BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between	)	DOCKET NO. UT-990385
AMERICAN TELEPHONE TECHNOLOGY, INC., and U S WEST COMMUNICATIONS, INC.	)	ARBITRATOR'S REPORT AND DECISION
Pursuant to 47 U.S.C. Section 252.	)	
. . . . .	)	

BACKGROUND

Procedural History: On March 23, 1999, American Telephone Technology, Inc. (ATTI), requested to negotiate an interconnection agreement (Agreement) with U S WEST Communications, Inc. (U S WEST). U S WEST is an incumbent local exchange carrier (ILEC) and ATTI is a competitive local exchange carrier (CLEC). On August 27, 1999, ATTI filed with the Washington Utilities and Transportation Commission (Commission) a petition for arbitration and request to receive arrangements previously approved by the Commission pursuant to 47 U.S.C. §§ 252(b)(1) and 252(i) of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996) (Telecom Act).

The Commission entered an Order on Arbitration Procedure, appointed an Arbitrator, and entered a Protective Order on September 9, 1999. U S WEST filed its response on September 24, 1999.

On September 28, 1999, a prehearing conference was held to establish a procedural schedule, and a prehearing conference order was entered on October 8, 1999. Both parties filed direct testimony on October 15, 1999, and rebuttal testimony on October 19, 1999.

An arbitration hearing was conducted on October 28, 1999, at the Commission's offices in Olympia, WA. Both parties filed post-hearing opening briefs on November 12, 1999, and reply briefs on November 18, 1999.

Appearances: Lawrence Freedman, attorney, Arter & Hadden, Washington, D.C., appeared on behalf of ATTI, and John Devaney, attorney, Perkins Coie, Washington, D.C., appeared on behalf of U S WEST.

Unresolved Issues: The parties presented two legal issues and numerous factual issues at the outset of the proceeding. Although the parties should have resolved many more issues through negotiation prior to the filing of the petition for arbitration, the parties and their counsel are commended for continuing to negotiate and resolve disputes while this proceeding was pending. The parties submitted an unresolved issues matrix which presented the issues, positions of the parties, and proposed contract language. The instant Arbitrator's Report and Order (Arbitrator's Report) follows a similar sequence in presenting decisions. As stated in the prehearing conference order, the Arbitrator is not bound to make decisions based on proposed contract language.

The legal and factual issues resolved in the Arbitrator's Report are:

A. Should ATTI Be Permitted to Opt-into the Reciprocal Compensation Arrangement from the Interconnection Agreement Between MFS and U S WEST? (Legal Issue #1)

B. Should U S WEST Be Required to Make Combinations of Unbundled Network Elements Available to ATTI? (Legal Issue #2)

C. Should the Requirement for Adjacent Collocation Extend to "Nearby Locations" Where U S WEST Does Not Own the Property? (Factual Issue #5)

D. Should There Be a Separate Dispute Resolution Clause to Expedite Collocation Disputes? (Factual Issue #11)

E. Should Final Payment for Installation of Collocation Equipment Be Based on Completion of the Job or on ATTI's Reasonable Satisfaction? (Factual Issue #17)

F. Is U S WEST Entitled to a Quote Preparation Fee When ATTI Requests Cross-connection to Another Collocated CLEC? (Factual Issue #22)

Resolution of Disputes and Contract Language Issue: As a general matter, the Arbitrator's Report is limited to the disputed issues presented for arbitration. 47 U.S.C. § 252(b)(4). Prior to the start of the hearing the Arbitrator ordered that this proceeding would *not* be based on "baseball-style" arbitration.

The parties were required to present proposed contract language on all disputed issues to the extent possible, and the Arbitrator reserved the discretion to either adopt or disregard proposed contract language in making decisions. Each

decision of the Arbitrator is subject to and qualified by the discussion of the issue. Contract language adopted pursuant to arbitration remains subject to Commission approval. 47 U.S.C. § 252(e).

This Arbitrator's Report is issued in compliance with the procedural requirements of the Telecom Act, and it resolves all issues which were submitted to the Commission for arbitration by the parties. The parties are directed to engage in good faith negotiations and resolve any precursory issues not expressly addressed, consistent with the Arbitrator's decisions. If the parties are unable to submit a complete interconnection agreement due to an unresolved issue they shall notify the Commission in writing prior to the time for filing the Agreement. At the conclusion of this Report, the Arbitrator addresses procedures for review to be followed prior to entry of a Commission order approving an interconnection agreement between the parties.

MEMORANDUM

I. Relevant Proceedings

A. The Commission's Generic Cost and Pricing Proceeding

1. As part of its effort to fully implement the Telecom Act, the Commission entered an Order on October 23, 1996, declaring that a generic proceeding would be initiated in order to review costing and pricing issues for interconnection, unbundled network elements, transport and termination, and resale. The Commission stated that rates adopted in the pending arbitration proceedings being conducted pursuant to the Telecom Act would be interim rates, pending completion of the generic proceeding. That proceeding is underway.[1] Accordingly, the prices approved in every interconnection agreement are interim rates and are subject to the Commission's decisions in the Generic Case.

B. Proceedings to Implement the Telecommunications Act of 1996

1. The FCC's Pick and choose rule

[1] *In the Matter of the Pricing Proceeding For Interconnection, Unbundled Elements, Transport and Termination, and Resale*, UT-960369 (general), UT-960370 (U S WEST), UT-960371(GTE); Order Instituting Investigations; Order of Consolidation; and Notice of Prehearing Conference, November 21, 1996 (Generic Case). On April 16, 1998, the Commission entered an interlocutory order determining costs in Phase I of the Generic Case. The Commission held hearings in October and December 1998 to set permanent prices. On August 30, 1999, the Commission entered an Order determining prices in Phase II of the proceeding (17th Supplemental Order). Phase III of the Generic Case and other proceedings have been commenced to further investigate the cost and pricing of collocation, to consider deaveraged loop pricing proposals for different geographic zones, and to consider all other unresolved cost and pricing issues deferred by the Commission in the 17th Supplemental Order.

2. Following the passage of the Telecom Act, the Federal Communications Commission (FCC) issued its First Report and Order (Local Competition Order), including Appendix B - Final Rules (FCC Rules), promulgating regulations to implement the local competition provisions of the Act.[2] Numerous parties petitioned for judicial review of the Local Competition Order to the Eight Circuit Court of Appeals and asked that court for a stay of the order.[3]

3. On September 27, 1996, the Eighth Circuit temporarily stayed the entire body of the FCC's Rules. Ultimately, the Eighth Circuit stayed only the FCC's pricing provisions and 47 C.F.R. 51.809 (the "pick and choose" rule) pending judicial review. On October 15, 1996, the U. S. Court of Appeals, Eighth Circuit stayed operation of the FCC Rules relating to pricing of interconnection and the pick and choose provisions.[4]

4. On July 18, 1997, the Eighth Circuit entered an order vacating numerous FCC Rules.[5] On October 14, 1997, the Court entered an order on rehearing vacating additional FCC Rules.[6] Several parties filed writs of certiorari to the United States Supreme Court.[7] On January 25, 1999, the Supreme Court entered a decision holding that the FCC Rules, with the exception of 47 C.F.R. §51.319, are consistent with the Telecom Act (*AT&T Corp.*).[8] On June 10, 1999, the Eighth Circuit entered an order reinstating the FCC's pick and choose rule .[9]

2. The FCC's combination of unbundled network elements rule

5. Among the rules initially vacated by the Eighth Circuit was the combination of unbundled network elements (UNEs) rule, 47 C.F.R. §51.315(c)-(f), and

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[2] *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 F.C.C.R. 15499, First Report and Order (August 8, 1996), Appendix B- Final Rules.

[3] *Iowa Util. Bd. v. Federal Communications Comm'n*, 109 F.3d 418, 421 (8th Cir. 1996).

[4] *Id.* at 427 and n.8.

[5] *Iowa Utilities Bd. v. Federal Communications Comm'n*, 120 F.3d 753 (8th Cir. 1997).

[6] *Id.*

[7] *See* 118 S.Ct. 879 (1998).

[8] *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999).

[9] *Iowa Utilities Bd. v. Federal Communications Comm'n*, ___ F.3d ___ (8th Cir. June 10, 1999).

the court later vacated 47 C.F.R. §51.315(b).[10] On appeal, parties challenged the order vacating the FCC's rule prohibiting ILECs from disassembling UNEs already combined in their network before making them available to requesting CLECs (Rule 51.315(b)).

6. With respect to the FCC's UNE combination rule, the Supreme Court rejected the argument that the Act requires CLECs to combine network elements for themselves and reversed the Eighth Circuit's decision that Rule 315(b) violates the Telecom Act. Although the Eighth Circuit Court presently is considering the validity of Rule 315(c)-(f), the United States Court of Appeals for the Ninth Circuit recently reviewed the Supreme Court's decision regarding UNE combinations (MFS case).[11]

7. In that case, U S WEST appealed the decision of the Commission approving an arbitrated interconnection agreement between U S WEST and MFS (MFS Agreement) and the decision of the federal District Court granting summary judgment on all issues to the Commission and MFS. The Ninth Circuit Court relied upon the Telecom Act and the Supreme Court's interpretation of the Act, and affirmed the provision in the MFS Agreement that requires U S WEST to combine elements at the request of MFS.[12]

C. The Commission's Duty Under the Telecommunications Act of 1996

8. The primary goals of the Telecom Act are the nondiscriminatory treatment of carriers and the promotion of competition.[13] The Telecom Act contemplates that competitive entry into local telephone markets will be accomplished through interconnection agreements between ILECs and CLECs, which will set forth the particular terms and conditions necessary for the ILECs to fulfill their duties under the Act. 47 U.S.C. § 251(c)(1). Each interconnection agreement must be submitted to the Commission for approval, regardless of whether the agreement was negotiated or arbitrated, in whole or in part. 47 U.S.C. § 252(d).

9. Section 252(i) of the Telecom Act permits third parties to obtain access to any individual interconnection, service, or network element arrangement on the same terms and conditions as those contained in any agreement approved under Section

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[10] *Iowa Utilities Bd. v. Federal Communications Comm'n*, 120 F.3d 753, 813 (8th Cir. 1997)

[11] *U S WEST Communications, Inc. v. MFS Intelenet, Inc.,* Case No. 98-35146, 1999 U.S. App. LEXIS 25032 (9th Cir. (Wash.) Oct. 8, 1999).

[12] *Id.* at [*21] and [*22].

[13] Local Competition Order, 11 FCC Rcd at 16139, ¶ 1315.

252.[14] The FCC concluded that Section 252(i) entitles all parties with interconnection agreements to "most favored nation" status, and adopted 47 C.F.R. § 51.809, enabling requesting carriers to pick and choose arrangements contained in any agreement that is approved by a state commission.[15]

10. The FCC further concluded that requesting carriers must be permitted to obtain their statutory rights on an expedited basis, and left to state commissions in the first instance the details of implementing expedited procedures for making arrangements available.[16] The Commission issued an Interpretive and Policy Statement consisting of ten guiding principles to implement Section 252(i) of the Telecom Act and the FCC's pick and choose rule (Section 252(i) Policy Statement).[17]

D. Standards for Arbitration

11. The Telecommunications Act states that in resolving by arbitration any open issues and imposing conditions upon the parties to the agreement, the state commission is to: (1) ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC under Section 251; (2) establish rates for interconnection services, or network elements according to Section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C. § 252(c).

II. ISSUES, DISCUSSION, AND DECISIONS

A. Should ATTI Be Permitted to Opt-into the Reciprocal Compensation Arrangement from the Interconnection Agreement Between MFS and U S WEST? (Legal Issue #1)

1. ATTI's Position

12. ATTI requests to receive interconnection terms from an approved interconnection agreement between AT&T and U S WEST (AT&T Agreement),[18] except ATTI seeks terms providing for UNE combinations as a disputed arbitration issue and

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[14] Local Competition Order, 11 FCC Rcd at 16139, ¶ 1314.

[15] Local Competition Order, 11 FCC Rcd at 16139-40, ¶ 1316.

[16] Local Competition Order, 11 FCC Rcd at 16141, ¶ 1321.

[17] *In the Matter of the Implementation of Section 252(i) of the Telecommunications Act of 1996*, Interpretive and Policy Statement, Docket No. UT-990355 (November 30, 1999).

[18] *In the Matter of the Petition for Arbitration of An Interconnection Agreement Between AT&T Communications of the Pacific Northwest, Inc. and U S WEST Communications, Inc.*, Docket No. UT-960309, Commission Order Approving Agreement (July 11, 1997).

requests a reciprocal compensation arrangement pursuant to its rights under Section 252(i) of the Telecom Act. ATTI argues that it is entitled to receive the same reciprocal compensation arrangement from an approved agreement between MFS and U S WEST (MFS Agreement)[19] that the Commission recently approved between NEXTLINK and U S WEST (NEXTLINK case).[20]

2. U S WEST's Position

13. U S WEST argues that ATTI does not have the right to opt-into to the reciprocal compensation language of the MFS Agreement under Section 252(i) because the MFS Agreement has expired. U S WEST also argues that even if the MFS Agreement were not expired, ATTI still would be prohibited from opting-into the MFS reciprocal compensation language because all of the provisions in the interconnection section of the AT&T Agreement constitute a single arrangement.

3. Discussion and Recommended Decision

14. As mentioned in the Memorandum section, the Commission recently issued a policy statement consisting of ten guiding principles as it fulfills its regulatory obligation to implement Section 252(i) of the Telecom Act and the FCC's pick and choose rule. Principle 6 of the Commission's Section 252(i) Policy Statement addresses the period of time during which arrangements must be made available:

> The "reasonable period of time" during which arrangements in any interconnection agreement (including entire agreements) must be made available for pick and choose by a requesting carrier extends until the expiration date of that agreement. A requesting carrier may not receive arrangements from any agreement after the expiration date.

Section 252(i) Policy Statement, ¶ 18, at page 4.

15. Thus, under this guideline, the MFS reciprocal compensation arrangement need not be made available to ATTI if the MFS Agreement has expired.

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[19] *In the Matter of the Petition for Arbitration of An Interconnection Agreement Between MFS Communications Company, Inc., and U S WEST Communications, Inc.*, Docket No. UT-960323, Order Approving Negotiated and Arbitrated Interconnection Agreement (January 8, 1997).

[20] *NEXTLINK Washington, Inc. and U S WEST Communications, Inc.*, Docket No. UT-990340, Commission Order Adopting Recommended Decision, In Part, and Modifying Recommended Decision, In Part (September 9, 1999).

This issue also arose in a recent FCC case (Global NAPS-New Jersey Order).[21] In the Global NAPS-New Jersey Order, the FCC referred to the complex procedural history of the proceeding caused by both opt-in and arbitration attempts by Global NAPs, and to a dispute arising under Section 252(i) regarding the expiration date of the agreement being opted-into:

> . . . [A] carrier opting-into an existing agreement takes all of the terms and conditions of that agreement (or the [requested] portions of that agreement), including its original expiration date. It appears from the record that one of the disputes between the parties was over the termination date of the agreement being opted-into. This dispute underscores the importance of contractual terms that unambiguously establish a termination date.

Global NAPS-New Jersey Order at 12534, footnote 25. While the FCC's discussion may be dicta, its relevance is clear. A similar dispute arises in this case, and the provisions of the MFS Agreement fail to unambiguously establish a termination date. The MFS Agreement does not include a definitive expiration date, and arrangements must be made available to requesting carriers.

16. The MFS Agreement was approved by the Commission and became effective January 8, 1997, and Section XXXIV.V states:

> This Agreement shall be effective for a period of 2 ½ years, and thereafter the Agreement shall continue in force and effect unless and until a new agreement, addressing all of the terms of this Agreement, becomes effective between the Parties. The Parties agree to commence negotiations on a new agreement no later than two years after this Agreement becomes effective.

MFS Agreement at page 87.

17. Thus, the MFS Agreement both provides that it is effective for a period of 2 ½ years subsequent to its approval, *and* that it is effective until a new agreement, addressing all of the terms of the initial agreement, is approved by the Commission. Although a 2 ½ year term can be readily determined, the effective date of a successor agreement is indeterminate in time. The ambiguity in Section XXXIV.V cannot be resolved on the language in the MFS Agreement alone.

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[21] *In the Matter of Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersy Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc.*, CC Docket No. 99-154, 14 FCC Rcd 12530 (1999).

18. The term "expire" is defined as "to cone to an end," and "terminate" is defined as "to come to an end in time."[22] Although Section XXXIV.Q (entitled "Survival") states that the parties' obligations shall survive the termination or expiration of the agreement, there are no other terms that expressly provide for the termination or expiration of rights under the MFS Agreement. The only terms that could possibly result in the termination of MFS's rights under the agreement are the provisions stated in Section XXXIV.JJ (entitled "Default"). That section provides that U S WEST may seek legal and/or regulatory relief if MFS fails to meet its obligations under the agreement. However, Section XXXIV.V merely obligates the parties to commence negotiations, the parties are not obligated to enter into a new agreement, and there are no express provisions that allow U S WEST to terminate the original agreement if a new agreement does not timely become effective.

19. Section XXXIV.V in the MFS Agreement stands in marked contrast to contract language which appears in recently negotiated U S WEST interconnection agreements. For example, the Commission recently approved a negotiated amendment to the original agreement between U S WEST and NEXTLINK.[23] The amendment states that the agreement will expire on August 15, 2000, and sets forth express conditions which must be met in order for the Agreement to remain in effect past that date and not terminate.

20. Another example is the interconnection agreement between U S WEST and Digital Communications, Inc. (Digital Agreement).[24] Section XXXIV.V of the Digital Agreement provides that the agreement shall terminate on December 15, 2000. If Digital fails to extend the effective period of the agreement past that date by meeting certain specific conditions, the agreement expressly provides that it terminates and Digital must take service under tariffs that are generally available to all carriers until a new agreement is effective between the parties.

21. The MFS Agreement was the first interconnection agreement approved by the Commission pursuant to the Telecom Act, and the contractual language of the "Term of Agreement" section in U S WEST agreements has changed considerably since then, including the addition of express terms for termination. The

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[22] Webster's Collegiate Dictionary, Tenth Edition, pp. 409 and 1216 (1996).

[23] *In the Matter of the Request for the Adoption of An Approved Interconnection Agreement Between NEXTLINK Washington L.L.C. and U S WEST Communications, Inc.*, Docket No. UT-960356, Order Approving Adoption of Approved Interconnection Agreement (April 30, 1997).

[24] *In the Matter of the Request for Approval of Negotiated Agreement Under the Telecommunications Act of 1996 Between Digital Communications, Inc. and U S WEST Communications, Inc.*, Docket No. UT-993006, Order Approving Negotiated Agreement for Interconnection and Resale of Services (November 30, 1999).

change in standard contract language provides a frame of reference for resolving the ambiguity in the MFS Agreement. The absence of any terms in the MFS Agreement that provide for the termination or expiration of rights prior to a new agreement conflicts with the purported 2 ½ year effective period. The only express term for the expiration of the original MFS Agreement is the approval of a superseding agreement.

22. U S WEST argues that the intent of the parties to the MFS Agreement was to ensure continuity of service arrangements during negotiations between the parties for a successor agreement, and that the parties did not intend to waive the contract's expiration date. This purported intent is not evident on the face of the agreement and there is no other evidence in the record to confirm or ascertain the intent of those parties. Furthermore, the issue of waiver is not germane to resolving the underlying ambiguity regarding the expiration date. No waiver occurs if the original agreement is understood to expire on the effective date of a new agreement.

23. If the parties acted in strict compliance with the original agreement, MFS and U S WEST would have initiated negotiations on a successor agreement no later than January 8, 1999. However, neither U S WEST nor MFS have requested that the Commission approve a successor agreement subsequent to that date, and the inference that the parties continue to negotiate in good faith, 351 days later, is not reasonable. Under the Telecom Act, parties are required to negotiate for 135-160 days prior to petitioning the Commission to arbitrate open issues. This requirement establishes a reasonable time period for the parties to conclude negotiations and identify issues that cannot be resolved without additional process. The conduct of U S WEST and MFS leads to the conclusion that their original agreement was intended to be effective for an indefinite period of time until a new agreement becomes effective.

24. Furthermore, on July 12, 1999 (five days after their agreement supposedly expired), U S WEST and MFS jointly requested that the Commission approve an amendment to the original agreement adding a new section regarding cageless physical collocation (MFS Amendment No. 1).[25] The terms of the MFS Agreement were not modified in any other way. The MFS Amendment No. 1 states:

> The [original] Agreement remains in full force and effect.

MFS Amendment No. 1, Section VII.F.6, at page 10.

25. On December 13, 1999, U S WEST and MFS again jointly requested that the Commission approve an amendment to their original agreement (MFS

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[25] *In the Matter of the Petition for Arbitration of An Interconnection Agreement Between MFS Communications Company, Inc., and U S WEST Communications, Inc.*, Docket No. UT-960323, Amendment No. 1 to the Interconnection Agreement Between MCI Worldcom Communications, Inc. f/k/a MFS Intelenet, Inc. and U S WEST Communications, Inc. for the State of Washington (filed July 12, 1999).

Amendment No. 2).[26] Amendment No. 2 deletes Section VI.I.2(b) in its entirety and inserts a new Section VI.I.6 modifying U S WEST's obligation to provide MFS with traffic reports. The MFS Amendment No. 2 states:

> Except as modified herein, the provisions of the [original] Agreement shall remain in full force and effect.

MFS Amendment No. 2, ¶ 4, at page 2. U S WEST's argument that the MFS Agreement expired on or about July 8, 1999, is contradicted by its amendments to the original agreement. U S WEST cannot credibly argue that its agreement with MFS has expired, and then proceed to successively amend the agreement along with the proviso that the original agreement remains in full force and effect.

26. U S WEST argues that the statement in the MFS Agreement that, "The parties agree to commence negotiations on a new agreement no later than two years after this Agreement becomes effective," would not make sense unless they intended that the agreement expire on July 8, 1999. U S WEST interprets Section XXXIV.V as if it obligated the parties to commence negotiations *no later than six months prior to its expiration*; however, that interpretation begs the question and goes to the heart of the issue. The obligation that the parties commence negotiations by a specific date after the agreement became effective triggers certain rights in the event that either party violates that provision, but it does not implicate the expiration date of the agreement.

27. As a final consideration, it is again noted that the primary goals of the Telecom Act are the nondiscriminatory treatment of carriers and the promotion of competition.[27] These goals militate in favor of making the MFS reciprocal compensation arrangement available to ATTI and other requesting carriers. The MFS reciprocal compensation arrangement is currently effective between numerous CLECs and U S WEST pursuant to requests that the MFS Agreement be made available, in its entirety.

28. The MFS reciprocal compensation mechanism is a well-established alternative to bill and keep which implicitly includes the requirement that an alternative

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[26] *In the Matter of the Petition for Arbitration of An Interconnection Agreement Between MFS Communications Company, Inc., and U S WEST Communications, Inc.*, Docket No. UT-960323, Amendment No. 2 to the Interconnection Agreement Between U S WEST Communications, Inc. and MCI Worldcom Communications, Inc. f/k/a MFS Intelenet, Inc. for the State of Washington (filed December 13, 1999).

[27] Local Competition Order, 11 FCC Rcd at 16139, ¶ 1315. Also see 47 U.S.C. § 251(c)(2)(D).

mechanism be made available when traffic is sufficiently out-of-balance.[28] Furthermore, U S WEST fails to provide evidence that the MFS terms constitute an unfair or unreasonable arrangement pursuant to 47 C.F.R. 51.809(b).

29. U S WEST's argument that the interconnection provisions in the AT&T Agreement are integrated, and that compensation provisions are "legitimately related" to the rest of the terms and conditions for providing interconnection service, is rejected. U S WEST's argument that ATTI seeks "rates, terms, and conditions" for interconnection not contained in any existing agreement also is rejected.

FCC Rule 51.809 states, in relevant part:

> An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any *individual* interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement.

47 C.F.R. § 51.809(a) (emphasis added). U S WEST, having failed to prevail on its argument that FCC Rule 51.809 should be vacated and that agreements only be made available in their entirety, now argues that the Commission should read the word "individual" out of the rule. U S WEST's proposal that the Commission treat fifteen pages and seventeen subsections of terms in Attachment 4 to the AT&T Agreement as a single interconnection arrangement would not be consistent with the Telecom Act and FCC regulations.

30. The FCC discussed this issue in its Local Competition Order:

> Given the primary purpose of section 252(i) of preventing discrimination, we require incumbent LECs seeking to require a third party agree to certain terms and conditions to exercise its rights under section 252(i) to prove to the state commission that

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[28] The Local Competition Order discusses bill and keep arrangements. "If state commissions impose bill-and-keep arrangements, those arrangements must either include provisions that impose compensation obligations if traffic becomes significantly out of balance or permit any party to request that the state commission impose such compensation obligations based on a showing that the traffic flows are inconsistent with the threshold adopted by the state." Local Competition Order, 11 FCC Rcd at 16055,
¶ 1113. The Commission previously established the threshold of 10%, and in another case, ordered U S WEST to provide the MFS arrangement to NEXTLINK when that 10% threshold was exceeded.

> the terms and conditions were legitimately related to the purchase of the individual element being sought.

Local Competition Order, ¶ 1315, 11 FCC Rcd at 16139. The FCC also required that ILECs prove that additional terms and conditions to interconnection arrangements are legitimately related.

31. The Commission's Section 252(i) Policy Statement makes clear the incumbent LEC's burden:

> Principle 10: An ILEC bears the burden of proving that certain terms and conditions are legitimately related to any requested individual interconnection, service, or element arrangements. An ILEC may impose additional terms and conditions as part of an arrangement only if the ILEC proves to the Commission that the interconnection, services or elements comprising the arrangement are either technically inseparable or are related in a way that separation will cause an increase in underlying costs. Arrangements are not "legitimately related" solely because they were negotiated jointly or through *quid pro quo* bargaining.

Section 252(i) Policy Statement, ¶ 22, at page 5.

32. To the extent that Principle 10 expands the ILEC's burden under FCC regulations or otherwise constitutes an additional requirement, Principle 10 is not inconsistent with the Telecom Act or relevant FCC regulations and is authorized by 47 U.S.C. § 261(c). U S WEST generally argues that different compensation arrangements may affect trunking arrangements, billing requirements, and the class of customers that a carrier targets. However, U S WEST expressly does not challenge ATTI's request on the basis of costs, and it fails to establish that the AT&T bill and keep compensation mechanism for terminating traffic is technically inseparable from other interconnection terms.

33. ATTI requests that U S WEST make available the same reciprocal compensation arrangement that the Commission ordered U S WEST to provide in the NEXTLINK case. In that case, an agreement between U S WEST and NEXTLINK provided that either party could seek an alternate reciprocal compensation plan if terminating traffic was sufficiently out-of-balance. NEXTLINK requested that the terms in Article V, § D, Appendix A - Local Call Termination rates, and associated terms from the MFS Agreement be made available as an arrangement. NEXTLINK's request was upheld by the Commission based on its claim for contractual relief; however, the Commission also concluded that NEXTLINK was entitled to the MFS reciprocal compensation arrangement under Section 252(i) based on equitable considerations.

34. Those same considerations do not exist in this case, but the Commission's Order established that the reciprocal compensation terms requested by ATTI constitute an individual interconnection arrangement. The parties should take note that the reciprocal compensation arrangement approved by the Commission in the NEXTLINK case terminates on or about August 15, 2000.

35. The indeterminate term of the MFS Agreement raises the issue of when the reciprocal compensation arrangement requested by ATTI should expire. Principle 8 of the Commission's Section 252(i) Policy Statement addresses the duration that an arrangement must be made available:

> An interconnection agreement or arrangement made available pursuant to Section 252(i) must be made available for the specific time period during which it is provided under the interconnection agreement from which it was selected. For example, if the interconnection arrangement was included in an agreement that expired on December 31, 2000, it must be made available to other carriers only until December 31, 2000.

Section 252(i) Policy Statement, ¶ 20, at page 4.

36. An interpretive and policy statement is not an order of the Commission, nor is it binding on the Commission or parties who may come before it in formal proceedings. The general purpose of the Commission's Section 252(i) Policy Statement is to establish guidelines for carriers making requests and to inform the telecommunications industry of how the Commission plans to implement the requirements of Section 252(i) and the FCC's pick and choose rule. In this case, the strict application of Principle 8 would not be fair or reasonable.

37. It would be inequitable to ATTI to associate an effective term with the MFS arrangement that would be subject to expiration upon the approval of a new agreement between MFS and U S WEST.[29] In that case, ATTI would likely receive insufficient notice that it must plan an alternative arrangement. Likewise, it would be inequitable to U S WEST if ATTI received the MFS arrangement for an indefinite term.

38. The most just and reasonable effective term to associate with the MFS arrangement is either 1) the arrangement expires 90 days after a new agreement between U S WEST and MFS becomes effective, or 2) the arrangement expires contemporaneous with the other negotiated and arbitrated terms in the Agreement, whichever event occurs first.

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[29] Upon the approval of a new agreement, the current agreement expires and U S WEST will no longer be required to make arrangements available from it.

B. Should U S WEST Be Required to Make Combinations of Unbundled Network Elements Available to ATTI? (Legal Issue #2)

1. ATTI's Position

39. ATTI requests that U S WEST make available terms and conditions related to unbundled network elements (UNEs) from the AT&T Agreement, but that combinations of UNEs be made available as an individual arrangement. ATTI seeks to obtain UNE combinations by arbitration, and it proposes specific contract language for approval.

40. ATTI argues that the provision for combinations in the AT&T Agreement is not legitimately related to the balance of UNE terms. The view that UNE combinations can be separated from other UNE-related terms is bolstered by the fact that the FCC adopted a separate rule governing the provision of combinations. ATTI argues that U S WEST fails to meet its burden to prove that UNE combinations are technically inseparable from other UNE-related terms or will cause an increase in underlying costs.

41. ATTI requests that U S WEST both make available combinations of UNEs that it currently combines and those that are not already combined. ATTI argues that it is entitled to receive the same UNEs that are provided in the AT&T Agreement, and that any changes to that list must be made subject to the "regulatory changes" and "amendments" provisions.

2. U S WEST's Position

42. U S WEST argues that all UNE-related terms in the AT&T Agreement, including UNE combinations, are legitimately related and constitute an individual arrangement. Therefore, ATTI cannot substitute language relating to UNE combinations and either must adopt the unaltered UNE provisions in the AT&T Agreement or must present comprehensive evidence regarding UNEs as an open issue for arbitration. Because ATTI did not present comprehensive evidence, U S WEST argues that ATTI must adopt UNE-combination terms from the AT&T Agreement.

43. U S WEST also argues that its obligation to provide UNEs does not extend to all network elements but only to those elements that meet the "necessary and impair" test in Section 251(d)(2) of the Telecom Act and that the FCC has specifically required ILECs to unbundle. ATTI is not entitled to unbundled access to, or combinations of, other network elements. Finally, U S WEST argues that it is not required to combine UNEs that are not already combined in its network.

3. Discussion and Recommended Decision

44. The parties identified and submitted the UNE-combinations issue as a legal issue to be resolved; not as a factual issue. ATTI's request for combined UNEs includes proposed contract language that raises factual issues not addressed in the record or that are indirectly related to combined UNEs. For example, ATTI proposes terms regarding pricing adjustments, provisioning intervals, circuit conversions, and Operations Support System (OSS) functions.

45. Accordingly, the decisions that ensue are not based upon ATTI's proposed language, and that language is not adopted. However, U S WEST's argument that rejection of ATTI's proposed language by necessity results in the adoption of the UNE combination terms in the AT&T Agreement also is rejected. ATTI's claim that it is entitled to treat combined UNEs as an individual arrangement and that
U S WEST is obligated to provide combinations is ripe for resolution.

46. U S WEST's obligation to provide UNEs does not extend to all network elements but only to those elements that meet the "necessary and impair" test in Section 251(d)(2) of the Telecom Act and that the FCC has specifically required ILECs to unbundle. Since both parties agree that the terms for unbundled network access in the AT&T Agreement be made available to ATTI (Attachment 3), any changes to the list of network elements must be made pursuant to Part A, Section 17 (Amendment of Agreement) and Section 21 (Governing Law).

47. The Commission retains jurisdiction to require ILECs to unbundle additional network elements, but would be required to apply the same standard as the Supreme Court mandated in its remand to the FCC. Although ATTI requests that U S WEST be required to combine "individual Network Elements" with "other Network Elements" or "network components," ATTI does not identify any additional network element with the requisite specificity to determine whether access is "necessary" or whether lack of access "impairs" its ability to provide service.

48. Provisions for UNE combinations are not legitimately related to other terms for unbundled access to network elements in the AT&T Agreement.[30] If the two references to UNE combinations were removed from the AT&T Agreement, the 52 pages of other terms relating to UNEs would be unaffected. The Commission's Section 252(i) Policy Statement, Principle 10, states,"An ILEC bears the burden of proving that certain terms and conditions are legitimately related to any requested individual interconnection, service, or element arrangements."

[30] References to combinations of UNEs appear in Attachment 3, Section 1.2.2.

49. U S WEST has not presented evidence or persuasive argument that the UNE-combination terms are either technically inseparable or cause additional costs if treated as an individual arrangement. The FCC's treatment of UNE combinations under 47 C.F.R. § 51.315, separate from specific network element unbundling requirements under 47 C.F.R. § 51.319, supports the conclusion that terms relating to UNE combinations comprise an individual arrangement.

50. The Telecom Act states, in pertinent part, that it is:

> "The duty [of the incumbent LEC] to provide, to any requesting telecommunications carrier *for the provision of a telecommunications service*...access to network elements on an unbundled basis[.] An incumbent local exchange carrier shall provide such unbundled network elements in a manner *that allows requesting carriers to combine such elements in order to provide such telecommunications service."*

47 U.S.C. § 251(c)(3) (emphasis added).

51. The Telecom Act, on its face, therefore, expressly permits the combination of elements by a requesting carrier for the purpose of providing a telecommunications service. The FCC takes this view, finding no basis to conclude from the Act's language "a limitation or requirement in connection with the right of new entrants to obtain access to unbundled elements."[31] Consistent with this interpretation, the FCC Rules permit the combination of unbundled elements by requesting carriers to provide a telecommunications service. 47 C.F.R. § 51.315(a).

52. As discussed in the memorandum section, the Eighth Circuit initially vacated the FCC's Rules requiring ILECs to combine network elements for CLECs (vacating 47 C.F.R. §§ 51.315(c)-(f)), and on rehearing also vacated Rule 315(b), which prohibited an ILEC from separating network elements it currently combines in its network unless requested by the CLEC.

53. On January 25, 1999, the Supreme Court issued its decision in *AT&T Corp*. With respect to the FCC's combination rule, the Supreme Court reversed the Eighth Circuit's decision that Rule 315(b) violates the Act. In affirming this rule, the Court rejected the argument that the Act requires CLECs to combine network elements for themselves. Accordingly, U S WEST must provide UNE combinations to ATTI that it currently combines in its network.

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[31] Local Interconnection Order, 11 FCC Rcd at 15666, ¶ 328.

54. The United States Court of Appeals for the Ninth Circuit also reviewed the Supreme Court's decision regarding UNE combinations in the MFS Agreement. The MFS Agreement states:

> USWC [U S WEST] agrees to perform and MFS agrees to pay for the functions necessary to combine requested elements in any technically feasible manner either with other elements from USWC's network, or with elements possessed by MFS.

MFS Agreement, ¶ XXXI.A.3, at 71. The District Court had previously held that this provision does not violate the Telecom Act because it provides for compensation to U S WEST for performing the functions necessary to combine the elements; thus, it does not upset pricing distinctions between unbundled elements and resold services.

55. The Ninth Circuit Court affirmed the provision in the MFS Agreement that requires U S WEST to combine elements at the request of MFS. The Court did not rely on the FCC's Rules to affirm the provision, rather it relied upon the Telecom Act and the Supreme Court's interpretation of the Act. According to the Court:

> The district court's holding sustaining the provision in the MFS Agreement requiring U S West to combine unbundled network elements at MFS's request before leasing must be affirmed under the rationale of [*AT&T Corp.*], sustaining a provision prohibiting an incumbent from separating already-combined elements before leasing.

MFS case, at [*19]. The Ninth Circuit Court did not rely on the federal regulations and its decision does not unlawfully intrude on the Eighth Circuit Court's jurisdiction as argued by U S WEST.

56. The Supreme Court considered whether the Telecom Act mandates that elements must never be provided in a combined form. In resolving this issue, the Supreme Court held:

> Because [47 U.S.C. § 251(c)(3)] requires elements to be provided in a manner that "allows requesting carriers to combine" them, incumbents say that it contemplates the leasing of network elements in discrete pieces. It was entirely reasonable for the [FCC] to find that the text does not command this conclusion. It forbids incumbents to sabotage network elements that are provided in discrete pieces, and thus assuredly contemplates that elements may be requested and provided in this form. . . . But it does not say, or even remotely imply, that elements must be provided only in this fashion and never in combined form.

AT&T Corp., 119 S. Ct. at 737. It follows, the Court held, that the FCC regulation prohibiting an ILEC from separating already-combined network elements was not inconsistent with the Telecom Act.

57. The Ninth Circuit Court followed that holding:

> It also necessarily follows from [*AT & T Corp.*] that requiring US West to combine unbundled network elements is not inconsistent with the Act: the MFS combination provision does not conflict with the Act because the Act does not say or imply that network elements may only be leased in discrete parts.

MFS case at *[21]. The Ninth Circuit Court found that the Supreme Court opinion undermined the Eighth Circuit's rationale for invalidating 47 C.F.R. § 51.315(c)-(f), and concluded that it must follow the Supreme Court's reading of the Telecom Act by upholding the terms in the MFS Agreement despite the Eighth Circuit's prior invalidation of the nearly identical FCC regulation.

58. Likewise, the Commission must follow the Ninth Circuit Court's decision. Procedural objections aside, U S WEST presents no compelling argument in support of its position that it should not be required to combine network elements at the request of other carriers. U S WEST must perform and ATTI must pay for the functions necessary to combine requested UNEs in any technically feasible manner either with other UNEs from USWC's network, or with network elements possessed by ATTI. However, U S WEST need not combine UNEs in any manner requested if not technically feasible, but must combine UNEs ordinarily combined in its network in the manner they are typically combined.

C. Should the Requirement for Adjacent Collocation Extend to "Nearby Locations" Where U S WEST Does Not Own the Property? (Factual Issue #5)

1. ATTI's Position

59. ATTI proposes contract language that would establish collocation either on U S WEST's premises or other nearby property when space has been exhausted in a U S WEST wire center. ATTI argues that its proposal is consistent with the FCC's Advanced Services Order and 47 C.F.R. § 51.323 (standards for physical and virtual collocation).[32] According to ATTI, the only limits placed on adjacent collocation by the FCC are technical feasibility and "reasonable safety and maintenance requirements."

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[32] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, 14 FCC Rcd 4761 (1999) Advanced Services Order).

60. ATTI argues that even if the express language of the FCC's order does not support off-premises adjacent collocation, it is consistent with the FCC's intent. ATTI proposes that U S WEST bear the costs to extend AC power up to a maximum of 200 feet from the U S WEST power source (so long as it is safe and technically feasible), and that ATTI bear all other costs where it seeks off-premises adjacent collocation. Finally, ATTI argues that the FCC expressly empowered state commissions to take measures they deem necessary to implement adjacent collocation, including the approval of nearby locations.

2. U S WEST's Position

61. U S WEST argues that the Advanced Services Order does not allow ATTI to collocate at "nearby locations" that are not on U S WEST's property. U S WEST takes exception to ATTI's use of the word "collocation" to refer to locating its equipment outside U S WEST's premises. U S WEST also points out that ATTI's proposed contract language does not address the allocation of costs for off-premises adjacent collocation.

3. Discussion and Recommended Decision

62. Collocation space has been a scarce commodity since the inception of the Telecom Act, and scarcity will continue as demand to collocate increases. In that context, the Commission supports the development of alternatives to meet demand within the bounds of technical feasibility, and reasonable safety and maintenance requirements. FCC Rule 51.323(k)(3) provides such an alternative:

> An incumbent LEC must make available, where space is legitimately exhausted in a particular incumbent LEC premises, collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible. The incumbent LEC must permit the new entrant to construct or otherwise procure such an adjacent structure, subject only to reasonable safety and maintenance requirements.

47 C.F.R. § 51.323(k)(3).

63. The word "adjacent" is defined as "not distant: NEARBY," and is distinguishable from its synonym "contiguous," which implies having contact on all or most of one side.[33] A controlled environmental vault consists of a space that includes: sufficient air conditioning; sufficient space for maintenance and expansion; sufficient

[33] Webster's Collegiate Dictionary, Tenth Edition, p. 14.

and correct power; and a solid electrical ground.[34] Any secure enclosed space that provides a suitable controlled environment constitutes a compliant similar structure.

64. The Advanced Services Order discusses collocation in an adjacent structure:

> Such a requirement is, we believe, the best means . . . of addressing the issue of space exhaustion by ensuring that competitive carriers can compete with the incumbent, even where there is no space inside the LEC's premises.

Advanced Services Order at 4786, ¶ 44. Thus, the FCC envisioned off-premises adjacent collocation.

65. Although the rule envisions a situation where a carrier requests to physically collocate on-premises but space is unavailable, there is no reason why the new entrant should not be allowed to construct or otherwise procure an adjacent structure even when space is available, subject to the same reasonable requirements. The further an adjacent collocation space is located from a central office, the greater the risk that quality of service will be adversely impacted. Thus, quality of service concerns dictate that adjacent collocation occurs no further from central offices than necessary.

66. The physical boundary of adjacent collocation must be dictated by technical feasibility, and not the name by which it is known. When a requesting carrier incurs the expense of securing and conditioning an adjacent structure and the expense of provisioning facilities to interconnect, it is the only party at risk if its quality of service is adversely impacted by a poor business decision.

67. ATTI may select vendors to perform adjacent collocation services in the same manner as it is permitted to select vendors to perform physical collocation services. U S WEST can protect itself through contractual terms limiting liability.

68. ATTI's proposed language is adopted with two modifications: 1) ATTI's option is not conditioned upon the availability of space on U S WEST's premises; and 2) ATTI bears all expenses for adjacent collocation at other than an "On Grounds Location."

D. Should There Be a Separate Dispute Resolution Clause to Expedite Collocation Disputes? (Factual Issue #11)

1. ATTI's Position

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[34] Newton's Telecom Dictionary, 15th Edition, p. 292.

69. ATTI proposes contract language for a separate dispute resolution clause to expedite collocation. ATTI argues that collocation is an activity for which time is of the essence, and that expedited procedures are necessary.

2. U S WEST's Position

70. U S WEST argues that terms requested by ATTI in the AT&T Agreement include an expedited dispute resolution process. Alternately, ATTI can file an informal complaint with the Commission or formally petition for relief under WAC 480-09-530.

3. Discussion and Recommended Decision

71. A separate dispute resolution clause to expedite collocation disputes is superfluous. In addition to ATTI's request that dispute resolution terms in the AT&T Agreement be made available, the parties may obtain expedited dispute resolution by filing a petition under WAC 480-09-530, the Commission's rule for enforcement of interconnection agreements.

E. Should Final Payment for Installation of Collocation Equipment Be Based on Completion of the Job or on ATTI's Reasonable Satisfaction? (Factual Issue #17)

1. ATTI's Position

72. ATTI argues that it should not be required to make final payment to U S WEST for collocation space if the space provided does not meet ATTI's reasonable satisfaction. Since ATTI pays 50% of the total cost as a down payment, ATTI argues that it is fair for it to retain final payment until the dispute is resolved.

2. U S WEST's Position

73. U S WEST states that it is entitled to reimbursement for services provided under the agreement, including collocation, pursuant to Section 252(d)(1) of the Telecom Act. U S WEST argues that ATTI's proposed contract language does not define "reasonable satisfaction" and effectively leaves the decision to pay entirely up to ATTI. U S WEST proposes that ATTI make final payment and seek relief for specific performance through the dispute resolution process.

3. Discussion and Recommended Decision

74. There is insufficient evidence in the record to determine a standard of commercial reasonableness for U S WEST's performance of services. Disagreements over U S WEST's compliance with its duty to perform specific services should be

addressed through the dispute resolution process, including a petition for enforcement of interconnection agreement filed with the Commission.

75. Payment for services to provide collocation space are non-recurring charges. This issue does not involve the reasonableness of the charges assessed; rather, it involves the adequacy of performance. It is possible that a collocation space may be functional, yet doesn't comply with the parties agreement. ATTI should not unfairly benefit from U S WEST's performance without making payment.

76. If ATTI does not take possession and make use of the collocation space or facilities while dispute resolution is pending it may retain final payment until the process is completed. However, if ATTI takes possession and makes use of the collocation space or facilities, it must make final payment while the dispute resolution process is pending. Final payment by ATTI shall not constitute a waiver of any objections to U S WEST's performance.

F. Is U S WEST Entitled to a Quote Preparation Fee When ATTI Requests Cross-connection to Another Collocated CLEC? (Factual Issue #22)

1. ATTI's Position

77. ATTI proposes that a request for CLEC-to-CLEC cross-connection may be included on the original collocation application form without incurring any separate or additional quote preparation fee (QPF) or other charge, and without extending the applicable collocation time intervals. ATTI argues that minimal additional time is required to prepare a quote at the outset.

78. Where CLEC cross-connection is separately requested subsequent to the original application form, ATTI proposes that it pay U S WEST a QPF based on U S WEST's reasonable and necessary costs for work performed.

2. U S WEST's Position

79. U S WEST argues that it is entitled to recover the costs incurred when its engineers determine the route for cross-connections (ensuring that overhead cable racking and routing are in place), in addition to any costs incurred for actually performing the cross-connect. These activities require U S WEST to prepare a quote, and in turn, entitles U S WEST to compensation. U S WEST presented testimony and argues that it is developing a separate QPF that will reflect the actual work and costs associated with cross-connects.

3. Discussion and Recommended Decision

80. U S WEST is entitled to recover costs caused by competing carrier requests, even if they are relatively small. The QPF for an original collocation application should provide for the recovery of the actual costs incurred to perform up-front technical assessments. The telecommunications industry is dependent on incremental charges, and if U S WEST performs an additional technical assessment as the result of ATTI's request for cross-connection, it is entitled to recover its additional costs.

81. If the additional cost to perform a technical assessment for cross-connection differs between requests made contemporaneous or subsequent to an original collocation application, then the QPF also should differ. Any disagreement regarding the assessment of a QPF should be addressed through the dispute resolution process, including a petition for enforcement of interconnection agreement filed with the Commission.

III. IMPLEMENTATION SCHEDULE

82. Pursuant to 47 U.S.C. § 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, may contain implementation time lines. The parties shall implement the agreement pursuant to the schedule provided for in the contract provisions, and in accordance with the 1996 Act, the applicable FCC Rules, and the orders of this Commission.

83. In preparing a contract for submission to the Commission for approval, the parties may include an implementation schedule.

IV. CONCLUSION

84. The foregoing resolution of the disputed issues in this matter meets the requirements of 47 U.S.C. § 252(c). The parties are directed to submit an interconnection agreement consistent with the decisions in this Arbitrator's Report to the Commission for approval pursuant to the following requirements.

A. Petitions for Review and Requests for Approval

85. The parties may petition for review of the Arbitrator's Report and Decision by the Commission. Petitions for review shall be in the form of a brief or memorandum, and must state all legal and factual bases in support of arguments that the Arbitrator's Report should be modified.

86. The parties also must file a request that the Commission approve negotiated terms, arbitrated terms for which review is not requested, and terms

requested pursuant to Section 252(i) which are not disputed. Parties filing a petition for review must present their request for approval in the same pleading.

87. Parties requesting approval of negotiated terms must summarize those provisions of the agreement, and state why those terms do not discriminate against other carriers, are consistent with the public interest, convenience, and necessity, and are consistent with applicable state law requirements, including relevant Commission orders.

88. Parties also requesting approval of arbitrated terms must summarize those provisions of the agreement, and state how the agreement meets each of the applicable specific requirements of Sections 251 and 252, including relevant FCC regulations, and applicable state requirements, including relevant Commission orders.

89. The petition for review and/or request for approval may reference or incorporate previously filed briefs or memoranda. Copies should be attached to the extent necessary for the convenience of the Commission. The parties are *not* required to file a proposed form of order.

90. **Petitions for review and/or requests for approval must be filed on or before January 14, 2000. Either party may file a reply to the opposing party's petition for review and/or request for approval on or before January 25, 2000.**

91. Requests for approval shall be filed with the Secretary of the Commission in the manner provided for in WAC 480-09-120. In addition, requests for approval shall be served on all parties who have requested service (the list is available from the Commission Records Center). The service rules of the Commission set forth in WAC 480-09-120 and 420 apply except as modified by the Commission or Arbitrator. Unless filed jointly, post-hearing pleadings and any accompanying materials should be served on the opposing party by delivery on the day of filing.

92. The parties shall file an original and six (6) copies of all post-hearing briefs or pleadings. **All post-hearing briefs or pleadings also *must* be filed on diskette formatted in either WordPerfect 5.1 through 6.1.** Attachments or exhibits to pleadings and briefs which do not pre-exist in an electronic format do not need to be converted.

B. Filing of an Interconnection Agreement for Approval

93. The parties must file a complete copy of the signed interconnection agreement, including any attachments or appendices, and incorporating all negotiated terms, terms requested pursuant to Section 252(i), and terms intended to fully

implement arbitrated decisions. The Agreement must clearly identify arbitrated terms by font style and identify the arbitrated issue which relates to the text by footnote.

94. **The Agreement must be filed on or before January 25, 2000.** The Commission reserves discretion to reject the filing of the Agreement in advance of that date, and the deadline may be extended by the Commission for good cause. The Commission does not interpret the nine-month time line for arbitration under Section 252(b)(4)(C) to include the approval process.

C. Approval Procedure

95. The requests for approval will be assigned to Commission Staff to review and present a recommendation to the Commission. The Commission does not interpret the approval process as an adjudicative proceeding under the Washington Administrative Procedure Act.

96. Any person wishing to comment on a request for approval may do so by filing written comments with the Commission no later than 10 days after the date of request for approval. Comments shall be served on all parties to the Agreement, and parties to the Agreement may file written responses to comments within 7 days of service.

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

98. The Commission will enter an order, containing findings and conclusions, approving or rejecting the Agreement within 30 days of its being filed. Agreements containing both negotiated and arbitrated provisions are treated as arbitrated agreements subject to the 30-day approval deadline specified in the Telecom Act.

DATED at Olympia, Washington and effective this 23th day of December 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAWRENCE J. BERG
Arbitrator