail, as opposed to a wholesale, business.

- » *Issue 31* MCImetro prevails as to general methodology.
- » *Issue 35* MCImetro prevails as to general methodology.
- » *Issue 37* MCImetro prevails as to general methodology.

3. Issue 40: Selection of a Cost Study

Issue. Which cost study should the Commission use?

MCImetro's Position. The FCC properly focused on economically efficient entry by identifying the costs which an efficient firm would avoid by switching from retailing to wholesaling. The FCC model is the one MCImetro proposes for this arbitration.

Argument in Favor of Its Cost Study. MCImetro's avoided cost model uses publicly available U S WEST cost data for 1995. It treats direct costs of providing retail services as fully avoidable and indirect costs as partially avoidable in the proportion of direct retail expenses to total expenses. It reflects wholesaling costs by reducing avoided costs in certain directly avoided categories from 100% to 90%.¹² That represents a conservative approach because, if anything, it overestimates the modest incremental expense U S WEST will incur to service the accounts of resellers.

Argument Against U S WEST's Cost Study. The U S WEST avoided cost study has the same "black box" characteristics that have typified U S WEST cost studies throughout these proceedings.

U S WEST's Position. The Commission may not use FCC proxy wholesale prices because U S WEST presented an appropriate cost study. The appropriate focus for a cost study is U S WEST's costs for the specific services it will offer for resale. This requires analysis of U S WEST cost accounts and allocation of costs to specific services.

¹² In this regard, MCImetro's approach is identical to that of the FCC. *FCC Order at ¶ 928.*

Argument in Favor of Its Cost Study. U S WEST's study uses internal records to analyze all costs for each service and calculate a discount for each service. This includes data from U S WEST's carrier access group which has sold services at wholesale for many years. That data shows that U S WEST will avoid no more than 76 percent of marketing costs and 72 percent of customer service costs. The overall result of the cost study is a discount for each of the six services U S WEST proposes to provide.

Argument Against MCImetro's Cost Study. The MCImetro model uses the FCC's fundamentally flawed inputs and fails to reflect that U S WEST's retailing costs vary from service to service. The inputs are ARMIS data which, while specific to U S WEST, reflect a broad aggregation of financial data relating to both retail and other services. Other problems are:

- MCImetro classifies all Directory Assistance and Operator Services costs as "avoided" even though only a small percentage of those costs are part of the retail price. If MCImetro had simply excluded the costs from the analysis, as it should have, the analysis would have shown a three percent lower discount.
- MCImetro ignores capital costs for the plant and facilities it will use to provide wholesale services. This inflates the discount by at least 1.6 percent.
- MCImetro also ignores the property taxes U S WEST would pay on land and buildings it uses to perform wholesale operations.
- MCImetro used erroneous ARMIS data in listing U S WEST's total operating expenses and did not include all components of the "total operating expense" from the ARMIS report for U S WEST. Neither error is material, but they reflect a lack of care in conducting the cost study.

MCImetro's Response. The proposed adjustments for property taxes and Operator Service/Directory Assistance are not appropriate:

- Property taxes should decrease as the incumbent avoids sales, marketing and customer service staff to support retailing operations. These costs should be avoided in a portion relatively equal to avoided costs already identified in MCImetro's study. Since these costs should be avoided in the same portion as the percentage of avoided costs calculated before considering property taxes, this adjustment has absolutely no effect on the resulting avoided cost discount.

- If the Commission excludes Directory Assistance and Operator Services, it should exclude all services which are not part of retail operations. This would include access, public payphone, and any other incumbent operations which U S WEST does not make available for resale. U S WEST, however, only chose to adjust costs which work in its favor to the detriment of the avoided cost discount.

FCC Order. In ¶912, the FCC concluded that an avoided costs study should include indirect, or shared, costs. In ¶913, the FCC concluded that an avoided cost study should include a portion of the contribution to fixed costs and profit. In ¶916, the FCC concluded that both uniform (average) and service-specific discounts are appropriate approaches. In ¶917, the FCC identified direct retailing costs and established a presumption that they are avoidable:

All costs recorded in accounts 6611 (product management), 6612 (sales), 6613 (product advertising) and 6623 (customer services) are presumed to be avoidable. The costs in these [*82] accounts are the direct costs of serving customers. All costs recorded in accounts 6621 (call completion services) and 6622 (number services) are also presumed avoidable, because resellers have stated they will either provide these services themselves or contract for them separately from the LEC or from third parties. These presumptions regarding accounts 6611-6613 and 6621-6623 may be rebutted if an incumbent LEC proves to the state commission that specific costs in these accounts will be incurred with respect to services sold at wholesale, or that costs in these accounts are not included in the retail prices of the resold services.

In ¶918, the FCC identified indirect retailing costs and presumed them to be avoided in the proportion as direct retailing costs:

General support expenses (accounts 6121-6124), corporate operations expenses (accounts 6711, 6612, 6721-6728), and telecommunications uncollectibles (account 5301) are presumed to be avoided in proportion to the avoided direct expenses identified in the previous paragraph. Expenses recorded in these accounts are tied to the overall level of operations in which an incumbent LEC engages. Because the advent of wholesale operations will reduce the overall level of operations -- for example,

staffing should decrease because customer inquiries and billing [*83] and collection activity will decrease -- overhead and support expenses are in part avoided. We select the revenue offset account of 5301 rather than accounts 5300 or 6790 because account 5301 most directly represents overheads attributable to the services being resold.

In ¶919, the FCC established a presumption that plant expenses are not avoided.

Decision. There are problems with both parties' offers on this issue which prevent the Arbitrator from adopting either offer:

U S WEST. MCImetro correctly notes that the U S WEST study has "black box" characteristics which make it difficult to evaluate. U S WEST's approach to the wholesale discount issue has been to focus on the costs which U S WEST would avoid for individual wholesale transactions. That approach is not consistent with the general methodology the Arbitrator has adopted and the "black box" characteristics of the model prevent the Arbitrator from using it as the basis for constructing a discount.

MCImetro. MCImetro based its model on the FCC's presumptions and U S WEST correctly argues that the Arbitrator should not accept some of the FCC's decisions on the various ARMIS accounts:

Prevailing Party

U S WEST ACCOUNT: 6611 (Product Management)

RATIONALE: U S WEST will incur product management costs regardless of the nature of the sales transaction.

U S WEST ACCOUNT: 6612 (Sales Expenses)

RATIONALE: U S WEST rebutted the presumption by showing avoided marketing costs of only 76% for interexchange access.

MCImetro ACCOUNT: 6613 (Advertising)

RATIONALE: At this point in the development of a competitive market, there is no need for an incumbent to advertise wholesale services.

MCImetro ACCOUNT: 6621 (Operator Services) and 6622 (Directory Assistance)

RATIONALE: MCImetro subtracted these costs from the numerator but did not subtract the corresponding revenues from the denominator.

U S WEST ACCOUNT: 6623 (Customer Services)

RATIONALE: U S WEST rebutted the presumption by showing avoided customer service costs of only 72% for interexchange access.

MCImetro ACCOUNTS: 6121-6124 (General & Administrative)

RATIONALE: General & Administrative costs for avoided functions will be avoided.

MCImetro ACCOUNTS: 6711, 6612, 6721-6728 (Corporate Operations)

RATIONALE: Corporate costs for avoided functions will be avoided.

MCImetro ACCOUNT: 5301 (Uncollectables)

While U S WEST may have some uncollectables relating to MCImetro's customers, they should be relatively small because MCImetro is responsible for paying for the service.

U S WEST Plant & Plant Administrative Costs

RATIONALE: U S WEST will incur Plant & Plant Administrative costs regardless of the nature of the sales transaction.

While the Arbitrator concludes that the MCImetro model is the better model, he does not adopt MCImetro's position on all of the input values. He adopts U S WEST's changes in Appendix "C." The result is a single discount rate of 13.96 percent. The single rate may not send the best price signals, but its simplicity is an appropriate approach for an interim discount.

» *Issue 40* Neither party prevails. Adjustments to the MCImetro model produce a wholesale discount of 13.96 percent.

4. Issue 33: Packages

Issue. Should the Commission require U S WEST to offer a wholesale discount for service packages?

MCImetro's Position. U S WEST must provide any retail service, including packaged services, for resale at wholesale rates. There is a difference between a package discount and a wholesale discount. The package discount should reflect the lower cost of offering a group of services as a package while the wholesale discount reflects avoided retailing costs.

U S WEST's Position. Resellers may purchase discounted service packages, such as optional calling plans and contracts including volume and term discounts, but should not receive the average avoided cost discount on such packages. Package services are already discounted so they are not a "retail" service.

Decision. Packages are retail services because U S WEST offers them to end users. The package price may reflect:

- Lower costs from marketing the services as a group,
- Lower costs of providing services as a group,
- A lower contribution level, or
- A combination of those factors.

It is not possible from this record to determine the extent to which package prices reflect lower marketing costs. That is an issue for the generic proceeding. For this arbitration, the Arbitrator adopts MCImetro's position because it is more realistic than a zero discount for packages.

» *Issue 33* MCImetro Prevails.

5. Issue 34: Residential Services

Issue. Should the Commission require U S WEST to offer a wholesale discount for residential service?

MCImetro's Position. Residential services are retail services. A wholesale rate for residential services will not adversely affect U S WEST's margins because the decrease in U S WEST's revenues will be offset by a proportionate decrease in retailing costs.

U S WEST's Position. U S WEST is willing to resell residential service, but contends that the Commission should not require it to sell at a discount because it sells the service below cost.

Decision. U S WEST's position on the relationship between residential service costs and residential service prices differs from the conclusion the Commission reached in the recent rate case. Residential service may generate less

contribution to overhead and profit than some other services, but an appropriate wholesale discount should leave U S WEST with the same contribution from a wholesale transaction as a retail transaction.

» *Issue 34* MCImetro Prevails.

6. Issue 39: Construction & Other Additional Charges

Issue. Should the Commission permit U S WEST to impose construction charges or any other costs of compliance with the mandatory resale provisions of the Act which U S WEST does not similarly bill its own retail customers?

MCImetro's Position. Costs that U S WEST incurs to construct facilities are presumably included in the prices it charges its customers and, therefore, will be included in the prices it charges its resale customers. U S WEST's contention that these costs represent a "loss" to it is nonsensical. When U S WEST constructs new facilities, it does not demand that end user customers pay "up front" for those facilities. The provisions of the Act and state law which prohibit discrimination require that resellers enjoy the same treatment.

U S WEST's Position. The Arbitrator should rule that the same construction tariff that applies to end users should apply to resellers.

Decision. The actual amount that U S WEST charges end users for new construction is in its tariffs. Those tariff provisions should govern new construction charges for MCImetro when its resells a U S WEST service.

» *Issue 39* U S WEST Prevails.

IX. STRUCTURAL FACILITIES

A. Inside Plant

1. Issue 9: Types of Equipment

Issue. What equipment is "necessary" for interconnection or access to unbundled network elements?

MCImetro's Position. New entrants should be able to collocate Remote Switching Units because they perform concentrating functions and do not take more space or power than transmission equipment. Collocating remote switching units is a more technically efficient option and is critical for accessing unbundled loops.

U S WEST's Position. Remote Switching Units are switching equipment, as opposed to transmission or multiplexing equipment, and their primary purpose is not interconnection or access to unbundled elements. Their primary purpose is to switch calls.

The Act. The incumbent must provide space for any equipment "necessary" for interconnection or access to unbundled network elements.

FCC Rules. §51.5 defines "equipment necessary for interconnection or access to unbundled network elements" simply as equipment "used" to interconnect or gain access.

§51.323(c) states: "Nothing in this section requires an incumbent LEC to permit collocation of switching equipment or equipment used to provide enhanced services."

FCC Order. In ¶579, the FCC concluded that the broader "used or useful" definition is more consistent with the competitive goals of the Act than the narrow "indispensable" interpretation.

In ¶581, the FCC noted that technology is blurring the distinction between switching equipment and multiplexing equipment. It left the issue of whether §251(c)(6) covers specific switching equipment to the states:

Decision. Neither the Act nor FCC rules require an incumbent to allow a new entrant to collocate switching equipment inside the incumbent's central office. MCImetro has the option of using either subloop unbundling alternatives or direct (copper) cable from U S WEST's central office to connect customers to a nearby MCImetro switching location. MCImetro and U S WEST should explore other alternatives, such as the use of digital cross connect systems (DCS), to eliminate the need for back to back subscriber loop carrier configurations.

» *Issue 9* U S WEST Prevails.

2. Issue 11: Direct Collocator-to-Collocator Connections

Issue. Under what conditions must U S WEST allow MCImetro to directly connect its facilities to other collocators?

MCImetro's Position. U S WEST should permit MCImetro to directly interconnect with another collocating carrier through MCImetro facilities.

U S WEST's Position. MCImetro must interconnect with other collocators through U S WEST facilities.

FCC Rules. §51.323(h) requires incumbents to permit direct connections between collocators:

An incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.

(1) An incumbent LEC shall provide the connection between the equipment in the collocated spaces of two or more telecommunications carriers, unless the incumbent LEC permits one or more of the collocating parties to provide this connection for themselves; and

(2) An incumbent LEC is not required to permit collocating telecommunications carriers to place their own connecting transmission facilities within the incumbent LEC's premises outside of the actual physical collocation space.

FCC Order. In ¶595, the FCC specifically gave incumbents the right to require connections between collocators through incumbent facilities:

We clarify that we here require incumbent LECs to provide the connection between the equipment in the collocated spaces of two or more collocating telecommunications carriers unless they permit the collocating parties to provide this connection for themselves. We do not require incumbent LECs to allow placement of connecting transmission facilities owned by competitors within the incumbent LEC premises anywhere outside of the actual physical collocation space.

Decision. The FCC's rules allow U S WEST to require collocator-to-collocator connections through U S WEST facilities.

» *Issue 11* U S WEST Prevails.

3. Issue 12: Ordering Process

Issue. Should the Contract provide a standard ordering procedure for collocation space?

MCImetro's Position. Yes. MCImetro has experienced unacceptably long intervals in establishing collocations in other states. Its proposal for a three-month maximum interval for physical collocation and a two-month maximum interval for virtual collocation language will minimize the opportunity for delay. Its contract language still allows extensions of time for good.

U S WEST's Position. Yes. U S WEST prefers its contract language because it does not specify locations for collocation.

Decision. The Arbitrator prefers MCImetro's language because it does a better job of avoiding delays in collocating equipment.

» *Issue 12* MCImetro Prevails.

4. Issue 13: Minimum Collocation Space

Issue. Should the Commission allow U S WEST to require collocators to acquire space at least 10 feet by 10 feet?

MCImetro's Position. No. It is an unreasonable requirement.

U S WEST's Position. Yes. There should be adequate room around equipment.

FCC Order. In ¶585 the FCC adopted policies to avoid incumbents hampering entry by minimizing the space available to new entrants. In ¶586, the FCC similarly adopted policies to avoid new entrants hampering subsequent new entrants by warehousing collocation space.

Decision. The Arbitrator rejects U S WEST's position because it would artificially reduce the amount of space available to new entrants. A new entrant should be able to rent smaller space if it is sufficient to meet the collocator's needs.

» *Issue 13* MCImetro Prevails.

5. Issues 80 – 82: Costs & Pricing

Issue. What method should the Arbitrator use to price collocation?

MCImetro's Position. U S WEST's rates for physical or virtual collocation must reflect only the TELRIC estimates of the costs it incurs in providing those services. Where TELRIC estimates are not available, MCImetro should be permitted to self-provision/subcontract.

U S WEST's Position. U S WEST's should apply the following charges for physical or virtual collocation: Quote Preparation Fee; Expanded Interconnection Channel Termination; Entrance Facility; Fiber Splicing; 48 Volt and Power Cable; and Inspector Labor (charged whenever MCImetro requires access to the interface point or collocated equipment); Equipment Bay; Engineering Labor; Installation labor; and Training Labor. These elements should be priced at TELRIC with a reasonable allocation of forward-looking common costs.

Decision. U S WEST should price collocation pending the generic costing/pricing proceeding in the same way it prices network elements. That is TELRIC pursuant to the MCImetro's Hatfield Model with U S WEST's nonrecurring charges.

» *Issue 80* Neither Party Prevails. See Page 26

» *Issue 81* Neither Party Prevails. See Page 26

» *Issue 82* Neither Party Prevails. See Page 26

B. Outside Plant

1. Issue 52: Reciprocal Access

Issue. Should the agreement impose a reciprocal access obligation?

MCImetro's Position. No. U S WEST's attempt to impose a reciprocal access obligation is outside the scope of this arbitration.

U S WEST's Position. Yes. The act requires reciprocity.

The Act. §251(b)(4) requires *all* local exchange carriers to provide "... access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224."

§224(f)(1) requires a "utility" to provide nondiscriminatory access to any pole, duct, conduit, or right-of-way it owns or controls.

§224(a)(1) defines a "utility" as "any person who is a local exchange carrier"

Decision. The Act clearly requires MCImetro to provide access.

» *Issue 52* U S WEST Prevails.

2. Issue 53: Reserving Space

Issue. May U S WEST reserve pole or conduit space for itself?

MCImetro's Position. No. U S WEST may not reserve space for its own use to the detriment of a new entrant. Before reserving space, U S WEST must have a bona fide development plan that reasonably and specifically projects a need for space in the provision of its core utility service.

U S WEST's Position. Yes. The spare capacity level that U S WEST must keep available for maintenance and administrative purposes is 15%. It would be inappropriate to jeopardize service quality by requiring U S WEST to lease facilities beyond that maximum level.

FCC Order. In ¶1169, the FCC stated "We will permit an *electric utility* to reserve space if such reservation is consistent with a bona fide development plan that reasonably and specifically projects a need for that space in the provision of its core utility service." (Emphasis Added)

In ¶1170, the FCC decided it would be inconsistent with §224(f)(1) to similarly allow incumbent local exchange carriers to reserve space. ¶1176, in the interests of safety and reliability, allows incumbents to consider capacity, safety, reliability and engineering when considering attachment requests it considers them in a nondiscriminatory manner.

Decision. MCImetro generously, but erroneously, asserts that the FCC allows incumbent's reserve some space for their own use. The FCC actually interpreted §224(f)(1) as prohibiting incumbents from reserving space because it would discriminate against new entrants. The FCC's distinction between the impact on electric utilities and telecommunications utilities is a reasonable interpretation of the Act. A telecommunications utility may not reserve space for future growth, but can factor safety and reliability considerations into determining whether it has capacity. It is not clear whether U S WEST's 15 percent figure goes beyond safety and reliability considerations, so the Arbitrator will not adopt that specific figure. In a dispute over capacity, U S WEST must show that safety and reliability, rather than future growth, drives the decision.

» *Issue 53* Neither Party Prevails. U S WEST may not reserve space, but may consider safety and reliability in determining whether it has capacity available.

3. Issue 54: Expanding Space

Issue. Must U S WEST expand capacity for MCImetro? If so, under what time frame?

MCImetro's Position. Yes. U S WEST must take reasonable steps to accommodate requests for access, just as if its own needs required expansion of capacity. This includes modifying its facilities to increase capacity.

U S WEST's Position. No. The Act does not require U S WEST to construct facilities for the purpose of leasing space to its competitors.

The Act. §224(f) only allows electric utilities to deny access for lack of capacity.

FCC Order. In ¶1161, the FCC identified a variety of expansion options which reduced the burden of expanding capacity. In ¶1162, the FCC concluded that the parity requirements of §224(f)(1) prevent utilities from automatically denying access for lack of capacity. In ¶1163, the FCC concluded that a utility must take all reasonable steps to expand capacity before denying access:

Decision. U S WEST should take all reasonable steps to expand capacity before denying access.

» *Issue 54* MCImetro Prevails.

4. Issue 55: Licenses

Issue. Does U S WEST have an obligation to affirmatively help MCImetro obtaining rights of way?

MCImetro's Position. U S WEST must affirmatively aid MCImetro in gaining access to restricted rights-of-way. To the extent U S WEST has eminent domain powers, the Commission should require U S WEST to exercise them. Even in the absence of eminent domain powers, U S WEST's existing relationships with grantors and licensors puts it in the best position to negotiate for increased access.

U S WEST's active assistance is necessary to neutralize a competitive advantage from U S WEST's position as the first service provider. As the first service provider, U S WEST had an inherent advantage in negotiating for access because

governments and private parties had to grant rights of way to obtain telephone service. Subsequent providers, like MCImetro, are likely to have a harder time acquiring rights of way.

U S WEST's Position. In many instances, U S WEST lacks the ability to grant access to private or public rights of way. U S WEST's normally obtains through specific permits, licenses, or easements from another party. U S WEST has no authority to extend easements to other carriers, so MCImetro may have to directly obtain authority from the granting authority. MCImetro has the same power of eminent domain as U S WEST because both the Washington State Constitution (Art. 12 § 19) and RCW 80.36.010 extend the right of eminent domain to all telecommunications companies in the state.

FCC Order. In ¶1181, the FCC determined that incumbents should assist new entrants by exercising their powers of eminent domain for the benefit of new entrants:

Decision. The right of way issue is very similar to the pole/conduit capacity issue and should have a consistent result. The consistent result would be to require U S WEST to "take all reasonable steps to expand" rights of way.

» *Issue 55* MCImetro Prevails.

5. Issue 56: Sharing for Modification Costs

Issue. What pricing method should the Arbitrator adopt for allocating the cost of modifications to poles, conduits, and rights-of-way?

MCImetro's Position. To the extent U S WEST incurs modification costs for the specific benefit of any one party, that party should pay. Multiple parties seeking a modification should pay on the ratio of new space they occupy. A party later accessing facility and benefiting from the modifications should pay a proportionate share, as adjusted to reflect depreciation.

U S WEST's Position. U S WEST must recover all recurring and nonrecurring costs. To the extent MCImetro's actions increase rearrangement or modification costs, MCImetro should pay those costs.

FCC Order. In ¶ 1211, the FCC laid out a cost assignment policy for modifications essentially the same as MCImetro's proposal.

Decision. Pricing for modifications should recover costs from the beneficiaries pursuant to the FCC's policies.

» *Issue 56* MCImetro Prevails.

6. Issue 57: Minimum Purchase Requirements

Issue. Should the Commission allow U S WEST to impose minimum purchase requirements?

MCImetro's Position. U S WEST should charge only TELRIC prices for the facilities it uses.

U S WEST's Position. U S WEST should have the ability to impose minimum purchase requirements. It's fees for the use of structures should include an annual usage fee, a make ready charge, an application fee, and labor charges for inspection or supervision of facilities. The fees should recover a reasonable allocation of spare capacity.

Decision. Pricing for the ongoing cost of support structures should follow the same principles as pricing for network elements. It would not be appropriate to impose minimum purchase requirements because they would impede entry contrary to the competitive goals of the Act.

» *Issue 57* MCImetro Prevails.

X. NETWORK FACILITIES

A. Availability

1. In General

a. Issue 2: Ordering Process

Issue. Should the Commission require U S WEST to adopt a standard ordering process for all interconnection requests?

MCImetro's Position. MCImetro seeks a standard ordering process for all interconnection requests. It also want U S WEST to commit to a specific time frame for responding to requests for interconnection under standard terms and conditions. U S WEST's insistence on "joint forecasting" violates the FCC Order.

U S WEST's Position. For interconnection, no standard ordering process is required or achievable. Requests for interconnection and will need to be tailored for the specific location requested. The location and the volume of services will impact provisioning intervals, and must be determined on a case by case basis. Joint forecasting should be required so that facilities are available when needed.

Decision. MCImetro's proposal is less likely to lead to delays which would thwart the goals of the Act.

» *Issue 2* MCImetro Prevails.

b. Issue 14: Terms for Providing Network Elements

Issue. Under which contract language should the Commission require U S WEST to provide network elements?

Agreement. U S WEST has agreed to provide all of the elements in the FCC Rules and Order. It has also agreed to provide additional network elements, including sub-loop unbundling, on a bona-fide request basis.

MCImetro's Position. U S WEST's approach requires MCImetro to wait an unreasonably long period before receiving a detailed response and potentially experience more burden and delay than is warranted. If U S WEST is allowed to avoid detailed contractual language addressing the manner in which unbundled elements are provided, U S WEST will be in an excellent position to obstruct MCImetro's entry into the market. MCImetro seeks access to unbundled network elements, including subloop unbundling, on terms and conditions that will give MCImetro a meaningful opportunity to compete and ensure provision of high quality telephone service.

U S WEST's Position. U S WEST's bona fide request process includes strict timelines for response and otherwise appears to address MCImetro's concerns in this regard. MCImetro's proposal, on the other hand, contains unreasonably tight timelines and would have U S WEST responding to the request without sufficient time to properly analyze it.

Decision. The greater detail and tighter time lines in MCImetro's language are more consistent with the Act's focus on rapid development of competition in the local exchange market.

» *Issue 14* MCImetro Prevails.

2. Interconnection Points

a. Issue 8: Meet Points for Access to Elements

Issue. Should the Commission require U S WEST to make meet points available for network elements?

MCImetro's Position. U S WEST must make meet points available for access to unbundled elements upon request.

U S WEST's Position. U S WEST need not make meet points available for access to network elements.

FCC Order. In ¶553 the FCC requires incumbents to make meet points available for either access or interconnection.

Decision. To the extent technically feasible, U S WEST must make meet points available for access to network elements.

» *Issue 8* MCImetro Prevails.

b. Issue 17: Network Interface Device Connections

Issue. Should the Commission allow new entrants to directly connect their network to U S WEST's Network Interface Device. (NID).

MCImetro's Position. The Act requires unbundled access to the NID. This includes the ability for MCImetro to connect its loops, via its own NID, to U S WEST's NID ("NID-to-NID connection"). At this time, MCImetro has not requested direct connection to a U S WEST NID.

U S WEST's Position. The Commission should not allow direct connection to a U S WEST NID.

FCC Rules. § 51.319(b)(2) only requires NID-to-NID connections:

FCC Order. In ¶396, the FCC left the issue of technical feasibility of direct connections to an incumbent NID for the states to resolve in the context of a specific request for direct connections:

Decision. MCImetro is not requesting direct loop-to-NID connection at this time. In the absence of a request, it would be premature for the Arbitrator to resolve the technical feasibility issue.

» *Issue 17* U S WEST Prevails.

c. Issue 20: Digital Cross-Connect

Issue. Under which contract provision should U S WEST provide access to digital cross-connect functionality?

MCImetro's Position. The Act requires access to Interoffice Transmission Facilities. This includes access to digital cross-connect functionality.

U S WEST's Position. U S WEST has agreed to provide access to the functionality, but wants to maintain the cross connect controller and perform the work of changing cross connects.

FCC Rules. § 51.319(d)(2)(iv) requires incumbents to provide the same access they provide to interexchange carriers:

[Incumbents must] permit, to the extent technically feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC's digital cross-connect systems in the same manner that the incumbent LEC provides such functionality to interexchange carriers;

FCC Order. In ¶444 found a need for DCS access to facilitate high speed interoffice communication:

Decision. U S WEST's contract contains "mutually agreeable" language which is inconsistent with MCImetro's right to unilaterally select interconnection points.

» *Issue 20* MCImetro Prevails.

d. Issue 24: Interconnection with Other Networks

Issue. Under what contract terms should MCImetro use U S WEST's SS7 network elements to connect with third party networks?

FCC Order. In ¶483, requires access at parity.

Decision. MCImetro's proposal contains a greater level of technical detail which should lead to more dispute-free implementation.

» *Issue 24* MCImetro Prevails.

3. Unbundling

a. Issue 16: Subloop Unbundling

Area of Agreement. The parties agree to address subloop unbundling through a bona fide request process.

Issue. Which contract language should prevail?

MCImetro's Position. MCImetro requests access to subloop elements, including feeder, distribution, Feeder-Distribution Interface (FDI), and NID. It proposes a process similar to the process that is currently used for collocation requests. That process presumes technical feasibility, but allows the incumbent to rebut the presumption for specific requests.

U S WEST's Position. U S WEST opposes any general offering of subloop unbundling because it is not technically feasible in every situation. It prefers to handle subloop unbundling requests through the bona fide request process. That would avoid the prospect of substantial costs to make each of Washington's 5,294 FDIs ready for subloop unbundling, even if subloop unbundling is ultimately never requested at most of those FDIs.

FCC Order. The FCC did not feel that it had sufficient information to resolve technical feasibility issues for subloop unbundling on the national level. In ¶391, it simply left the issue to the states to resolve on a case-by-case basis.

Decision. Subloop unbundling, to the extent it is economically feasible, will result in a more efficient network. It is an area in which individual circumstances play a large role in determining technical feasibility. If unbundling a specific part of a specific loop is technically feasible, and makes economic sense, U S WEST should provide the subloop.

While U S WEST would have a valid concern about the cost of upgrading FDIs if the Commission required subloop unbundling in every instance, MCImetro does not propose upgrading in the absence of a specific request. The real issue is the best process for resolving disputes about technical feasibility. The best process reflects U S WEST's burden of showing lack of feasibility and provides the quickest path to resolution. It is MCImetro's process.

» *Issue 16* MCImetro Prevails.

b. Issue 18: Local Switch Unbundling

Agreement. U S WEST agrees to provide access to all vertical features as separate offerings.

Issue. Should the Commission allow U S WEST to offer vertical features only for resale?

MCImetro's Position. MCImetro desires access to all of the vertical features which a switch is capable of providing. It is willing to purchase vertical features as separate elements.

U S WEST's Position. MCImetro must purchase vertical features separately.

FCC Rules. §51.319(c)(1) defines the "local switching capability network element" to include vertical features.

FCC Order. In ¶412, the FCC stated that, when a carrier purchases the unbundled switching element, it obtains all switching features in the single element. In ¶413, the FCC specifically concluded that vertical features are network elements rather than retail services. In ¶414, the FCC declined to unbundle vertical features from the basic switching element:

Decision. Vertical features are elements rather than services.

» *Issue 18* MCImetro Prevails

c. Issue 19: Advanced Intelligent Network Triggers

Agreement. The parties agree that U S WEST will AIN triggers, but only for U S WEST databases.

Issue. Should the contract include MCImetro language relating to this issue?

MCImetro's Position. Yes. Its language will facilitate implementation.

U S WEST's Position. No. It is not necessary for contract language to cover items which U S WEST will not provide.

FCC Order. In ¶502, the FCC concluded that it lacked sufficient information to require incumbents to provide AIN triggers:

Decision. To the extent U S WEST provides triggers, the contract should address the topic.

» *Issue 19* MCImetro Prevails

d. Issue 22: Dark Fiber

The Issue. Is dark fiber a network element?

MCImetro's Position. Yes From an engineering perspective, dark fiber is a form of dedicated transport which lacks electronics. It is part of the transmission hierarchy. Without the ability to obtain dark fiber, MCImetro would be required to compensate U S WEST for the use of electronics in situations in which MCImetro can provide all or a portion of such electronics more efficiently itself. MCImetro would be limited by the type of electronics used by U S WEST and would not be able to take advantage of new or more cost-effective fiber technologies.

U S WEST's Position. No. Unlike in other parts of its Order, the FCC did not leave the open issue of whether dark fiber constitutes a network element to the state commissions for resolution in arbitration proceedings. Rather, the FCC noted: "We will continue to review and revise our rules in this area as necessary."

FCC Rules. §3(45) defines "network element" as a facility or equipment "used in the provision" of a telecommunications service.

FCC Order. In ¶450 the FCC declined to determine whether dark fiber is a network element.

Washington Law/Policy. When a carrier leases dark fiber to another carrier, it provides a telecommunications service. *See In Re Electric Lightwave, Inc.*, 123 Wn.2d 530, 545, 869 P.2d 1045 (1994).

Application of Washington Policy. The FCC did not preclude states from determining whether dark fiber qualifies as a network elements. While the FCC declined to rule on dark fiber because it lacked a sufficient record, this Commission has resolved the issue and the Court let the decision stand. The Commission's decision is compatible with the Act because fiber is "used in the provision" of telecommunications services. Fiber is "dark" when it lacks the electronics necessary to transmit/receive light and put it in actual service. There is no technical problem attaching an incumbent's fiber to a new entrant's electronics, so it is technically feasible to offer "dark" fiber as a network element.

Decision. In Washington, dark fiber is a network facility.

» *Issue 22* MCImetro Prevails.

e. Issue 61, 64, 65, 67: Operator Systems

Agreement. The parties agree that U S WEST must provide access to operator services and directory assistance. MCImetro seeks unbundled access and U S WEST has agreed to offer non-discriminatory access per the FCC Order

Issue. Which contract language should the Arbitrator adopt?

The Parties' Positions. The positions on each issue are:

<u>Issue</u>	<u>MCImetro/U S WEST</u>
Issue 61	<p>MCI METRO: Access to ancillary services must be provided in a manner that is at least equal in quality to the manner in which incumbent provides the service to itself.</p> <p>U S WEST: U S WEST agrees to provide nondiscriminatory access.</p>
Issue 64	<p>MCI METRO: It is necessary to provide unbundled directory service through a separate truck group. For bundled directory assistance, MCI metro should be able to use common DA/toll trunks, because U S WEST permits other incumbents to use common trunks. Since U S WEST has not provided cost or price data, it should provide the service at no charge until the Commission develops prices in the generic proceeding.</p> <p>U S WEST: For the time being, U S WEST must provide service through separate truck groups to record and bill without relying on self reporting by new entrants.</p>
Issue 65	<p>MCI METRO: U S WEST must unbundle operator call completion services and recover the cost of unbundling through TELRIC prices per the Hatfield Model. It has not committed to a time for billing and recording capabilities, and MCI metro's contract language has sufficient detail for appropriate implementation when U S WEST is ready.</p> <p>U S WEST: U S WEST has agreed to offer call completion services on a resold basis. It cannot presently offer call completion services to local exchange carriers who originate directory assistance traffic from their own switches because billing and recording capabilities are not yet available.</p>
Issue 67	<p>MCI METRO: U S WEST must unbundle Busy Line Verification and Busy Line Interrupt because it is technically feasible to perform the functions without intervention by a U S WEST operator.</p> <p>U S WEST: U S WEST does not want to offer Busy Line Verification or Busy Line Interrupt without intervention by a U S WEST operator because new entrants could monitor any U S WEST line.</p>

Decision. For all of these issues, the Arbitrator prefers the greater detail in MCI metro's contract.

- » *Issue 61* MCImetro Prevails.
- » *Issue 64* MCImetro Prevails
- » *Issue 65* MCImetro Prevails
- » *Issue 67* MCImetro Prevails

f) Issues 15 & 84: Loop Conditioning

Issue. Should the basic TELRIC loop price cover loop conditioning?

MCImetro's Position. The cost of conditioning should be included in the TELRIC price of the loop facility. In addition, specific contract provisions are necessary to ensure that MCImetro does not confront unreasonable and costly delays and service problems in the manner in which the loop is provided.

U S WEST's Position. A carrier asking U S WEST to condition loop must pay the cost of conditioning. U S WEST has not developed conditioning prices at this point in time.

FCC Order. In ¶380 the FCC includes "conditioned" loops in the definition of the local loop element. In ¶382 the FCC recognizes that its definition of the local loop element may require an incumbent to condition some loops for a higher level of service. It requires the requesting new entrant to pay the cost of conditioning.

Decision. While the FCC requires an incumbent to condition a loop when it is technically feasible to do so, the FCC also requires the new entrant to pay the cost of conditioning. Since conditioning is a nonrecurring cost with long term benefits, the Commission should decide, as a matter of policy, whether to recover the cost through a nonrecurring charge or a higher recurring rate for higher capacity lines. The Commission will have an opportunity to do so in the generic proceeding. In the mean time, there is no price proposal other than MCImetro's offer and the Arbitrator adopts it.

- » *Issue 15* MCImetro Prevails.
- » *Issue 84* MCImetro Prevails

4. Restrictions

a. Issue 25: Replication of Incumbent Services

Issue. May U S WEST prohibit MCImetro from assembling network elements to replicate existing U S WEST services?

MCImetro's Position. No. The Act does not limit the ability of a new entrant to combine unbundled elements.

U S WEST's Position. No. If the Commission adopts MCImetro's position, MCImetro will be able to order U S WEST to provide a finished retail service but get a cheaper price than the Act's resale price (retail less cost avoided) by using the fiction that MCImetro is buying unbundled network elements—when in reality there is no unbundling involved and MCImetro is not self-provisioning any elements. In this manner, MCImetro can completely circumvent the resale provisions of the Act—engaging in “sham” unbundling. Sham unbundling could also enable interexchange carriers to avoid paying switched access charges through the purchase of unbundled network elements. Sham unbundling creates significant opportunities for price arbitrage between resale prices and the prices of unbundled elements. It would upset the balance between resale and unbundling which Congress created when it crafted separate and distinct resale and unbundling provisions.

The Act. The incumbent must provide elements in a manner that allows other carriers to combine the elements into telecommunications services. §251(c)(3).

FCC Rules. §51.307(c): interprets the Act as enabling new entrants to assemble network elements into *any* service. §51.309(a) interprets the Act as prohibiting incumbents from restricting use of network elements.

FCC Order. In ¶292, the FCC specifically concluded that the Act does not prevent new entrants from using network elements to replicate incumbent services. ¶ 322 shows that the FCC was aware of the arbitrage argument.

Decision. There are two problems with U S WEST's argument on this issue:

Relationship Between Elements and Services. Most elements are part of two or more services and most services use two or more elements. There is no direct relationship between, for example, the price for the local loop element and the wholesale price for basic local service. The local loop element additionally creates an opportunity to earn revenues from toll and other services, but requires the purchase of additional elements to provide any service. Many of the additional elements create opportunities for additional services, but require the purchase of additional elements to provide those services. The indirect relationship between elements and services means that they are not direct substitutes. Since they are not direct substitutes, §251(c)(3) and §251(c)(4) cannot be mutually exclusive.

Arbitrage. To the extent there is an arbitrage opportunity between elements and services, it is similar to the arbitrage opportunity between apples and oranges. "Sham unbundling" is not a problem.

» *Issue 25* MCImetro Prevails.

b. Issue 7: Distance Limitations for Mid-Span Meets

Issue. Should the Commission allow U S WEST to place a distance limit on mid-span meets.

MCImetro's Position. The Act does not permit U S WEST to place a distance limit on mid-span meets.

U S WEST's Position. The Commission should not require U S WEST to provide more than one mile of facilities to the meet point. In no case should it provide facilities for more than one half the distance of the route.

FCC Order. In ¶553 the FCC concluded that state commissions are in a better position to determine the appropriate distance an incumbent should build facilities to accommodate interconnection:

Decision. In light of MCImetro's ability to unilaterally select interconnection at any feasible point, and U S WEST's responsibility for the cost of facilities on its side of a meet point, it is reasonable to impose a distance limit on U S WEST's obligation to build facilities to a meet point. U S WEST's proposal of a one-mile limit is reasonable. It also is reasonable for each party to build one-half of the facilities for shorter distances.

» *Issue 7* U S WEST Prevails.

XI. ANCILLARY FUNCTIONS

A. Availability & Restrictions

1. Issues 70 & 71: Directories

Issue. To what extent should the Commission require U S WEST to provide directory listings, assist MCImetro with Yellow Pages advertising, and distribute directories?

MCImetro's Position. U S WEST should provide one white page and one Yellow Page listing at no cost to MCImetro or MCImetro's customers. It should sell enhanced White Page listings to MCImetro's customers and act as MCImetro's agent for Yellow Pages advertising. It also should distribute directories to MCImetro's customers.

U S WEST's Position. U S WEST will provide one white page listing for MCImetro or MCImetro customers. MCImetro must negotiate Yellow Page terms with U S WEST Direct.

Washington Law/Policy. On page 57 of its Fourth Supplemental Order in Docket No. 941464, the Commission expressed concern about multiple companies distributing different kinds of directories to all telephone customers in a calling area. The Commission doubted whether it would be "practical, economically feasible, or desirable." and concluded that "a unified directory data base is essential."

Decision. Neither party's offer conforms to the Commission's interconnection order. They shall draft language consistent with the order and consistent with the language resulting from Arbitrator's ffitch's award in UT-960309 (AT&T vs. U S WEST). That will avoid customer confusion from different directory policies.

» *Issue 70* Neither Party Prevails. The contract must conform to the Commission's interconnection order and be consistent with U S WEST's contract with AT&T.

» *Issue 71* Neither Party Prevails. The contract must conform to the Commission's interconnection order and be consistent with U S WEST's contract with AT&T.

2. Issues 41, 42, 43, 44, 47, 48: Operations Support Systems

Agreement. U S WEST agrees to provide electronic interfaces.

Issue. What timing and formats should the Commission require?

MCImetro's General Position. In general, U S WEST must make available to MCImetro industry standard electronic interface systems sufficient to order interconnection trunks, unbundled network elements, resale and other U S WEST services as efficiently as U S WEST provides those services to itself. When a more efficient way exists to provide service to customers, MCImetro should not be forced to use U S WEST's less efficient way simply because U S WEST does it that way. For each resale, unbundled and interconnect product and service that

MCImetro buys from the U S WEST, MCImetro should know the level of quality in terms of installation, billing, maintenance standards, and level of service. These standards should be at parity with the service which U S WEST provides to itself. These standards also should be in the contract so that they can be changed only by bilateral agreement.

U S WEST's Position. U S WEST's Operational Support Systems (OSS) proposal is the only viable option for attempting to meet the FCC deadline for providing MCImetro and other new entrants with access to many of U S WEST's operational support systems by January 1, 1997, and to others on a phased basis later in the year. Since MCImetro is not proposing to pay any portion of the costs associated with U S WEST's construction of the interfaces, MCImetro clearly has no interest or incentive to accomplish the interfaces in the most efficient manner. Nor is MCImetro interested in whether its proposal will meet the needs of other new entrants. However, U S WEST has the financial incentive to design and implement the most efficient solution, and, since U S WEST must provide electronic interfaces to all carriers, U S WEST also has the incentive to design and implement a system which will allow all carriers access. U S WEST is committed to adopting national standards when they become available.

Issue 41. Scope of interfaces.

MCImetro's Position. U S WEST must make pre-ordering, ordering, provisioning, maintenance and repair and billing interfaces available by January 1, 1997. U S WEST should accomplish this through Electronic Data Interchange ("EDI") for ordering; Electronic Bonding - Trouble Administration ("EBTA") for maintenance; and Interexchange Access Billing System ("IABS") for wholesale billing. It should not use its "Web" proposal, even on an interim basis. U S WEST should comply with the following Industry Standard Operational Interfaces Requirements:

- (a) Pre-ordering: Data download of U S WEST SAG (Street Address Guide) to ensure accurate order entry and a data download of their and feature/functionality database by switch.
- (b) Ordering and Provisioning - There is an existing agreed industry standard interface and this should be used. It is the TCIF/EDI standard agreed at the OBF.
- (c) Maintenance and Repair: There is an agreed industry standard interface and this should be used. It is the ANSI standards T1 227-95 and T1 228-95 defined at the ECIC committee.

U S WEST's Position. U S WEST plans to provide access to U S WEST's OSS through an electronic gateway that will utilize a private version of "World Wide Web" technology. This technology will allow U S WEST to offer MCImetro interim electronic access via desktop workstations or MCImetro's own gateways.

Issue 42. Parity

MCImetro's Position. MCImetro wants U S WEST to demonstrate parity through monthly reports showing U S WEST's performance against each performance standard. If U S WEST is unable to define its standards for parity in the contract, the Arbitrator should require U S WEST to meet the standards MCImetro's proposal.

U S WEST's Position. U S WEST's plan provides MCImetro and others the ability to "perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that [U S WEST] can for itself."

Issue 43. Billing Interfaces.

The parties are in agreement, except that MCImetro wants U S WEST to use Interexchange Access Billing System ("IABS") for wholesale billing and U S WEST wants to use CRIS.

Issue 44. Billing Format

MCImetro's Position. U S WEST should transmit all billing in billing output specification ("BOS") format through the integrated access billing system ("IABS") which also is the Carrier Access Billing System ("CABS"). The CABS/BOS format is the industry standard.

U S WEST's Position. The issue of CRIS or IABS as a billing interface comes down to the issue of the message format and transmission protocol used to transmit the billing information to MCImetro. CRIS uses the industry standard of EDI for sending the billing messages, and that interface is currently in place between MCImetro and U S WEST. U S WEST can convert the CRIS information to the billing output specification as requested by MCImetro, or MCImetro can do the conversion on its own side of the interface. Either way, MCImetro should pay for the significant additional costs to meet its demands.

Issue 47. System Security

The parties agree in principle that mediation mechanisms will deter improper system access.

Issue 48. National Gateways

The parties agree that U S WEST should transition to developing nationally uniform gateway interfaces over the long term.

FCC Order. In ¶316 the FCC highlighted the need for incumbents to provide access to OSS functions under the same terms as they provide for themselves. ¶516 concludes that operation support systems are network elements. In ¶523 the FCC states that access includes access to the same information as the incumbent provides to itself. With respect to timing, ¶525 establishes a January 1, 1997, deadline.

Decision. It is clear that the current situation is not parity and that national standards are the most effective long term solution. In the meantime, U S WEST should comply with the FCC order to the maximum extent possible. If U S WEST's Web technology is the best it can do at the moment, U S WEST should bear the cost as an incentive to reach a better solution faster and to reflect that there is no hope that the industry will mitigate the cost of implementing Web technology as an interim solution by adopting Web technology as a permanent solution. U S WEST's interim solution for wholesale billing is reasonable because the parties presently interact through that interface. Otherwise, MCImetro's proposals are more reasonable and more consistent with the Act. The parties should implement a solution consistent with Arbitrator ffitich's award in UT-96039 (AT&T vs. U S WEST).

- » *Issue 41* Neither Party Prevails. The Arbitrator instructs the parties to develop contract language consistent with the above decision.
- » *Issue 42* Neither Party Prevails. The Arbitrator instructs the parties to develop contract language consistent with the above decision.
- » *Issue 43* Neither Party Prevails. The Arbitrator instructs the parties to develop contract language consistent with the above decision.
- » *Issue 44* Neither Party Prevails. The Arbitrator instructs the parties to develop contract language consistent with the above decision.
- » *Issue 47* Neither Party Prevails. The Arbitrator instructs the parties to develop contract language consistent with the above decision.

» *Issue 48* Neither Party Prevails. The Arbitrator instructs the parties to develop contract language consistent with the above decision.

3. Issue 46: Outage Reporting

Issue. Under what terms should the Commission require real time reporting for outages?

MCImetro's Position. MCImetro may request a quality level higher than the level U S WEST provides to itself. It requests real-time notice of network outages and other problems associated with network reliability to help ensure that it can provide its customers with prompt repair or rerouting of traffic.

U S WEST's Position. MCImetro may request a higher level of service through the bona fide request process.

Decision. It is not clear what language U S WEST would like the Arbitrator to adopt. The Arbitrator adopts MCImetro's language.

» *Issue 46* MCImetro Prevails.

4. Issue 66: Directory Assistance Database

Issue. Under what terms should U S WEST provide access to its directory assistance database?

MCImetro's Position. U S WEST's proposal to impose term and volume requirements on new entrants as a prerequisite for unbundling is inconsistent with the technical feasibility and standard contrary to the public interest. Entrants' strategies will evolve over time as they evaluate their successes and failures. See *FCC Order* ¶12. In that light, a term requirement could unreasonably lock an entrant into the purchase of an unbundled network element when the economics of a dynamic market dictate the construction of facilities. Term commitments will deter the advance of facilities-based competition.

U S WEST's Position. Term and volume requirements are reasonably necessary to recover the cost of unbundling access to the database.

FCC Order. ¶538 requires unbundling.

Decision. The Act requires unbundling and it would not be appropriate to recover the cost from a single new entrant through term or volume requirements.

» *Issue 66* MCImetro Prevails.

5. Issue 51: Permanent Number Portability

Issue. What method should the Arbitrator select for permanent number portability?

MCImetro's Position. At present, the Location Routing Number solution is consistent with the FCC's Rules and is the only solution that will, in fact, permit compliance with those Rules.

U S WEST's Position. Query on Release method is a viable option for permanent number portability.

FCC Number Portability Order. The deadline for permanent number portability in Seattle is the first quarter of 1998.

Decision. This is an issue which the Commission should resolve on a better record than this proceeding and with input from more parties. There is time for the Commission to consider the issue, so the Arbitrator will defer to the Commission.

» *Issue 51* Neither Party Prevails.

6. Issues 58 & 60: Dialing Parity

Issue. Which contract language should the Commission adopt?

MCImetro's Position. The MCImetro language is more detailed and reasonable.

U S WEST's Position. U S WEST's position depends on the nature of the call:

Local Calls. U S WEST's proposed language complies fully with the requirements of the Act and Rules.

IntraLATA Interexchange Calls. Under the clear provisions of the Act, the Commission cannot order intraLATA dialing parity until U S WEST enters the interLATA business, or until February 8, 1999, whichever is earlier. 47 U.S.C. §271(e)(2)(B). That makes MCImetro's request for resolution of intraLATA dialing parity issues beyond the scope of this proceeding and premature.

Decision. The Arbitrator prefers the greater detail of MCImetro's language..

- » *Issue 58* MCImetro Prevails.
- » *Issue 60* MCImetro Prevails.

7. Issues 30, 30a, & 62: Branding

Issue. Should the Commission require U S WEST to accommodate MCImetro's branding requests?

MCImetro's Position. U S WEST must rebrand operator services and directory assistance to prevent customer confusion. It also should rebrand repair and maintenance (but not to the extent of rebranding uniforms or vehicles).

U S WEST's Position. U S WEST does not object to reasonable requests for rebranding as long as new entrants are willing to pay for it

Decision. MCImetro's proposal contains a concise, but detailed, statement of the terms.

- » *Issue 30* MCImetro Prevails.
- » *Issue 30a* MCImetro Prevails
- » *Issue 62* MCImetro Prevails

B. Costing & Pricing

1. Issue 45: Electronic Interfaces

Issue. How should the Commission price electronic interfaces?

MCImetro's Position. The Commission should not allow U S WEST to charge more than TELRIC plus a reasonable allocation of forward-looking common costs for electronic interfaces.

U S WEST's Position. U S WEST proposes to charge an initial TELRIC nonrecurring fee to cover the cost of establishing the interfaces plus ongoing transaction fees at TELRIC costs. It has not calculated those costs yet.

Decision. It is not clear to what extent electronic interface pricing is an interim price issue and, since neither party proposed specific prices, its is difficult for the Arbitrator to pick a number. The Arbitrator defers this issue to the generic proceeding so the Commission will have an opportunity to consider the appropriate level for both nonrecurring and recurring charges.

» *Issue 45* Neither Party Prevails. The record does not permit the Arbitrator to select a number so he defers the issue to the generic proceeding.

2. Issue 50. Number Portability

Issue. What pricing method and prices should the Arbitrator adopt for number portability?

MCImetro's Position. U S WEST should recover RCF interim number portability costs in a competitively neutral manner, either on bill and keep basis (MCImetro's preference) or by allocating total costs of RCF to all working telephone number or to each carrier based on relative market share.

U S WEST's Position. All costs of interim number portability should be borne by new entrants.

Preferred Outcome. The Commissions preferred outcome is to provide number portability at the incumbent's TSLRIC until a true number portability solution is implemented.

Decision. Neither party's position is consistent with the Commission's preferred outcome. The Commission's preferred outcome is consistent with the Act and the Arbitrator adopts it as his interim solution. Specifically:

- U S WEST shall recover TSLRIC by allocating them to each carrier in proportion to each carrier's share of active working numbers.
- MCImetro and U S WEST shall recover access charges for terminating intraLATA toll and interLATA minutes by billing IXC's separately for their portion of the access charges. MCImetro and U S WEST shall base the charge on the functions and facilities each provides for call forwarding or termination. Their agreement shall reflect that U S WEST will receive compensation for INP costs through the above process.
- The Arbitrator adopts U S WEST's proposal for nonrecurring charges.

» *Issue 50* Neither Party Prevails. U S WEST shall provide interim number portability pursuant to the Arbitrator's decision.

3. Issue 72: E-911

Agreement. U S WEST agrees to provide E-911 service at no charge and MCImetro acknowledges that the third party manager of the E-911 database may assess non-discriminatory charges.

Issue. Which contract provisions should apply to E-911 services?

Decision. MCImetro's language contains greater procedural detail and the Arbitrator adopts it.

» *Issue 72* MCImetro Prevails.

XII. SERVICES FOR RESALE

A. Issue 38: Deposits

Issue. To what extent should the Commission allow U S WEST to require deposits from resellers.

MCImetro's Position. Requiring resellers to pay a deposit before obtaining U S WEST's services for resale would raise the barriers to entry. If U S WEST requires resellers to pay a deposit, U S WEST also should pay itself a deposit.

U S WEST's Position. The Commission should allow U S WEST to require a deposit consistent with industry practice.

Decision. This issue requires a balance between U S WEST's interest in securing payment and MCImetro's interest in avoiding deposits as a barrier to entry. U S WEST's proposal (§XXX.G) requires a deposit equal to two month's estimated charges for the resold service and accrues interest at the federal discount rate. The deposit is at U S WEST's discretion and U S WEST may require the reseller to maintain the deposit until it establishes satisfactory credit. A reseller establishes satisfactory credit after twelve consecutive months of service as a reseller without a termination for nonpayment and no more than one notification of intent to terminate service for nonpayment.

The deposit terms read like typical deposit terms for individual end users. When U S WEST is dealing with a reseller, the transaction is a wholesale transaction rather than a retail transaction and any deposit should be more closely related to the actual risk of loss than U S WEST's simple program for retail customer deposits. U S WEST's terms are not appropriate.

» *Issue 38* MCImetro Prevails.

B. Issue 29: Resale Restrictions

The Issue. Which terms should the Arbitrator adopt regarding resale restrictions?

MCImetro's Position. The only appropriate restrictions are resale of lifeline services to non-qualifying residential customers and resale of residential service to businesses.

U S WEST's Position. The Commission should prohibit any resale of a service other than to the same class of customers eligible to purchase the service from U S WEST.

FCC Order. In ¶962, the FCC addressed resale of residential service to business customers, and the resale of Lifeline service to non-qualifying residential customers. It concluded that a restriction against cross-class resale for those services would be reasonable. In ¶963, the FCC addressed resale of shared tenant services. It concluded that it would not be reasonable to adopt a restriction against resale of shared tenant services. In ¶964, the FCC addressed other cross-class restrictions. It decided to also presume that other restrictions would be unreasonable.

Decision. There is a legitimate concern about resale of residential service to business customers. That is the only cross-class scenario with public policy considerations supporting protection for price discrimination.¹³ Since that is a reasonable restriction, and U S WEST has not identified another similarly reasonable situation, MCImetro's position is more consistent with the Act.

» *Issue 29* MCImetro Prevails.

¹³ Price discrimination occurs when the ratio of the price of a given product/service to its marginal cost varies across different customer groups. It can be a barrier to entry in a mixed market environment if the incumbent reduces prices for customers likely to switch carriers and recovers the lost revenue from the customers least likely to switch. Price discrimination only works when the incumbent can prevent low-price customers from reselling services to high-price customers.

XIII. CONTRACT ISSUES

A. Issue 69: Customer Address & Number Changes

Issue. What terms should the Arbitrator require for customer address and number change updates?

MCImetro's Position. Non-discriminatory access requires that MCImetro have the same access to customer address and number change information as U S WEST. If U S WEST has greater access than what it proposes to provide to MCImetro, the Arbitrator should reject its proposal.

U S WEST's Position. U S WEST proposes to provide MCImetro with daily customer addresses and number change information updates through its expanded use updates. This is the same access that U S WEST makes available to itself.

Decision. The contract should contain terms defining parity in this area, so the Arbitrator adopts MCImetro's position.

» *Issue 69* MCImetro Prevails.

B. Issue 36: Service Quality Discounts

Agreement. The parties have an agreement in principle:

- MCImetro does not propose a discount for resold services to reflect poor service quality or failure to provide electronic interfaces; and
- U S WEST has agreed that it must provide services parity with the services it provides to itself.

Issue. Which party proposes better contract language?

MCImetro's Position. To the extent that the services that U S WEST provides are of poor quality, MCImetro's reputation in the marketplace will be damaged, not only with respect to resold services, but also with respect to those services that MCImetro provides using its own facilities

U S WEST's Position. U S WEST did not directly address this issue in its brief.

Decision. While MCImetro asserts that the parties need specific contract language, the specific language MCImetro proposes it is not clear from the brief or issue matrix.

» *Issue 36* U S WEST Prevails.

C. Issues 73 & 74: Quality Standards & Performance Commitments

Issue. Must U S WEST deploy its resale and unbundled offerings in specific time frames, with service guarantees, and provide for remedial measures for substandard performance?

MCImetro's Position. Yes. U S WEST must provide all local services, network elements or combinations in accordance with DMOQs which are at least equal or superior to the level of DMOQs that U S WEST is required to meet by its own internal procedures or by law—or is actually meeting—in providing local service, network elements or combinations to itself, to its end-users, or to its affiliates. U S WEST must provide services and network elements in conformance with its stated performance standards.

U S WEST's Position. It is likely that MCImetro will propose a contract that contains almost 200 pages of performance standards.¹⁴ Most of these standards are unreasonable and measure purported aspects of performance irrelevant to the quality of service as perceived by the end user. MCImetro proposes over 93 pages of business process requirements (Attachment VIII), after stating that all it wants is parity with U S WEST, and agreeing that it has no idea whether the proposed standards or requirements will ensure parity or not. There is no evidentiary basis from which to conclude that MCImetro's quality standards should be adopted.

FCC Order. In ¶55, the FCC noted that incumbents have no economic incentive to facilitate a new entrant's success in the market.

Washington Law/Policy. The Commission's "preferred outcome" incorporate the view that "installation intervals and other performance standards should be part of an interconnection agreement negotiated between the affected parties." See Docket No. 941464, *Ninth Supplemental Order*, at 8.

The Commission has rules governing conformance to service specifications.

¹⁴ This discussion assumes that MCI will submit a Best and Final Offer similar to the one it offered in Oregon.

Decision. Given the incumbent's economic incentives to hamper new entry into the market, there is a need which is not present in most commercial transactions for a countervailing economic incentive. An incentive in the form of specific standards and remedial measures would be consistent with the Act, would help achieve a self-policing relationship, and probably would not result in any less parity than the absence of an incentive. Another approach to the situation is the Commission's enforcement of parity requirements and its quality of service rules. The latter is the better approach for "standard" service at the interim rates. If MCImetro wants more assurance of performance, it should make a request for a higher level of service under the bona fide request process.

- » *Issue 73* U S WEST Prevails.
- » *Issue 74* U S WEST Prevails.

D. Issue 75, 76: Dispute Resolution

Issue. Should the agreement include an accelerated dispute resolution procedure for "service affecting" disputes?

MCImetro's Position. MCImetro's bona fide request process and dispute resolution process result in far less delay than U S WEST's process. Under MCImetro's dispute resolution process, the Commission retains continuing jurisdiction to implement and enforce all terms and conditions of the Agreement. MCImetro's process thus will allow the Commission to continue its vigilance over the development of competition in Washington.

U S WEST's Position. U S WEST does not disagree with the alternative dispute resolution idea. However, any provisions which would impose, or allow the Arbitrator to impose, penalties must be rejected. Further, U S WEST disagrees that an expedited review or appeal to the Commission is necessary or desirable. The parties should have a reasonable time to negotiate resolution of a dispute, and an expedited resolution process by appeal to the Commission would both unnecessarily burden the Commission and discourage the parties from resolving the issue on their own.

Washington Law/Policy. RCW 80.04.380-.400 authorizes the Commission to order penalties as follows:

- (1) the amount of the penalty cannot exceed \$1,000;
- (2) the penalty is paid into the general fund; and
- (3) the company or person against whom the penalty is assessed has the right to notice and hearing.

Decision. Given an incumbents' economic incentives to impede entry, it is understandable for MCImetro to desire a quick, inexpensive method for presenting issues to a neutral third party. That, like performance standards and remedial measures, is a need MCImetro should address through the bona fide request process. Otherwise, it should use the Commission's existing dispute resolution processes.

- » *Issue 75* U S WEST Prevails
- » *Issue 76* U S WEST Prevails

XIV. CONCLUSION

The foregoing issue resolutions meet the requirements of §252(c).

A. Implementation Schedule

Pursuant to §252(c)(3), the Arbitrator is to "provide a schedule for implementation of the terms and conditions by the parties to the agreement". In this case, the parties did not submit specific alternative implementation schedules. Specific contract provisions, however, contain implementation timelines. The parties shall implement the agreement pursuant to the schedule in the contract provisions. They also shall implement in accordance with the 1996 Act, the applicable FCC rules, and this Commission's rules/orders.

When the parties submit the contract to the Commission for approval, they may include an implementation schedule.

B. Deadline for Filing

The Arbitrator directs the parties to submit an agreement consistent with the terms of this report to the Commission for approval with 30 days pursuant to the requirements in the next section from the Commission's Interpretative Statement.

C. Approval Process

1. In General

a. An interconnection agreement shall be submitted to the Commission for approval under Section 252(e) within 30 days after the issuance of the Arbitrator's Report, in the case of arbitrated agreements, or, in the case of negotiated agreements, within 30 days after the execution of the agreement. The 30 day deadline may be extended by the Commission for good cause. The Commission does

not interpret the 9 month time line for arbitration under Section 252(b)(4)(C) as including the approval process.

b. Requests for approval shall be filed with the Secretary of the Commission in the manner provided for in WAC 480-09-120. In addition, the request for approval shall be served on all parties who have requested service (List available from the Commission Records Center. See Section II.A.2 of the Interpretive and Policy Statement) by delivery on the day of filing. The service rules of the Commission set forth in WAC 480-09-120 and 420 apply except as modified in this interpretive order or by the Commission or arbitrator. Unless filed jointly by all parties, the request for approval and any accompanying materials should be served on the other signatories by delivery on the day of filing.

c. A request for approval shall include the documentation set out in this paragraph. The materials can be filed jointly or separately by the parties to the agreement, but should all be filed by the 30 day deadline set out in paragraph 1 above.

2. Negotiated Agreements

a. A "request for approval" in the form of a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to whether the agreement should be adopted or modified, including a statement as to why the agreement does not discriminate against non-party carriers, is consistent with the public interest, convenience, and necessity, and is consistent with applicable state law requirements, including Commission interconnection orders.

b. A complete copy of the signed agreement, including any attachments or appendices.

c. A proposed form of order containing findings and conclusions.

3. Arbitrated Agreements

a. A "request for approval" in the form of a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to whether the agreement should be adopted or modified; and containing a separate explanation of the manner in which the agreement meets each of the applicable specific requirements of Sections 251 and 252, including the FCC regulations thereunder, and applicable state requirements, including Commission interconnection orders. The "request for approval" brief may reference or incorporate previously filed briefs or memoranda. Copies should be attached to the extent necessary for the convenience of the Commission.

b. A complete copy of the signed agreement, including any attachments or appendices.

c. Complete and specific information to enable the Commission to make the determinations required by Section 252(d) regarding pricing standards, including but not limited to supporting information for (1) the cost basis for rates for interconnection and network elements and the profit component of the proposed rate. (2) transport and termination charges; and (3) wholesale prices.

d. A proposed form of order containing findings and conclusions.

4. Combination Agreements (Arbitrated/Negotiated)

a. Any agreement containing both arbitrated and negotiated provisions shall include the foregoing materials as appropriate, depending on whether a provision is negotiated or arbitrated. The memorandum should clearly identify which sections were negotiated and which arbitrated.

b. A proposed form of order is required, as above.

c. Any filing not containing the required materials will be rejected and must be refiled when complete. The statutory time lines will be deemed not to begin until a request has been properly filed.

5. Confidentiality

a. Requests for approval and accompanying documentation are subject to the Washington public disclosure law, including the availability of protective orders. The Commission interprets 47 USC § 252(h) to require that the entire agreement approved by the Commission must be made available for public inspection and copying. For this reason, the Commission will ordinarily expect that proposed agreements submitted with a request for approval will not be entitled to confidential treatment.

b. If a party or parties wishes protection for appendices or other materials accompanying a request for approval, the party shall obtain a resolution of the confidentiality issues, including a request for a protective order and the necessary signatures (Exhibits A or B to standard protective order) prior to filing the request for approval itself with the Commission.

6. Approval Procedure

a. The request will be assigned to the Commission Staff for review and presentation of a recommendation at the Commission public meeting. The Commission does not interpret the approval process as an adjudicative proceeding under the Washington Administrative Procedure Act. Staff who participated in the mediation process for the agreement will not be assigned to review the agreement.

b. Any person wishing to comment on the request for approval may do so by filing written comments with the Commission no later than 10 days after date of request for approval. Comments shall be served on all parties to the agreement under review. Parties to the agreement file written responses to comments within 7 days of service.

c. The request for approval will be considered at a public meeting of the Commission. Any person may appear at the public meeting to comment on the request for approval. The Commission may in its discretion set the matter for consideration at a special public meeting.

d. The Commission will enter an order, containing findings and conclusions, approving or rejecting the interconnection agreement within 30 days of request for approval in the case of arbitrated agreements, or within 90 days in the case of negotiated agreements. Agreements containing both arbitrated and negotiated provisions will be treated as arbitrated agreements subject to the 30 day approval deadline specified in the Act.

7. Fees and Costs

Each party shall be responsible for bearing its own fees and costs. Each party shall pay any fees imposed by Commission rule or statute.

DATED at Olympia, Washington and effective this 23rd day of December 1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



KARL CRAINE
Arbitrator