BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE PETITION OF SPRINT COMMUNICATIONS COMPANY L.P. FOR ARBITRATION OF INTERCONNECTION RATES, TERMS, CONDITIONS AND RELATED ARRANGEMENTS WITH U S WEST COMMUNICATIONS, INC.	))))))	**DOCKET NO. UT-003006**

CONFIDENTIAL

U S WEST COMMUNICATIONS, INC.'S POST-HEARING BRIEF

John M. Devaney
Mary Rose Hughes
PERKINS COIE LLP
607 Fourteenth Street, N.W.
Suite 800
Washington, D.C. 20005-2011
(202) 628-6600
(202) 434-1690(fax)

Lisa Anderl
U S WEST COMMUNICATIONS, INC.
Room 3206
1600 Seventh Avenue
Seattle, Washington 98191
(206) 343-4052
(206) 343-4040 (fax)

Attorneys for U S WEST Communications, Inc.

I.INTRODUCTION AND SUMMARY

The Telecommunications Act of 1996 (the "Act") establishes a two-step process for incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") to follow in entering into interconnection agreements: negotiations followed, if necessary, by compulsory arbitration. See 47 U.S.C. § § 252(a) and (b). By requiring negotiation before arbitration, Congress intended to promote voluntary resolution of interconnection issues and to minimize the number of issues that state commissions would have to resolve through the arbitration process. This arbitration between U S WEST Communications, Inc. ("U S WEST") and Sprint Communications Co. ("Sprint") is an example of what Congress must have had in mind when it established this two-step process. Through cooperative, focused negotiations, the parties have been able to agree upon the vast majority of the terms and conditions that will govern their relationship and have submitted to this Commission a comprehensive interconnection agreement that has only a small number of disputed provisions. The disputed issues presented to the Commission in this arbitration are: Matrix Issue No. 1 – reciprocal compensation for Internet traffic; Matrix Issue No. 2 – the definition of "currently combined" unbundled network elements ("UNEs"); Matrix Issue No. 3 – combinations of UNEs that are not currently combined; and Matrix Issue No. 10 – non-recurring charges for UNE combinations.

Although the disputed issues are small in number, they are high in importance. Of great importance, of course, is the parties' disagreement concerning whether Sprint should be able to collect reciprocal compensation from U S WEST for calls originating on U S WEST's network destined for Internet service providers ("ISPs") that are served by Sprint. This issue arises because the FCC has established that enhanced service providers, including ISPs, are exempt from paying the access charges that, in the normal course, would compensate both U S WEST and Sprint for the costs of originating calls to ISPs. Because Sprint cannot collect access charges from ISPs, it is seeking to recover its costs from U S WEST and, ultimately, from U S WEST's customers. In other words, Sprint would have this Commission require U S WEST and its customers to subsidize use of the Internet.

U S WEST recognizes that in previous orders, this Commission has required reciprocal compensation for Internet traffic. However, there is now an increasingly large body of experience and evidence demonstrating that this compensation scheme leads to several undesirable economic distortions in the market and is not in the public interest. The evidence U S WEST has presented in this arbitration demonstrates the negative economic consequences of reciprocal compensation and provides a sound basis for the Commission to reconsider whether this compensation scheme is in the interest of Washington consumers and competition in this state.[1] Based on substantially the same

[1] Pursuant to an agreement between U S WEST and Sprint set forth in a letter of May 22, 2000 to the Administrative Law Judges, the parties have waived an arbitration hearing and stipulated to the admission into the record of all pre-filed direct, rebuttal, and surrebuttal testimony, along with the exhibits accompanying that testimony. The parties also have stipulated to the admissibility of the arbitration hearing transcripts from the recently concluded arbitrations between U S WEST and Sprint conducted in

evidence, the Colorado Commission recently rejected Sprint's request for reciprocal compensation in the interconnection arbitration in that state between U S WEST and Sprint, despite earlier rulings that had permitted a competitive local exchange carrier ("CLEC") to collect reciprocal compensation. See In the Matter of the Petition of Sprint Communications Co. for Arbitration Pursuant to U.S. Code § 252(B) of the Telecommunications Act of 1996, Docket No. 00B-011T, Decision No. C00-479, Initial Commission Decision at 10-18 (Mailed Date May 5, 2000)("Colorado Decision"). In reaching that result, the Colorado Commission commented that in the earlier cases, "no one, including the Commission, appreciated the economic ramifications of ordering termination compensation for ISP traffic." Id. at 12. As in Colorado, the record U S WEST has presented in this case provides new information about the economic effects of requiring reciprocal compensation.

There are several compelling reasons for denying Sprint's request for reciprocal compensation. First, the reciprocal compensation requirements of section 251(b)(5) of the Act apply only to local telecommunications traffic. 47 C.F.R. § 51.701(a). As confirmed by Sprint's own witnesses, Internet calls travel to remote hubs located in other states and ultimately terminate in most instances at websites located in different states and foreign countries. Arizona Transcript ("AZ Tr.") at 67-68. It is not surprising, therefore, that Sprint itself has acknowledged that based on an end-to-end analysis, Internet traffic is predominately interstate. Id. This conclusion is, of course, consistent with that reached by the FCC in the declaratory ruling relating to this issue that the United States Court of Appeals for the District of Columbia recently vacated and remanded. The FCC's statements since the D.C. Circuit's ruling strongly suggest that the FCC continues to view Internet traffic as predominately interstate and not local. Therefore, consistent with 47 C.F.R. 51.701(a), reciprocal compensation should not be paid.

Second, requiring U S WEST to pay reciprocal compensation would lead to an implicit subsidy for ISPs and their customers. The unfairness that would result from a subsidy is starkly demonstrated by focusing on the many U S WEST customers in Washington -- many of the elderly, for example -- who do not use the Internet or even own a computer. As a matter of equity and sound public policy, these citizens should not be required to subsidize the Internet and ISPs through the rates they pay for local telephone service. Moreover, this result would violate the intent of Congress to eliminate implicit subsidies that are built into rates for telecommunications services.

Third, the basic economic principle of cost causation undermines Sprint's request that U S WEST pay reciprocal compensation for Internet calls. It cannot reasonably be disputed that Internet calls and the costs associated with them are caused by ISPs through offering Internet services, signing up customers, and marketing their offerings. As discussed in the testimony of U S WEST witness, Dr. William Taylor, just as in the long distance regime, the carrier that encourages its customers to place calls and, in turn, causes other carriers to incur costs, should bear responsibility for collecting charges from its customers and compensating the other carriers. To do otherwise and require

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Arizona and Colorado and a limited number of cross-examination exhibits.

U S WEST to pay Sprint's costs through reciprocal compensation would violate the principle that the party that causes a cost should pay it.

Fourth, as described in the testimony of Dr. Taylor and as the Colorado Commission recognized, if the Commission orders U S WEST to pay reciprocal compensation for Internet traffic, it will create perverse economic incentives that violate the pro-competition intent of the Act. Specifically, the significant profits CLECs can obtain through reciprocal compensation paid at the voice rate for transport and termination encourage CLECs to specialize in serving dial-up ISPs and carrying Internet traffic, while significantly decreasing their incentive to provide local residential service. This result undermines an essential purpose of the Act -- promoting vigorous competition for all services in local exchange markets.

Fifth, Sprint has failed to present the Commission with evidence to support its request for reciprocal compensation. For example, while Sprint asserts that U S WEST should recover the costs of paying reciprocal compensation by raising its retail rates, it provided no evidence of the amount of reciprocal compensation at issue and, in turn, the amount by which U S WEST would have to raise its retail rates to recover these costs. Similarly, Sprint did not present any evidence to rebut U S WEST's evidence and the FCC's finding that Internet traffic is predominately interstate. As a result of these shortcomings, the Commission does not have an adequate record upon which to base a ruling in support of Sprint's request for reciprocal compensation.

For these reasons and the reasons discussed below, the Commission should not grant Sprint's request for reciprocal compensation for ISP-bound traffic. However, if the Commission does allow Sprint's request, it should not award reciprocal compensation at the voice rate, which was based on the average cost to originate and terminate voice traffic. Indeed, as set forth in the letter from the parties of May 22, 2000 to the ALJs, Sprint and U S WEST have expressly stipulated that the cost of handling Internet calls typically is less than the costs associated with terminating voice calls and that, therefore, it is appropriate to establish in the pending generic cost docket a separate rate for Internet calls if the Commission awards reciprocal compensation. This stipulation is supported by evidence from both parties demonstrating the different cost structures for voice and Internet calls.

The other issues in this arbitration relate to the extent of U S WEST's obligation to provide combinations of unbundled network elements ("UNEs") and U S WEST's right to recover nonrecurring costs associated with combinations of UNEs. As explained below, although U S WEST is fully aware of the Commission's prior rulings on this issue, requiring U S WEST to combine UNEs that are not already combined violates the express language of section 251(c)(3) of the Act and the ruling of the United States Court of Appeals for the Eighth Circuit in Iowa Utils. Bd. v. FCC, 120 F.3d 753, 813 & n. 39 (8th Cir. 1997), aff'd in part, rev'd in part, AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721 (1999). Further, for any combinations of UNEs that it is required to provide, under section 252(d)(1), U S WEST has the right to recover the nonrecurring costs it incurs.

These issues are addressed in detail in the discussion that follows.

II.DISCUSSION

A. The Commission Should Not Require U S WEST To Pay Reciprocal Compensation for Internet Calls (Issue 1).

1. Internet Traffic Is Interstate and Is Not Subject To the Reciprocal Compensation Provisions of Section 251(b)(5).

Last year, the Federal Communications Commission held that traffic delivered to an ISP is primarily interstate, and not local, in nature. In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 (rel. February 26, 1999) (the "ISP Order"). In the ISP Order, the FCC stated that state commissions may require the payment of reciprocal compensation for ISP traffic, but were not obligated to do so: "[S]tate commissions also are free not to require the payment of reciprocal compensation for this traffic and to adopt another compensation method." ISP Order at ¶ 26. In reaching these conclusions, the FCC emphasized that Internet calls do not terminate at the ISP's local server. ISP Order at ¶ 12. Instead, these calls "continue to the ultimate destination or destinations, specifically at an Internet website that is often located in another state." ISP Order at ¶ 12. Accordingly, Internet traffic is not governed by the reciprocal compensation provisions of Section 251(b)(5) of the Telecommunications Act of 1996 ("Act").[2] ISP Order at ¶ 26, at n.87.

Recently, the United States Court of Appeals for the District of Columbia Circuit vacated the ISP Order. Bell Atlantic Tel. Cos. v. FCC, No. 99-1094, 2000 WL 273383 (D.C. Cir. March 24, 2000). However, in vacating the ISP Order, the court did not hold that the FCC's conclusion that ISP traffic is interstate in nature is incorrect. To the contrary, the court ruled that the FCC had not yet provided an adequate explanation of why such traffic is exchange access rather than telephone exchange service. Moreover, subsequent to that court's decision, FCC Common Carrier Bureau Chief Lawrence E. Strickling commented that he continues to believe that ISP traffic is interstate in nature, and that some fine tuning and further explanation should satisfy the court that the FCC is correct in this conclusion. TR Daily (March 24, 2000); Taylor Direct at 5 n.1. Accordingly, there is at present no basis to suppose that the FCC's determination of the interstate nature of ISP traffic will be revised or is in any way mistaken.

By regulation, the FCC has limited the scope of Section 251(b)(5) of the Act to local telecommunications traffic only. 47 C.F.R. § 51.701(a). Thus, under the Act, because ISP traffic is primarily interstate in nature, the reciprocal compensation

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[2] Similarly, in In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order (rel. December 22, 1999), at ¶ 377, the FCC stated that "Inter-carrier compensation for ISP bound traffic, however, is not governed by section 251(b)(5)" the reciprocal compensation provision of the Act.

mechanism prescribed by the Act does not apply. In a recent decision, the Public Service Commission of South Carolina concluded that, because ISP traffic is interstate in nature, it cannot be subject to reciprocal compensation: "As ISP-bound traffic does not terminate at the ISP's server on the local network, this Commission finds that ISP-bound traffic is non-local traffic. Further, since Section 251 of the 1996 Act requires that reciprocal compensation be paid for local traffic, the Commission further finds that the 1996 Act imposes no obligation on parties to pay reciprocal compensation on ISP-bound traffic." In re Petition of DeltaCom Communications, Inc., for Arbitration with BellSouth Telecommunications, Inc., Docket No. 1999-259C, Order No. 1999-690, Order on Arbitration at 64 (October 4, 1999). For the same reasons, this Commission should reject Sprint's contention that reciprocal compensation applies to ISP traffic.

That ISP traffic is interstate in nature -- and consequently not subject to reciprocal compensation -- is demonstrated by that traffic's similarities to other long distance traffic. When a caller makes an ordinary long distance call, the call originates on the network of one or more local exchange providers, which then route the call to an interexchange carrier's ("IXC's") point of presence ("POP"). The IXC then routes the call to the local exchange carrier serving the called party, who in turn delivers the call to that party. Brotherson Direct at 8-9. The Internet works in the same way. When a caller accesses the Internet, the call originates on the network of a provider that routes the call to the ISP. The ISP then routes the call onto an Internet backbone, to be terminated at the website that the caller seeks to contact. Id. As U S WEST's witness Joseph Craig explained, all ISP calls originating in Washington are routed to ISP hubs located outside of the state. Craig Direct at 14.[3]

From a technical perspective, an ISP call is plainly more analogous to a long distance call than to a local call. With both long distance calls and ISP calls, the switch of the originating carrier does not deliver the call to its ultimate destination. Craig Direct at 12-13. Instead, for both types of calls, the originating provider delivers the call to another carrier -- an IXC or a CLEC serving an ISP -- and that carrier identifies the network for which the call is destined. The originating provider does not have a direct path to the final destination of the call and does not know which network the call ultimately reaches. Id. By contrast, with a local call the switch of the originating carrier identifies the destination of the call, and the originating carrier has a direct path to that final destination. The carrier that originates a local call identifies the destination of that call and delivers the call to that destination. Id.[4]

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[3] As further described in the testimony of Mr. Craig, a customer of an ISP who uses a dial-up connection uses the same switch to originate the ISP call that is used to originate long distance and local calls. The originating end user's local exchange provider takes the call to the originating serving central office, switches the call, and delivers it to the appropriate Internet hub using the Universal Resource Locator or "URL" designated by the originating user. Craig Direct at 10-11. Because there is no limit to the number of web sites the end-user can access on a single call to an ISP, calls to ISPs tend to be much longer than local or long distance calls. Id. at 11.

[4] As discussed more fully below, there are other differences as well. Most significantly, the originator of an ISP call originates that call as a customer of the ISP, not as the customer of the local

The routing process for ISP calls also shows that these calls are interstate in nature. Upon receiving a call, an ISP must deliver it over the Internet backbone to a remote hub specified by the URL address that the originating end-user designates. Craig Direct at 11. The remote hubs to which ISP calls are delivered are often located outside the state of the originating user. Remote hubs in the continental United States are located in Chicago, New York, Washington, D.C., Houston, Dallas, Los Angeles, San Jose, and San Francisco. For ISPs in Washington, the closest remote hubs are in San Jose and San Francisco. Id. For this reason, most Internet calls placed by end users in Washington cross state lines. Id.

Based on the same evidence summarized above, the Colorado Commission found that Internet calls are primarily interstate in nature and are not properly the subject of reciprocal compensation. Colorado Decision at 14-15. The same conclusion follows from the evidence in this case.

2. Strong Public Policy Reasons Counsel Against Imposing Reciprocal Compensation for Internet Traffic.

There are strong policy reasons why Internet calls should not be subject to reciprocal compensation.

First, application of reciprocal compensation to Internet traffic conflicts with the basic economic principle of cost causation. The party that initiates a call to an ISP does so as a customer of the ISP, not as a customer of the local exchange carrier. When a customer logs on to the Internet, that customer is doing so as a user of the ISP's services, not as a user of the ILEC's services. The Internet user pays a monthly fee to the ISP, and the ISP encourages that user to place the call by designing, marketing (e.g. distributing free Internet software that offer free usage), and selling its Internet services. Thus, the conduct of the ISP causes the end-user to generate costs, and the end-user generates those costs as a customer of the ISP, not as a customer of U S WEST. The same principle holds true when a caller makes an interstate call using an IXC. The IXC markets its service to the customer and contracts with the caller regarding the terms and conditions governing that call. In the case of the long distance call, the customer is a user of the IXC's long distance service, and the IXC is the cost causer. Taylor Direct at 14-22.

Just as is the case in the IXC regime, the cost causer of ISP traffic should be responsible for collecting the charges from its customers necessary to cover the network costs that are incurred. In both situations, the subscriber that originates the call is making the call as a customer of the IXC or the ISP, not of the ILEC with which the call originates. Accordingly, the ISP compensation structure should mirror that of IXC exchange access. The ISP should pay the ILEC (and CLEC) that serve the ISP usage charges analogous to carrier access charges that the IXCs pay. In this way, the CLEC that switches Internet calls for the ISP is compensated, not from reciprocal compensation paid

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exchange carrier, just as the originator of a long distance call does so as the customer of the IXC, not as the customer of the local exchange carrier. By contrast, the originator of a local call does so as the customer of the local exchange carrier.

by the originating ILEC, but rather from the charges paid by the ISP. Id.

Second, subjecting ISP traffic to reciprocal compensation creates an implicit subsidy for ISP traffic and those Internet subscribers who generate that traffic. This problem is exacerbated by the fact that the FCC has already created an implicit subsidy for ISP traffic by exempting it from access charges.[5] In addition to being inconsistent with Congress' intent in the Act to eliminate such implicit subsidies, the implicit subsidy created by reciprocal compensation for Internet traffic gives rise to perverse economic incentives -- most strikingly reflected by the creation of sham LECs whose sole purpose is to deliver traffic to ISPs and generate reciprocal compensation payments. In fact, the significant profit margins that CLECs receive through reciprocal compensation has led to the creation of CLECs that specialize in Internet traffic and provide little or no genuine local exchange service. In the worst case, some CLECs actually generate artificial Internet traffic for the specific purpose of reaping the significant financial benefits of reciprocal compensation. See, e.g., In the Matter of BellSouth Telecommunications, Inc., Docket No. P-561, Sub 10, Order Denying Reciprocal Compensation (NCUC March 31, 2000). This practice obviously undermines a fundamental purpose of the Act -- to develop vigorous competition for all services in the local exchange markets. Id.

It is precisely because of the perverse economic incentives created by reciprocal compensation that the North Carolina Utilities Commission recently ruled that BellSouth need not compensate a competitor for delivering traffic that was generated to raise reciprocal compensation revenue. Id. According to the Commission, reciprocal compensation in such circumstances "would be ultimately destructive to competition and represent a severe misallocation of resources . . . The destructiveness arises not only from the draining of resources of existing ILECs but from the incentive to prospective recipients of reciprocal compensation to construct artificial and inefficient networks resulting ultimately in endangerment to the public switched network." Id.

Internet traffic has dramatically increased the usage of U S WEST's network. Craig Direct at 14-16. This increased usage results in large part from the significantly longer hold times of Internet calls as compared to the average hold times of local voice calls. Id. As Sprint's witness confirmed, the average hold time of a local voice call is in the range of three to five minutes, while the average hold time of an Internet call is nearly 30 minutes. AZ Tr. at 77-78. **[Confidential data begins]** In this case, Sprint has produced data showing the hold times for 371 actual Internet calls it measured on March 27, 2000. The average hold times of these calls is more than 37 minutes, confirming that the hold times of Internet calls significantly exceed the average hold times of local voice calls. Craig Direct at 16. **[Confidential data ends]**

The increased usage caused by Internet calls has required U S WEST to invest millions of dollars to increase the capacity of its network in Washington and elsewhere.

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[5] Because ISP traffic is not subject to access charges, U S WEST loses substantial revenues due to Internet traffic in Washington. The amount of access revenues that U S WEST is losing in Washington because of the access exemption is set forth in the confidential direct testimony of Larry Brotherson at pages 11-12.

Id. at 15. For example, in Washington alone, U S WEST's capital expenditures for interoffice facilities, which consist primarily of trunking facilities, increased by nearly 100 percent from 1998 to 1999. In the same period, investment in U S WEST's Washington network for switching increased by more than 35 percent. While these increases are not caused exclusively by Internet traffic, this type of traffic is a substantial cause of the need for more network capacity. Id. Moreover, without additional capital expenditures, increased usage of U S WEST's network will result in call blocking. Id. at 18-19.

If, in addition to the capital expenditures resulting from Internet traffic, U S WEST is required to pay reciprocal compensation for the delivery of that traffic, the result is nothing less than a large subsidy of the Internet and its users. Indeed, reciprocal compensation payments can rapidly consume the revenues that telephone usage otherwise produces. For example, in Washington, the Commission set the monthly rate for basic residential service at $12.50. If an Internet subscriber uses the Internet for just one hour a day, the reciprocal compensation payments (based on the end office rate of $.005416 from the MFS/U S WEST interconnection agreement) amount to about $9.75 per month, or 78 percent of the residential basic service rate in Washington. Brotherson Direct at 18. If an Internet subscriber uses the Internet for three hours a day, which is not uncommon, the reciprocal compensation payments would total about $29.25, more than double the flat monthly rate for basic residential service. Id.

Third, Sprint incorrectly suggests that is has no other means to recover the costs it incurs delivering Internet traffic to ISPs. However, there has been no showing from Sprint that it cannot recover the costs of delivering Internet calls to ISPs from the revenues it already can collect from ISPs. See AZ Tr. at 61-62. Further, as Sprint acknowledges, there is no legal restriction that prevents it from increasing the rates it charges for the Primary Rate Interconnection ("PRI") connections that it provides to the ISPs. Colorado Transcript ("CO Tr.") at 48. This fact alone refutes Sprint's suggestion that reciprocal compensation is the only means it has to recover its costs. Of course, U S WEST also sells PRI connections to ISPs, and under the Washington local exchange tariff, an ISP can purchase PRIs from either Sprint or U S WEST. U S WEST also understands that it may ultimately lose some of this business to Sprint through competition. However, U S WEST should not be required, in addition to losing its PRI business, to pay its competitor for accepting the interstate traffic for which the competitor has chosen to compete.

Fourth, as discussed previously, the application of reciprocal compensation to Internet traffic raises significant issues of distributive justice. Under Sprint's proposed contract language, the carrier that does not directly serve the ISP (here, U S WEST) ultimately bears the costs associated with the use of two local exchange networks -- its own network and Sprint's network. U S WEST must recover these costs from its customers, the ratepayers, including those who do not use the Internet. This will result in a subsidy that will be paid, in some cases, by non-Internet ratepayers who can least afford it.

Fifth, while Sprint claims that it will be placed at a competitive disadvantage if it does not receive reciprocal compensation for Internet traffic, it wholly ignores the

substantial negative effects to U S WEST resulting from the proposed compensation scheme and the ESP exemption. These multiple effects include: (1) paying millions of dollars annually in reciprocal compensation to Sprint and, potentially, other CLECs; (2) being unable to collect tens of millions of dollars annually in access charges from ISPs; (3) losing the revenues that are obtained currently by selling primary rate interconnection facilities ("PRIs") to Sprint and other carriers; and (4) having to invest substantial amounts of capital in the Washington network to accommodate traffic demands caused by the ISPs Sprint has chosen to serve.[6]

Sprint would contend that these negative effects are offset by the fact that under its proposal, U S WEST would be entitled to receive reciprocal compensation from Sprint and other CLECs. However, that is an empty response that does not address the significant disparity that would result from Spint's proposal. As the testimony of Larry Brotherson shows, U S WEST's large customer base ensures a steady flow of traffic from U S WEST subscribers to the ISPs that Sprint will serve. By contrast, Sprint currently has no local customers in Washington and, hence, no customers to generate reciprocal compensation for U S WEST by placing Internet calls to ISPs that U S WEST serves. See, e.g., Brotherson Direct at 16-17; AZ Tr. at 94.

The absence of any significant offset resulting from reciprocal compensation that U S WEST may receive for Internet traffic is demonstrated further by the fact that in Washington in January and February 2000, the number of minutes of use going to CLECs from U S WEST's customers was 1.5 billion, while the minutes of use going from CLEC end users to U S WEST was only 109 million. Brotherson Direct at 14. In other words, 93 percent of the traffic exchanged between U S WEST and CLECs originated from a U S WEST customer and was delivered to a CLEC customer. Further, more than 91 percent of the more than 1.5 billion minutes delivered to CLECs were ISP-bound minutes. Id. Adding further context to these data is the fact that of the 1.5 billion minutes of Internet calls, only 700 telephone numbers are associated with these minutes. These 700 telephone numbers will receive more than 13 million minutes annually; each telephone number will receive more than 36,500 minutes of Internet calls per day. Id.

These data also demonstrate the dramatic financial effects of requiring reciprocal compensation for Internet traffic. Extrapolating the number of Internet minutes that went to CLECs in January and February out to an annual number, without assuming any growth in calls placed to ISPs, yields 8.429 billion ISP-bound minutes originated from U S WEST customers. While the Commission has not established a final end office rate, using the rate of $0.005416 from the MFS/U S WEST interconnection agreement, the projected compensation to CLECs could exceed $45 million for this year alone. This massive transfer of reciprocal compensation dollars will inevitably affect Washington ratepayers. Brotherson Rebuttal at 3-4.

[6] In the proprietary testimony of Larry Brotherson, U S WEST quantifies some of these amounts. See, e.g., Brotherson Direct at 10, 16.

3. U S WEST Can Measure ISP Traffic and Distinguish It from Voice Traffic.

Sprint has suggested that if U S WEST is not required to pay reciprocal compensation for Internet traffic, that result effectively would relieve U S WEST of paying reciprocal compensation for local voice traffic, since U S WEST cannot distinguish between voice and data traffic. However, as U S WEST has demonstrated and as the Colorado Commission found, Sprint's premise is wrong; U S WEST is able to identify Internet traffic and distinguish it from voice traffic. Brotherson Direct at 11-14; Colorado Decision at 18.[7]

As described by Mr. Brotherson and Mr. Craig, U S WEST has implemented a three-step process to capture the set-up and traffic flow within the network. First, U S WEST has implemented the Hewlett Packard CroSS 7 system to capture the number of calls and associated minutes of use for calls delivered between U S WEST and CLECs. Second, U S WEST has also developed an algorithm that identifies high-speed modem traffic based on various call characteristics. When U S WEST applies this algorithm to the recorded usage, it can identify the amount of traffic that is ISP-related. But U S WEST's system does not stop there. The third step is the modem identifier process, which confirms that the phone numbers identified by the algorithm process are actually high-speed data modems. U S WEST used this process to gather the data for January and February 2000 reported above that relates to Internet and voice call traffic flows in Arizona. Brotherson Direct at 11-14; Craig Direct at 19-21; Brotherson Rebuttal at 5-6; Craig Rebuttal at 2-3.[8]

Sprint also expresses concern that even if U S WEST can separate Internet and voice traffic for measuring purposes, it cannot separate interstate Internet traffic from local data traffic. Again, Sprint is wrong. To permit this type of separation, Sprint would only have to provide U S WEST with the telephone numbers of the ISPs it serves. Having these numbers would allow U S WEST to identify local data traffic for which reciprocal compensation is due from interstate Internet calls for which reciprocal compensation should not be due. Sprint's concerns that these numbers are proprietary and therefore cannot be provided to U S WEST are unfounded. First, the telephone numbers of ISPs are publicly disclosed and are, of course, known to the ISPs' customers. Second, even if there were legitimate concerns of confidentiality, U S WEST and other carriers in the industry routinely have access to telephone numbers associated with competitors for

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[7] Sprint's stipulation establishing the appropriateness of a rate for reciprocal compensation that recognizes the cost differences between voice and Internet traffic is an implicit acknowledgement that Internet traffic can be identified separately. If this traffic could not be identified and measured separately from voice traffic, there would be no need, of course, for a different rate.

[8] Sprint challenges U S WEST's measuring process on the ground that the process identifies high-speed data modems, not ISPs. However, as Mr. Brotherson explains, this is a distinction without a difference. The process identifies high-speed data modems used by ISPs, which allows U S WEST to measure amounts of Internet traffic. Brotherson Surrebuttal at 3. Further, the process excludes voice calls and fax calls and eliminates "occasional use" high-speed modems. These steps provide substantial assurance that the modems included are in fact being used by ISPs. Id. at 3-5.

billing and other purposes, and there are standard industry practices for handling this type of information. For example, the contract provides that proprietary information "provided for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts." Contract Section (A)3.36.2. See Craig Rebuttal at 3-4.

4. If the Commission Allows Sprint's Request for Reciprocal Compensation, it Should Establish a Separate Rate of Compensation for this Traffic.

If the Commission determines that reciprocal compensation does apply to Internet traffic, the Commission should establish a separate rate that recognizes the differences in cost between Internet and voice traffic. As set forth in the May 22, 2000 letter to the ALJs, Sprint and U S WEST have stipulated that the costs of delivering Internet traffic to ISPs are typically less than the costs of terminating voice traffic and, accordingly, that in the generic cost docket, the Commission should establish a rate that recognizes this difference. The parties have stipulated as follows:

> The costs that carriers incur to terminate voice calls typically exceed the costs they incur to deliver Internet calls to Internet service providers ("ISPs"). Accordingly, if the Washington Utilities and Transportation Commission ("WUTC") allows Sprint's request to receive reciprocal compensation for Internet traffic, U S WEST and Sprint agree that the WUTC should establish a rate of compensation for Internet traffic that is separate and distinct from the termination rate the WUTC has established for voice traffic. The parties agree further that if the WUTC allows Sprint's request for reciprocal compensation, the costs, recovery mechanism, and permanent rate associated with the delivery of Internet traffic to ISPs should be determined by the WUTC in Docket UT-003013.

This stipulation is supported by substantial evidence establishing that the costs of delivering Internet calls to ISPs are less than the costs of terminating voice calls. This evidence includes Sprint's own acknowledgements of these differences in costs and of the appropriateness of a rate that recognizes these differences if reciprocal compensation is ordered. See AZ Tr. at 85; CO Tr. at 59-64. The differences in cost structure arise from several factors.

First, the end office rate for voice calls includes the cost to set up the call as well as the costs associated with the duration of the call. The call setup costs are spread over the average call duration. Because the average Internet call is substantially longer than the average voice call, the set up cost for Internet call should be spread over a longer duration, thus reducing the per minute of use termination rate. AZ Tr. at 82-84; Taylor Direct at 29-34. Second, trunk utilization rates are much higher for Internet calls than for basic voice traffic. Craig Direct at 25-26. This also results in a reduction in the per minute of use cost. Third, voice calls are routed through a line unit in the switch, which

incorporates line concentration. This is typically not the case when the Internet port is dedicated to the ISP, thereby reducing the cost. For these reasons, the cost for Sprint to terminate an Internet call is significantly less than the cost to terminate a voice call. Id.

For these reasons, and as stipulated by the parties, if the Commission allows Sprint's request for reciprocal compensation, it should establish a separate rate for Internet traffic in Docket UT-003013.

B. The Commission Should Adopt U S WEST's Proposed Definition Of "Currently Combined" To Describe UNEs That U S WEST Will Provide Upon Request From Sprint (Issue 2).

As set forth in the Direct Testimony of Perry W. Hooks, Jr. at 3-4, U S WEST proposes to define the term "currently combined" to describe UNEs that correspond to finished services which are being offered by U S WEST to a particular customer at the time Sprint orders such UNEs for that same customer at that same location. U S WEST will provide such UNE's in their "currently combined" form to Sprint upon request from Sprint.

The Commission should adopt U S WEST's proposed definition because it is consistent with the FCC rules at 47 C.F.R. 51.315(b) and follows the governing law set forth by the United States Court of Appeals for the Eighth Circuit. Contrary to Sprint's assertions, there is no legal basis for the Commission to adopt the expansive definition urged by Sprint, which would impose obligations on U S WEST to provide combinations of specific network elements to Sprint where no such UNE combinations exist and, therefore, would have to be created for Sprint.

The language at Rule 315(b) fully supports U S WEST's proposed language here. Rule 315(b) states: "Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." Sprint is correct when it states that U S WEST's proposed use of the phrase "pre-existing combination" limits U S WEST's obligation to provide combined UNEs. This is so because the language of 315(b) itself has a limited and narrow focus. If this were not the case, there would have been no need for the FCC to have developed rules which address situations *beyond those* that currently exist, i.e. the situations addressed in vacated Rules 315(c)-(f). "Currently combined" plainly describes a condition that presently exists – not a condition that may occur, could occur, would likely occur, or even would inevitably occur at some point in the future. "Pre-existing" combinations and "network elements that the incumbent LEC currently combines" are, therefore, synonymous. One need only look at the vacated language in Rule 315(c) to know that Rule 315(b) was not meant to address anything but network elements that are pre-existing, i.e. currently combined for use by an existing U S WEST end user customer.

It is the meaning conveyed in the currently vacated Rule 315(c) which Sprint is attempting to attribute to the narrowly-crafted Rule 315(b). Vacated Rule 315(c) states that "[u]pon request, an incumbent LEC shall . . . combine [UNEs] in any manner . . . ." "Any manner" means just that – any manner. Whether the UNEs "are not ordinarily combined," which the rule states, or whether the UNEs are ordinarily combined, which the rule implies, the plain language of vacated Rule 315(c) is clearly more expansive than

is the language of the narrowly crafted Rule 315(b). In sum, vacated Rule 315(c) is not viable, and Rule 315(b) cannot be expanded to support Sprint's proposed definition of "currently combined" here.

While Sprint relies upon section 251(c)(3) of the Telecommunications Act of 1996 (the "Act") to support imposing expansive UNE obligations upon U S WEST, this section provides no such support. It simply states generally where and how incumbent local exchange carriers (ILECs) should provide nondiscriminatory access to UNEs. No where does it state or imply that ILECs have an obligation to combine network elements at the request of a CLEC when the requested elements are not actually combined at the time the CLEC requests them. Indeed, contrary to Sprint's position here, section 251(c)(3) makes clear that the requesting carrier (and not the ILEC) will actually combine the unbundled elements in order to provide a telecommunications service.

Accordingly, in Iowa Utils. Bd. v. FCC, 120 F.3d 753, 813 & n. 39 (8th Cir. 1997), aff'd in part, rev'd in part, AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721 (1999), the Eighth Circuit vacated FCC Rules 315(c)-(f), which would have required ILECs to combine network elements into configurations different from their current configurations and to combine ILEC elements with CLEC facilities. The Eighth Circuit held that section 251(c)(3) cannot reasonably be read to require ILECs to combine elements for CLECs but, instead, requires CLECs to combine elements themselves. Id. In AT&T Corp., the Supreme Court did not address this issue, thereby leaving the Eighth Circuit's ruling intact. As discussed further below in connection with Issue 3, because the Eighth Circuit held that the Act does not require ILECs to perform these combinations, and that holding stands, the Commission should adopt here U S WEST's proposed definition of "currently combined" which is solidly grounded in the governing law.

C. The Commission Should Not Require U S WEST To Provide Sprint Combinations Of UNEs That Are Not Currently Combined Or Pre-Existing Within U S WEST's Network (Issue 3).

The Eighth Circuit's decision vacating FCC Rules 315(c)-(f) precludes the requirements that Sprint seeks to impose here. As discussed above in connection with the proper definition of "currently combined," and as set forth in the Direct Testimony of Perry W. Hooks, Jr. at 6-12, U S WEST and Sprint disagree over whether U S WEST should be required to create de novo for Sprint combinations of UNEs that are not pre-existing or already combined at the time that Sprint places an order for them. U S WEST proposes to provide Sprint with UNEs that are "currently combined" consistent with 47 C.F.R. § 51.315(b) and the decision of the Eighth Circuit in Iowa Utilities Board. In Iowa Utils. Bd., the Eighth Circuit vacated the rules articulated at 47 C.F.R. § 51.315(c)-(f) that would have required ILECs to combine for CLECs elements that are not already combined.

While Sprint witness Mr. Stahly describes why Sprint believes that U S WEST's position on UNE combinations is wrong on the law, he barely even acknowledges the Eighth Circuit decision upon which U S WEST's position rests, and which *is* the governing law.

In Iowa Utils. Bd. U S WEST and numerous other parties appealed various parts

of the FCC's Local Competition Order, including the rules concerning combining network elements, pursuant to the Hobbs Act, 28 U.S.C. § 2341, et seq. The panel on multidistrict litigation consolidated these appeals in the Eighth Circuit pursuant to 28 U.S.C. § 2112(a)(3). On July 18, 1998, the Eighth Circuit vacated, inter alia, the rules requiring ILECs to combine for CLECs elements that are not already combined. In vacating Rules 315(c)-(f), the Eighth Circuit explained that, "While the Act requires incumbent LECs to provide elements in a manner that enables the competing carriers to combine them, unlike the [FCC], we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements." Iowa Utils. Bd., 120 F.3d at 813. "[T]he plain meaning of the Act," the court explained, "indicates that the requesting carriers will combine the unbundled elements themselves; the Act does not require the incumbent LECs to do all of the work." Id. (emphasis in original).

The FCC and other parties sought review by the Supreme Court of several aspects of the Eighth Circuit's decision. However, neither the FCC nor any other party sought review of the Eighth Circuit's decision to vacate Rules 315(c)-(f). In its decision in AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999) ("AT&T Corp."), the Supreme Court ultimately remanded the case to the Eighth Circuit, where parties on both sides of the issues filed motions setting forth their positions concerning how the Eighth Circuit should revise its mandate to comport with the Supreme Court's decision and what additional proceedings should be held. In its motion, the FCC argued that the Supreme Court's rationale for upholding FCC rule 315(b) required upholding Rules 315(c)-(f) as well. U S WEST, along with other carriers, argued that the Supreme Court's ruling did not affect the Eighth Circuit's decision to vacate those rules.

Consistent with the express terms of the Supreme Court's decision, the Eighth Circuit reinstated rule 315(b). Iowa Utils. Bd. v. FCC, Nos. 96-3321 et al., Order at 2 (8th Cir. June 10, 1999). However, the Eighth Circuit did not revise its earlier mandate vacating rules 315(c)-(f). Instead, the court directed the parties to submit briefs addressing "whether or not, in light of the Supreme Court's decision, this court should take any further action with respect to . . . § 51.315(c)-(f) (unbundling rules). Id. at 3. The parties have submitted their briefs, oral argument has been held, and the case remains pending before the Eighth Circuit. Significantly, as the FCC confirmed in its Third Report and Order, Rules 315(c)-(f) remain vacated absent a further ruling from the Eighth Circuit or the Supreme Court. In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (Rel. Nov. 5, 1999).

Although Sprint does not discuss the Eighth Circuit's vacatur of Rules 315(c)-(f), nor the FCC's confirmation that these rules are vacated pending a further ruling from the Eighth Circuit or the Supreme Court, it does look for support in a decision of the Minnesota Public Utilities Commission ("MPUC") from which it quotes extensively.[9]

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[9] Federal Court Remand of Issues Proceeding from the Interconnection Agreements Between U S WEST Communications, Inc. and AT&T, MCI, MFS and AT&T Wireless, P421/C1-99-786 (March 14, 2000).

The MPUC decision, however, is not helpful here because it is inconsistent with the Eighth Circuit's ruling vacating Rules 315(c)-(f). The decision provides no support for imposing upon U S WEST the UNE combination obligations that Sprint urges because the Eighth Circuit has ruled that these obligations violate the Act and because the FCC has deferred to the Eighth Circuit in its Third Report and Order.

Likewise, the two recent Ninth Circuit decisions cannot support Sprint's position here. The Ninth Circuit ruled in U S WEST Communications, Inc. v. MFS Intelenet, Inc., 193 F.3d 1112 (9th Cir. 1999), and MCI Telecommunications Corp. v. U S WEST Communications, Inc., 204 F.3d 1262 (9th Cir. 2000), that the Eighth Circuit erred in Iowa Utilities Board when it vacated FCC rules 315(c)-(f). This Ninth Circuit ruling, however, can provide no support for Sprint here because the ruling improperly intrudes on the Eighth Circuit's exclusive statutory jurisdiction under the Hobbs Act to review Rules 315(c)-(f) . Under the Hobbs Act, the court of appeals reviewing an FCC order "has exclusive jurisdiction to make and enter . . . a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency." 28 U.S.C. § 2349(a) (emphasis added). If the court of appeals reverses the FCC order, in whole or in part, "it shall remand the case to the [FCC] to carry out the judgment of the court and it shall be the duty of the [FCC] . . . to forthwith give effect thereto." 47 U.S.C. § 402(h).[10]

The Ninth Circuit acknowledges that the Eighth Circuit has exclusive jurisdiction to decide the validity of Rules 315(c)-(f) and further acknowledges that, until the Eighth Circuit rules otherwise, Rules 315(c)-(f) are vacated and immune from collateral attack. MCI Telecommunications, 204 F.3d at 1268. Despite this accurate acknowledgement of the scope of the Hobbs Act, the Ninth Circuit does collaterally attack and impermissibly reinstate vacated Rule 315(c) when it reaches a result that requires U S WEST to do that which the Eighth Circuit has ruled U S WEST is not required to do.

The Ninth Circuit may believe that there is a rationale for requiring U S WEST to combine UNEs that are not already combined. The Ninth Circuit unquestionably wades through territory that belongs to the Eighth Circuit, however, when it analyzes the

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[10] The Hobbs Act ensures the uniformity of FCC rules and regulations by entrusting a single court of appeals with the exclusive power to review an agency order. Litigants may not "evade these provisions" by "rais[ing] the same issues" in a different court, where the effect would be to review the same agency action subject to the provisions of the Hobbs Act. See FCC v. ITT World Communications, 466 U.S. 463, 468 (1984). If a case requires a court to "determine the validity of" an FCC order or rule, then the court lacks jurisdiction to decide the issue unless it is a proper court under the Hobbs Act. Wilson v. Belo Corp., 87 F.3d 393, 397 (9th Cir. 1996) (quoting 47 U.S.C. § 2342).

Accordingly, under the Hobbs Act, the only court that can render a judgment on the validity of Rules 315(c)-(f) – barring further review by the Supreme Court – is the Eighth Circuit, the court of appeals that reviewed the FCC order promulgating those rules and the court most familiar with the Local Competition Order, the administrative and judicial record, and the history of the prior proceedings. The Eighth Circuit is in the process of rendering that judgment in light of the Supreme Court's decision. If the Eighth Circuit determines that the rules in question should remain vacated, then the FCC and this Commission must give effect to that decision.

interplay between the Supreme Court's treatment of Rule 315(b), how the Supreme Court would likely treat vacated Rules 315(c)-(f), and whether or not the Act permits (as opposed to mandates) the UNE combinations. Accordingly, whatever analysis the Ninth Circuit employs to support its result, the analysis and result improperly supplant the Eighth Circuit's decision-making concerning Rule 315(c), and cannot support Sprint's position here.

While Sprint's witness Mr. Stahly points to Judge Berg's Report and Decision in the ATTI interconnection arbitration as support for Sprint's proposed language here, Direct Testimony of David E. Stahly at 25, Mr. Stahly fails to address the fact that the contract language Sprint proposes here is far more expansive than that in Judge Berg's Report and Decision. Sprint's proposed language here would require U S WEST to combine UNEs "in any manner," provided that the UNE combination is technically feasible and would not impair the ability of other carriers to obtain access to UNEs or to interconnect with U S WEST. As such, Sprint's proposed language would obligate U S WEST to combine UNEs that U S WEST does *not* ordinarily combine in its network and to combine UNEs in a manner *not* typically combined in U S WEST's network. In contrast to Sprint's sweeping proposed language, Judge Berg ruled in the ATTI arbitration that "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." Arbitrator's Report and Decision, WUTC Docket No. UT-990385 at paragraph 58. Accordingly, the contract language ordered by Judge Berg is much narrower than that sought by Sprint here and does not support Sprint's view that it is entitled to the language it seeks here.

Because U S WEST's proposed language is consistent with the Eighth Circuit's ruling, whereas Sprint's proposed language violates that ruling, this Commission should adopt U S WEST's proposed language. Pursuant to this language, and consistent with U S WEST's proposed definition of "currently combined," (as set forth in the discussion of Issue 2 above), U S WEST would provide Sprint with combinations of those UNEs that are already combined or pre-existing.

Finally, there is no merit to Sprint's suggestion that it would be at a competitive disadvantage if U S WEST does not create for Sprint UNEs that do not otherwise exist. As set forth in Mr. Hooks's testimony, Sprint, like any other CLEC, can build facilities over which to serve prospective customers. Further, as set forth in the unrebutted Direct Testimony of Perry W. Hooks, Jr. at 11-12, Sprint can combine the unbundled network elements itself using distribution frames, which U S WEST offers for this purpose. Also, to the extent that U S WEST serves the end user customer(s), Sprint may order the finished service from U S WEST and resell it to the end user customer. Id. at 11. In sum, there is no factual predicate to Sprint's claims that if U S WEST doesn't build de novo for Sprint UNE combinations that Sprint is capable of building for itself, Sprint will be disadvantaged.[11]

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[11] Sprint's assertions concerning the requirements of its "ION" service underscore that Sprint's position, if adopted here, would turn U S WEST into Sprint's construction company. As explained in Mr. Hooks's Rebuttal Testimony, Sprint implies that its ION service is "new and innovative" and requires

For all of the reasons set forth above, this Commission should adopt U S WEST's proposed language, which provides Sprint with combinations of those UNEs that are already combined. This language follows the express language of section 251(c)(3) of the Act, the ruling of the Eighth Circuit, and in no respect prevents Sprint from offering whatever UNE combinations it wishes to offer to its customers.

D. The Commission Should Permit U S WEST To Recover The Nonrecurring Costs That U S WEST Incurs To Provide Unbundled Network Elements Combinations To Sprint (Issue 10).

U S WEST does not believe that there is a reasonable dispute over its right to recover the nonrecurring costs that it incurs to provide Sprint with access to unbundled network combinations. Section 252(d)(1) of the Act provides that "the just and reasonable rate for network elements . . . shall be (i) based on the cost (determined without reference to rate-of-return or other rate-based proceeding) of providing the . . . network element and (ii) nondiscriminatory, and . . . may include a reasonable profit." Here, consistent with the cost recovery provisions of the Act, U S WEST seeks to recover its nonrecurring charges for each UNE element that it provides access to as part of a UNE combination. While Sprint appears to concede that it should pay nonrecurring charges for "new" UNE combinations, it argues that paying U S WEST's nonrecurring costs for each element within a pre-existing UNE combination is somehow arbitrary and a "windfall" to U S WEST.

As set forth in the Direct Testimony of Perry W. Hooks, Jr. at 14-15, U S WEST will incur nonrecurring costs to provide Sprint with UNE combinations. These costs include the costs of changes to U S WEST's billing systems, the costs to re-tag all of the circuits to be used by Sprint located within U S WEST's central office in order to facilitate the provisioning, repair and ongoing operations of the collocated facilities, and the costs to change U S WEST's inventory, maintenance and repair records to facilitate the UNE provisioning.

Not surprisingly, Sprint does not appear to challenge these categories of cost; it objects, however, to paying nonrecurring costs for each unbundled network element, costs

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"an xDSL-type of network configuration…[that] is different than the standard network configuration used to provide POTs services." What Sprint is saying is that where the xDSL-type network configuration does not exist in the U S WEST network at the location where Sprint desires to provide this service to a Sprint customer, this Commission should order U S WEST to construct the facilities so that Sprint may serve its customers. Accordingly, Sprint would have the Commission order U S WEST to reconfigure its network solely for the benefit of Sprint, even though Sprint could construct these facilities itself or order xDSL-type network configurations from other CLECs. Rebuttal Testimony of Perry W. Hooks at 4.

As further explained by Mr. Hooks, other U S WEST customers, including other CLECs, do not have the option of turning U S WEST into their construction company to reconfigure their networks. To allow Sprint this option gives Sprint an unfair advantage over other CLECs. Such a requirement is contrary to the requirement of Section 253(b) of the Act that any state regulatory requirements be "competitively neutral," both to other CLECs and to U S WEST. Id.

which it claims would be a "windfall" to U S WEST. This objection is without merit. As Mr. Hooks explains, U S WEST incurs operational and systems costs to provide UNEs in combination. Id. at 14. If Sprint were to order individual unbundled network element; it would pay the nonrecurring costs for each of those unbundled network elements. Alternatively, if Sprint were to order a finished service from U S WEST, Sprint would pay the nonrecurring costs that U S WEST incurs to provide that finished service. In the case of orders for combined unbundled network elements, however, Sprint would have the Commission deny U S WEST its nonrecurring costs associated with providing the individual elements in the combination. Rebuttal Testimony of Perry W. Hooks, Jr. at 6.

Because there is no authority for Sprint's position denying U S WEST cost recovery here, and because U S WEST will incur nonrecurring costs to provide Sprint with UNE combinations, the Commission should adopt U S WEST's proposed language entitling it to recover its nonrecurring charges for each unbundled network element that comprises a UNE combination.

III.CONCLUSION

For the foregoing reasons, the Commission should resolve the issues in accordance with the evidence presented and positions stated by U S WEST.

Dated: June 2, 2000. U S WEST Communications, Inc

By:_____

John M. Devaney
Mary Rose Hughes
PERKINS COIE LLP
607 Fourteenth Street, N.W.
Suite 800
Washington, D.C. 20005-2011
(202) 628-6600
(202) 434-1690 (fax)

Lisa Anderl
U S WEST COMMUNICATIONS, INC.
Room 3206
1600 Seventh Avenue
Seattle, Washington 98191
(206) 343-4052
(206) 343-4040 (Fax)

Attorneys for U S WEST Communications, Inc.

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